Mercantile Law – Transportation Law

Case Digest

UNIVERSITY OF SANTO TOMAS
FACULTY OF CIVIL LAW

LIST OF CASES
Transportation Law

I. Transportation Laws

A. Definition of common carrier

1. Carrying of persons or goods or both may be the principal or ancillary activity

- Pedro De Guzman vs. Court of Appeals, G. R. No. L-47822, December 22, 1988

2. The common carrier need not be the owner (of the vessel) used to consummate contract of carriage

- Cebu Salvage Corporation vs. Philippine Home Assurance Corporation, G.R. No. 150403, January 25, 2007

B. Examples of common carrier

1. Pipeline operator

- First Philippine Industrial Corporation vs. Court of Appeals, G.R. No. 125948, December 29, 1989

2. Customs broker

- A.F. Sanchez Brokerage Inc. vs. Court of Appeals, G.R. No. 147079, December 21, 2004
- Loadmasters Customs Services, Inc. vs. Glodel Brokerage Corporation, GR No. 179446, January 10, 2011

3. Freight forwarder that contracts delivery of the goods

- Unsworth Transport International (Phils.) vs. Court of Appeals, G.R. No. 166250, July 26, 2010

4. School bus operator despite limited clientele

- Spouses Perena vs. Spouses Nicolas, GR No. 157917, August 29, 2012

C. Distinctions between common carrier and private carrier

- Philippine American General Insurance Company vs. PKS Shipping Company, G.R. No. 149038, April 9, 2003

D. Diligence Required of Common Carriers

1. Extra-ordinary diligence required/ Presumption of fault in case of loss or damage to goods or death or injury to passengers

- Heirs of Amparo de los Santos vs. Court of Appeals, 186 SCRA 649 (1990)
- American Home Assurance Company vs. The Court of Appeals, G.R. No. 94149, May 5, 1992
- Philippines Airlines, Inc. vs. Court of Appeals, 226 SCRA 423 (1993)
- Macam vs. Court of Appeals, 313 SCRA 77 (1999)
- Virgines Calvo doing business under the name and style Transorient Container Terminal Services, Inc. vs. UCPB General Insurance Co., Inc., G.R. No. 148496, March 19, 2002
- Vector Shipping Corp. and Francisco Soriano vs. Adelfo B. Macasa 559 SCRA 97 (2008)
- R Transport Corporation vs. Pante, G.R. No. 162104, September 15, 2009
- Nedlloyd Lijnen B.V. Rotterdam and the East Asiatic Co., LTD. vs. Glow Laks Enterprises, LTD., G.R. No. 156330, November 19, 2014
- Eastern Shipping Lines, Inc. vs. BPI/MS Insurance Corporation and Mitsui Insurance Co., Ltd., G.R. No. 182864, January 12, 2015
- Asian Terminals vs. Simon Enterprises, Inc. GR no. 177116, February 27 2013
- ALFREDO MANAY, JR. v. CEBU AIR,INC, G.R. No. 210621, April 04, 2016
- GREENSTAR EXPRESS, INC. v. UNIVERSAL ROBINA CORPORATION, G.R. No. 205090, October 17, 2016
- Cacho v. Manahan, G.R. No. 203081, [January 17, 2018]
- FEDERAL EXPRESS CORPORATION v. LUWALHATI R. ANTONINO AND ELIZA BETTINA RICASA ANTONINO, G.R. No. 199455, THIRD DIVISION, June 27, 2018, LEONEN, J
- KEIHIN-EVERETT FORWARDING CO., INC., v. TOKIO MARINE MALAYAN INSURANCE CO., INC. and SUNFREIGHT FORWARDERS & CUSTOMS BROKERAGE, INC., G.R. No. 212107, SECOND DIVISION, October 28, 2019, REYES, J. JR., J.
- ANNIE TAN v. GREAT HARVEST ENTERPRISES, INC., G.R. No. 220400, THIRD DIVISION, March 20, 2019, LEONEN, J.

E. Liabilities of Common Carriers

- Ma. Luisa Benedicto vs. Hon. Intermediate Appellate Court, G.R. No. 70876, July 19, 1990
- Cogeo Cubao Operators and Drivers Association vs. Court of Appeals, 207 SCRA 243 (1992)
- Spouses Cesar & Suthira Zalamea vs. Court of Appeals, G.R. No. 104235 November 18, 1993
- Philippine Airlines, Inc. vs. Court of Appeals, G.R. No. 119641, May 17, 1996
- Philippine Airlines, Inc. vs. Court of Appeals, G.R. No. 120262, July 17, 1997

- Carlos Singson vs. Court of Appeals, G.R. No. 119995, November 18, 1997)
- Loadstar Shipping Co., Inc. vs. Court of Appeals, G.R. No. 131621, September 28, 1999
- Equitable Leasing Corporation vs. Lucita Suyom et al., G.R. No. 143360, September 5, 2002
- Light Rail Transit Authority & Rodolfo Roman vs. Marjorie Natividad, G.R. No. 145804, February 6, 2003
- Singapore Airlines Limited vs. Fernandez, G.R. No. 142305, December 10, 2003
- Cathay Pacific Airways, Ltd., vs. Spouses Daniel Vazquez And Maria Luisa Madrigal Vazquez, G.R. No. 150843, March 14, 2003
- William Tiu, doing business under the name and style of "D' Rough Riders" vs. Pedro A. Arriesgado, G.R. No. 138060, September 1, 2004
- Philippine Airlines Inc. vs. Court of Appeals, G.R. No. 123238, September 22, 2008
- The Heirs of the late Ruben Reinoso, Sr. vs. Court of Appeals, GR No. 116121, July 18, 2011
- Heirs of Jose Marcial Ochoa vs. G&S Transport Corporation, G.R. No. 170071, March 9, 2011 as affirmed in the July 16, 2012 decision
- Loadstar Shipping Company, Inc., and Loadstar International Shipping Co., Inc. vs. Malayan Insurance Co., Inc., G.R. No. 185565, November 26, 2014
- Spouses Jesus Fernando and Elizabeth Fernando v. Northwest Airlines, Inc., G.R. No. 212038 and G.R. No. 212043, February 8, 2017
- Jose Sanico and Vicente Castro v. Werherlina P. Colipano, G.R. No. 209969, September 27, 2017
- SULPICIO LINES, INC. v. NAPOLEON SESANTE, G.R. NO. 172682, July 27, 2016
- ALFREDO S. RAMOS v. CHINA SOUTHERN AIRLINES CO. LTD., G.R. No. 213418, September 21, 2016
- CATHAY PACIFIC AIRWAYS, LTD. V. SPOUSES ARNULFO, G. R. No. 188283, July 20, 2016
- Sulpicio Lines, Inc. v. Karaan, G.R. No. 208590, [October 3, 2018]
- ASIAN TERMINALS, INC. (ATI) v. PADOSON STAINLESS STEEL CORPORATION, G.R. No. 211876, FIRST DIVISION, June 25, 2018, TIJAM, J.

F. Vigilance over Goods

1. Exempting Causes

- Mauro Ganzon vs. Court of Appeals, G.R. No. L-48757, May 30, 1988
- Central Shipping Company, Inc. vs. Insurance Company of North America, G.R. No. 150751, September 20, 2004
- Western Shipping Agency, Inc., vs. National Labor Relations Commission, 253 SCRA 405 (1996)
- Virgines Calvo doing business under the name and style Transorient Container Terminal Services, Inc. vs. UCPB General Insurance Co., Inc., G.R. No. 148496, March 19, 2002
- TORRES-MADRID BROKERAGE, INC. v. FEB MITSUI MARINE INSURANCE CO., INC.. G.R. No. 194121, July 11, 2016

- TRANSIMEX CO. v. MAFRE ASIAN INSURANCE CORP., G.R. No. 190271, September 14, 2016

a. **Requirement of Absence of Negligence**

- Bachelor Express, Incorporated vs. The Honorable Court of Appeals (Sixth Division), G.R. No. 85691, July 31, 1990
- Loadstar Shipping Co., Inc., vs. Court of Appeals, G.R. No. 131621, September 28, 1999
- Smith Bell Dodwell Shipping Agency Corporation vs. Catalino Borja, G.R. No. 143008, June 10, 2002

b. **Absence of Delay**

- Aniceto Saludo, Jr. vs. Hon. Court of Appeals, G.R. No. 95536, March 23, 1992
- Philippine Air Lines vs. Florante Miano, G.R. No. 106664, March 8, 1995

c. **Due Diligence to Prevent or Lessen the Los**

- Central Shipping Company, Inc. vs. Insurance Company of North America, G.R. No. 150751, September 20, 2004

2. **Contributory Negligence**

3. **Duration of Liability**

a. **Delivery of Goods to Common Carrier**

- Mauro Ganzon vs. Court of Appeals, G.R. No. L-48757, May 30, 1988
- Oriental Assurance Corporation v. Manuel Ong, doing business under the business name of Western Pacific Transport Services and/or Asian Terminals, Inc., G.R. No. 189524, October 11, 2017

b. **Actual or Constructive Delivery**

- Lu Do & Lu YM Corporation vs. I.V. Binamira, G.R. No. L-9840, April 22, 1957
- Compañia Maritima vs. Insurance Company of North America, G.R. No. L-18965, October 30, 1964
- Westwind Shipping Corporation vs. UCPB General Insurance Co., G.R. No. 200289, November 25, 2013

3. **Stipulation for Limitation of Liability**

a. **Void Stipulations**

- Sweet Lines, Inc. vs. Hon. Bernardo Teves, Presiding Judge, CFI of Misamis Oriental, Branch VII, G.R. No. L-37750, May 19, 1978

b. Limitation of Liability to Fixed Amount

c. Limitation of Liability in Absence of Declaration of Greater Value

- St. Paul Fire & Marine Insurance Co. vs. Macondray & Co, Inc., et al., G.R. No. L-27796, March 25, 1976
- Eastern and Australian Steamship Co., Ltd. vs. Great American Insurance Co., G.R. No. L-37604 October 23, 1981

5. Liability for Baggage of Passengers

a. Checked-In Baggage
b. Baggage in Possession of Passengers

G. Safety of Passengers

- Victory Liner, Inc. vs. Rosalito Gammad, G.R. No. 159636, November 25, 2004
- Philippine National Railways vs. The Honorable Court of Appeals, G.R. No. L-55347, October 4, 1985

1. Duration of Liability

a. Waiting for Carrier or Boarding of Carrier

- Dangwa Transportation Co., Inc. vs. Court of Appeals, G.R. No. 95582, October 7, 1991

b. Arrival at Destination

- La Mallorca vs. Honorable Court of Appeals, G.R. No. L-20761, July 27, 1966
- Aboitiz Shipping Corporation vs. Hon. Court of Appeals, Eleventh Division, G.R. No. 884458, November 6, 1989

1. Liability for Acts of Others

a. Employees

- Antonia Maranan vs. Pascual Perez, et al, G.R. No. L-22272, June 26, 1967
- Leopoldo Poblete vs. Donato Fabros, G.R. No. L-29803, September 14, 1979
- Sabena Belgian World Airlines vs. Honorable Court of Appeals G.R. No. 82068. March 31, 1989

b. Other Passengers and Strangers

- Jose Pilapil vs. Hon. Court of Appeals, G.R. No. 52159, December 22, 1989

3. Exempting causes

a. **Force majeure**

- Alberta Yobido vs. Court of Appeals, G.R. No. 113003, October 17, 1997

b. **When force majeure does not apply**

- Fortune Express, Inc., vs. Court of Appeals, G.R. No. 119756, March 18, 1999

4. **Extent of Liability for Damages**

- Philippine Airlines, Inc. vs. Hon. Court of Appeals, G.R. No. 54470, May 8, 1990
- Pan American World Airways, Inc. vs. Intermediate Appellate Court, G.R. No. 68988, June 21, 1990
- China Airlines Limited vs. Court of Appeals, 211 SCRA 897 (1992)
- Sulpicio Lines, Inc., vs. The Honorable Court of Appeals, G.R. No. 113578, July 14, 1995
- Collin A. Morris vs. Court of Appeals, G.R. No. 127957, February 21, 2001
- Smith Bell Dodwell Shipping Agency Corp. vs. Borja, 383 SCRA 341 (2002)
- Victory Liner, Inc. vs. Rosalito Gammad, G.R. No. 159636, November 25, 2004

H. **Bill of Lading**

1. **Definition**

- Unsworth Transport International Phils., Inc. vs. Court of Appeals, G.R. No. 166250, July 26, 2010

1. **Three-Fold Character**

- Keng Hua Paper Products Co., Inc. vs. Court of Appeals, 286 SCRA 257 (1998)

2. **Parties**

- Everett Steamship Corporation vs. Court of Appeals, 297 SCRA 496 (1998)

3. **Kinds of bill of lading**

- Magellan Manufacturing Marketing Corporation vs. Court of Appeals, G.R. No. 95529, August 22, 1991

4. **Stipulations in a bill of lading**

- Provident Insurance Corp. vs. Court of Appeals, G.R. No. 118030, January 15, 2004

2. **Delivery of Goods**

1. **Period of Delivery**

- Maersk Line vs. Court of Appeals, 222 SCRA 108 (1993)

2. Delivery Without Surrender of Bill of Lading

- National Trucking and Forwarding Corporation vs. Lorenzo Shipping Corporation, G.R. No. 153563, February 07, 2005
- DESIGNER BASKETS, INC., v. AIR SEA TRANSPORT, INC. AND ASIA CARGO CONTAINER LINES, INC., G.R. No. 184513, March 09, 2016

3. Requirements/Conditions precedent for Filing Claims (Coastwise or inter-island commerce)

1. Notice requirement

- Philippine American General Insurance Co., Inc. and Tagum Plastics, Inc. vs. Sweet Lines, Inc., G.R. No. 87434 August 5, 1992
- Lorenzo Shipping Corp. vs. Chubb and Sons, Inc., G.R. No. 147724, June 8, 2004
- Aboitiz Shipping Corporation vs. Insurance Company of North America, G.R. No. 168402, August 6, 2008
- UCPB General Insurance Co., Inc., vs. Aboitiz Shipping Corporation, e*t. al.,* G.R. No. 168433, February 10, 2009

2. Period to file Actions

- Loadstar Shipping Co., Inc. vs. Court of Appeals, 315 SCRA 339 (1999)
- Federal Express Corporation vs. American Home Assurance Company, G.R. No. 150094, August 18, 2004

I. Maritime Commerce

1. Charter Parties

- Lintonjua Shipping Company, Inc. vs. National Seamen Board, 176 SCRA 189 (1989)
- National Food Authority vs. Court of Appeals, G.R. No. 96453, August 4, 1999
- Caltex Philippines, Inc. vs. Sulpicio Lines, Inc., *et. al.,* G.R. No. 131166, September 30, 1999

2. Bareboat/Demise Charter

- Shipping Company, Inc., vs. National Seamen Board, 176 SCRA 189 (1989)

3. Time Charter

- Oceaneering Contractrors (Phils), Inc. vs. Nestor Barreto, doing business as NNB Lighterage , G.R. No. 184215, February 9, 2011

4. Voyage/Trip Charter

- Cebu Salvage Corporation vs. Philippine Home Assurance Corporation, G.R. No. 150403, January 25, 2007

5. Liability of Ship Owners and Shipping Agents

- Chua Yek Hong vs. Intermediate Appellate Court, G.R. No. 74811, September 30, 1988
- Macondray & Co., Inc. vs. Provident Insurance Corp., 445 SCRA 644 (2004)
- Centennial Transmarine, Inc. et al. vs. Ruben G. Dela Cruz, 563 SCRA 210 (2008)
- PHIL-NIPPON KYOEI, CORP. v. ROSALIA T. GUDELOSAO, G.R. No. 181375, July 13, 2016
- Tsuneishi Heavy Industries (Cebu), Inc. v. Mis Maritime Corp., G.R. No. 193572, [April 4, 2018]

6. Limited liability rule/hyphotecary nature of maritime law

- Aboitiz Shipping Corporation vs. General Accident Fire and Life Assurance Corporation Ltd., 217 SCRA 359 (1993)
- Chua Yek Hong vs. Intermediate Appellate Court, G.R. No. 74811, September 30, 1988

7. Exceptions to Limited Liability

- The Philippine American General Insurance Company, Inc., vs. Court of Appeals, et al., G.R. No. 116940, June 11, 1997
- Luzon Stevedoring Corporation vs. Court of Appeals, G.R. No. L-58897, December 3, 1987
- Chua Yek Hong vs. Intermediate Appellate Court, G.R. No. 74811, September 30, 1988
- Philippine American General Insurance Co. vs. Court of Appeals, 273 SCRA 262 (1997)
- Dela Torre vs. Court of Appeals, G.R. No. 160088, July 13, 2011

8. Accidents and Damages in Maritime Commerce

- R.V. Marvan Freight, Inc. vs. Court of Appeals, 424 SCRA 596 (2004)

9. Collisions

- Far Eastern Shipping Company vs. Court of Appeals, G.R. No. 130068, October 1, 1998

J. Carriage of Goods by Sea Act

1. Application

- National Development Company vs. Court of Appeals, G.R. No. L-49469, August 19, 1988
- Sea-Land Service, Inc. vs. Intermediate Appellate Court, G.R. No. 75118, August 31, 1987
- Philippine First Insurance Co. Inc. vs. Wallem Phils. Shipping, Inc., G.R. No. 165647, March 26, 2009
- Insurance Company of North America vs. Asian Terminals, Inc., G.R. No. 180784, February 15, 2012

2. Concept of loss or damage

- Domingo Ang vs. American Steamship Agencies, Inc., G.R. No. L-22491, January 27, 1967
- Mitsui O.S.K. Lines Ltd. vs. Court of Appeals, G.R. No. 119571, March 11, 1998

3. Conditions for filing of claim in case of loss or damage

a. Notice of Loss or Damage

- Belgian Overseas Chartering and Shipping N.V. vs. Philippine First Insurance Co., Inc., G.R. No. 143133, June 5, 2002
- Wallem Philippines Shipping vs. SR Farms, GR No. 161849, July 9, 2010
- Asian Terminals Inc. vs. Philam Insurance Co. G.R. No. 181262 , July 24, 2013

b. Period of Prescription

- Union Carbide Philippines, Inc. vs. Manila Railroad Co., G.R. No. L-27798, June 15, 1977
- Ang vs. Compañia Maritima, 133 SCRA 600 (1984)
- Dole Philippines, Inc. vs. Maritime Company of the Philippines, G.R. No. L-61352, February 27, 1987
- Loadstar Shipping Co., Inc. vs. Court of Appeals, G.R. No. 131621 September 28, 1999
- Mayer Steel Pipe Corporation vs. Court of Appeals, G.R. No. 124050 June 19, 1997
- Mitsui O.S.K. Lines Ltd., represented by Magsaysay Agencies, Inc. vs. Court of Appeals, G.R. No. 119571, March 11, 1998
- New World International Development Corporation vs. NYK-FilJapan Shipping Corporation, GR No. 171468, August 24, 2011
- PIONEER INSURANCE and SURETY CORPORATION v. APL CO., PTE. LTD., G.R. No. 226345, August 2, 2017

4. Limitation of Liability

- Eastern Shipping Lines, Inc. vs. Intermediate Appellate Court, G.R. No. L-69044, May 29, 1987

- Belgian Overseas Chartering and Shipping N.V. vs. Philippine First Insurance Co., Inc., G.R. No. 143133, June 5, 2002
- Philam Insurance Company vs. Heung Ah Shipping Corporation and Wallem Shipping Inc., G.R. No. 1877l and G.R. No. 187812, July 23, 2014

K. Air Transportation

1. The nature of an airline's contract of carriage

- British Airways vs. Court of Appeals, G.R. No. 121824, January 29, 1998
- Collin A. Morris vs. Court of Appeals, G.R. No. 127957, February 21, 2001

2. Cases of liability of air carrier

- Philippine Airlines, Inc. vs. Ramos, 207 SCRA 461 (1992)
- Sarreal, Sr. vs. Japan Airlines Co. Ltd., 207 SCRA 359 (1992)
- Pan American World Airways, Inc. vs. Intermediate Appellate Court, G.R. No. 68988, June 21, 1990
- British Airways vs. Court of Appeals, 258 SCRA 450 (1996)

L. The Warsaw Convention

1. Applicability

- Philippine Airlines Inc. vs. Hon. Adriano Savillo, et. al., G.R. No. 149547, July 4, 2008

2. Non-applicability

- KLM Royal Dutch Airlines vs. Court of Appeals, 65 SCRA 237 (1975)
- Alitalia vs. Intermediate Appellate Court, G.R. No. 71929, December 4, 1990

3. Limitation of Liability

4. Jurisdictional rules

- Lhuillier vs. British Airways, G.R. No. 171092, March 15, 2010

a. Liability to Passengers

- Lufthansa German Airlines vs. Court of Appeals, G.R. No. 83612, November 24, 1994

b. Liability for Checked Baggage

- Philippine Airlines Inc. vs. Court of Appeals, G.R. No. 119706, March 14, 1996

5. **Willful Misconduct**

- Sabena World Airlines vs. Court of Appeals, G.R. No. 104685, March 14, 1996

M. Miscellaneous Topics

1. **Motor Vehicles**

- Tiu vs. Arriesgado, 437 SCRA 426 (2004)
- Villanueva vs. Domingo, 438 SCRA 485 (2004)
- PCI Leasing & Finance Inc. vs. UCPB General Insurance Co. Inc., 557 SCRA 141 (2008)
- Mercado AG. Cadiente vs. Bithuel Macas 571 SCRA 105 (2008)
- Mariano C. Mendoza and Elvira Lim vs. Spouses Leonora J. Gomez and Gabriel V. Gomez, G.R. No. 160110, June 18, 2014

2. **Arrastre Services**

- International Container Terminal Services, Inc. vs. Prudential Guarantee & Assurance Co., Inc., 320 SCRA 244 (1999)
- Westwind Shipping Corporation vs. UCPB General Insurance Co., G.R. No. 200289, November 25, 2013
- Asian Terminals Inc. vs. First Lepanto-Taisho Insurance Corporation, G.R. No. 185964, June 16, 2014

3. **Public Utilities**

- Kilusang Mayo Uno Labor Center vs. Garcia, 239 SCRA 386 (1994)

I. Transportation Laws

N. Definition of common carrier

1. Carrying of persons or goods or both may be the principal or ancillary activity

- Pedro De Guzman vs. Court of Appeals, G. R. No. L-47822, December 22, 1988

PEDRO DE GUZMAN, *Petitioner*, -versus- COURT OF APPEALS and ERNESTO CENDANA, *Respondents*
G.R. No. L-47822, THIRD DIVISION, December 22, 1988, FELICIANO, *J.*

The law makes no distinction between one whose principal business activity is the carrying of persons or goods or both, and one who does such carrying only as an ancillary activity (in local Idiom as "a sideline"). Article 1732 also carefully avoids making any distinction between a person or enterprise offering transportation service on a regular or scheduled basis and one offering such service on an occasional, episodic or unscheduled basis. Neither does Article 1732 distinguish between a carrier offering its services to the "general public," i.e., the general community or population, and one who offers services or solicits business only from a narrow segment of the general population.

Here, Ernesto Cendana is deemed a common carrier. He is a junk dealer who was engaged in buying up used bottles and scrap metal in Pangasinan. Upon gathering sufficient quantities of such scrap material, respondent would bring such material to Manila for resale. He utilized two (2) six-wheeler trucks which he owned for hauling the material to Manila. On the return trip to Pangasinan, respondent would load his vehicles with cargo which various merchants wanted delivered to differing establishments in Pangasinan. For that service, respondent charged freight rates which were commonly lower than regular commercial rates.

FACTS

Respondent Ernesto Cendana, a junk dealer, was engaged in buying up used bottles and scrap metal in Pangasinan. Upon gathering sufficient quantities of such scrap material, respondent would bring such material to Manila for resale. He utilized two (2) six-wheeler trucks which he owned for hauling the material to Manila. On the return trip to Pangasinan, respondent would load his vehicles with cargo which various merchants wanted delivered to differing establishments in Pangasinan. For that service, respondent charged freight rates which were commonly lower than regular commercial rates.

Sometime in November 1970, petitioner Pedro de Guzman a merchant and authorized dealer of General Milk Company (Philippines), Inc. in Urdaneta, Pangasinan, contracted with respondent for the hauling of 750 cartons of Liberty filled milk from a warehouse of General Milk in Makati, Rizal, to petitioner's establishment in Urdaneta on or before 4 December 1970. Accordingly, on 1 December 1970, respondent loaded in Makati the merchandise on to his trucks: 150 cartons were loaded on a truck driven by respondent himself, while 600 cartons were placed on board the other truck which was driven by Manuel Estrada, respondent's driver and employee.

Only 150 boxes of Liberty filled milk were delivered to petitioner. The other 600 boxes never reached petitioner, since the truck which carried these boxes was hijacked somewhere along the

MacArthur Highway in Paniqui, Tarlac, by armed men who took with them the truck, its driver, his helper and the cargo.

On 6 January 1971, petitioner commenced action against private respondent in the Court of First Instance of Pangasinan, demanding payment of P 22,150.00, the claimed value of the lost merchandise, plus damages and attorney's fees. Petitioner argued that private respondent, being a common carrier, and having failed to exercise the extraordinary diligence required of him by the law, should be held liable for the value of the undelivered goods.

In his Answer, private respondent denied that he was a common carrier and argued that he could not be held responsible for the value of the lost goods, such loss having been due to *force majeure*.

ISSUES

I. Whether respondent is a common carrier (YES)
II. Whether respondent is liable (NO)

RULING

I.
The law makes no distinction between one whose *principal* business activity is the carrying of persons or goods or both, and one who does such carrying only as an *ancillary* activity (in local Idiom as "a sideline"). Article 1732 also carefully avoids making any distinction between a person or enterprise offering transportation service on a *regular or scheduled basis* and one offering such service on an *occasional, episodic or unscheduled basis*. Neither does Article 1732 distinguish between a carrier offering its services to the "*general public*," i.e., the general community or population, and one who offers services or solicits business only from a narrow segment of the general population.

So understood, the concept of "common carrier" under Article 1732 may be seen to coincide neatly with the notion of "public service," under the Public Service Act (Commonwealth Act No. 1416, as amended) which at least partially supplements the law on common carriers set forth in the Civil Code. Under Section 13, paragraph (b) of the Public Service Act, "public service" includes:

> ... every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, *with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier,* railroad, street railway, traction railway, subway motor vehicle, either for freight or passenger, or both, with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship line, pontines, ferries and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine repair shop, wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, gas, electric light, heat and power, water supply and power petroleum, sewerage system, wire or wireless communications systems, wire or wireless broadcasting stations and other similar public services.

It appears to the Court that private respondent is properly characterized as a common carrier even though he merely "back-hauled" goods for other merchants from Manila to Pangasinan, although

such back-hauling was done on a periodic or occasional rather than regular or scheduled manner, and even though private respondent's *principal* occupation was not the carriage of goods for others. There is no dispute that private respondent charged his customers a fee for hauling their goods; that fee frequently fell below commercial freight rates is not relevant here.

The Court of Appeals referred to the fact that private respondent held no certificate of public convenience, and concluded he was not a common carrier. This is palpable error. A certificate of public convenience is not a requisite for the incurring of liability under the Civil Code provisions governing common carriers. That liability arises the moment a person or firm acts as a common carrier, without regard to whether or not such carrier has also complied with the requirements of the applicable regulatory statute and implementing regulations and has been granted a certificate of public convenience or other franchise. To exempt private respondent from the liabilities of a common carrier because he has not secured the necessary certificate of public convenience, would be offensive to sound public policy; that would be to reward private respondent precisely for failing to comply with applicable statutory requirements. The business of a common carrier impinges directly and intimately upon the safety and well being and property of those members of the general community who happen to deal with such carrier. The law imposes duties and liabilities upon common carriers for the safety and protection of those who utilize their services and the law cannot allow a common carrier to render such duties and liabilities merely facultative by simply failing to obtain the necessary permits and authorizations.

II.
The precise issue that we address here relates to the specific requirements of the duty of extraordinary diligence in the vigilance over the goods carried in the specific context of hijacking or armed robbery.

Under Article 1745 (6) above, a common carrier is held responsible — and will not be allowed to divest or to diminish such responsibility — even for acts of strangers like thieves or robbers, *except* where such thieves or robbers in fact acted "with grave or irresistible threat, violence or force." We believe and so hold that the limits of the duty of extraordinary diligence in the vigilance over the goods carried are reached where the goods are lost as a result of a robbery which is attended by "grave or irresistible threat, violence or force."

In the instant case, armed men held up the second truck owned by private respondent which carried petitioner's cargo. The record shows that an information for robbery in band was filed in the Court of First Instance of Tarlac, Branch 2, in Criminal Case No. 198 entitled "*People of the Philippines v. Felipe Boncorno, Napoleon Presno, Armando Mesina, Oscar Oria and one John Doe*." There, the accused were charged with willfully and unlawfully taking and carrying away with them the second truck, driven by Manuel Estrada and loaded with the 600 cartons of Liberty filled milk destined for delivery at petitioner's store in Urdaneta, Pangasinan. The decision of the trial court shows that the accused acted with grave, if not irresistible, threat, violence or force. Three (3) of the five (5) hold-uppers were armed with firearms. The robbers not only took away the truck and its cargo but also kidnapped the driver and his helper, detaining them for several days and later releasing them in another province (in Zambales). The hijacked truck was subsequently found by the police in Quezon City. The Court of First Instance convicted all the accused of robbery, though not of robbery in band.

In these circumstances, we hold that the occurrence of the loss must reasonably be regarded as quite beyond the control of the common carrier and properly regarded as a fortuitous event. It is necessary to recall that even common carriers are not made absolute insurers against all risks of travel and of transport of goods, and are not held liable for acts or events which cannot be foreseen or are inevitable, provided that they shall have complied with the rigorous standard of extraordinary diligence.

We, therefore, agree with the result reached by the Court of Appeals that private respondent Cendana is not liable for the value of the undelivered merchandise which was lost because of an event entirely beyond private respondent's control.

2. **The common carrier need not be the owner (of the vessel) used to consummate contract of carriage**

    - Cebu Salvage Corporation vs. Philippine Home Assurance Corporation, G.R. No. 150403, January 25, 2007

CEBU SALVAGE CORPORATION, *Petitioner,* -versus- PHILIPPINE HOME ASSURANCE CORPORATION, *Respondent*
G.R. No. 150403, FIRST DIVISION, January 25, 2007, CORONA, *J.*

The idea proposed by petitioner is not only preposterous, it is also dangerous. It says that a carrier that enters into a contract of carriage is not liable to the charterer or shipper if it does not own the vessel it chooses to use. MCCII never dealt with ALS and yet petitioner insists that MCCII should sue ALS for reimbursement for its loss. Certainly, to permit a common carrier to escape its responsibility for the goods it agreed to transport (by the expedient of alleging non-ownership of the vessel it employed) would radically derogate from the carrier's duty of extraordinary diligence. It would also open the door to collusion between the carrier and the supposed owner and to the possible shifting of liability from the carrier to one without any financial capability to answer for the resulting damages.

FACTS

Petitioner Cebu Salvage Corporation (as carrier) and Maria Cristina Chemicals Industries, Inc. [MCCII] (as charterer) entered into a voyage charter wherein petitioner was to load 800 to 1,100 metric tons of silica quartz on board the M/T Espiritu Santo[7] at Ayungon, Negros Occidental for transport to and discharge at Tagoloan, Misamis Oriental to consignee Ferrochrome Phils., Inc.

Pursuant to the contract, petitioner received and loaded 1,100 metric tons of silica quartz on board the M/T Espiritu Santo which left Ayungon for Tagoloan the next day. The shipment never reached its destination, however, because the M/T Espiritu Santo sank in the afternoon of December 24, 1984 off the beach of Opol, Misamis Oriental, resulting in the total loss of the cargo.

MCCII filed a claim for the loss of the shipment with its insurer, respondent Philippine Home Assurance Corporation. Respondent paid the claim in the amount of P211,500 and was subrogated to the rights of MCCII. Thereafter, it filed a case in the RTC against petitioner for reimbursement of the amount it paid MCCII.

RTC rendered judgment in favor of respondent. CA affirmed.

ISSUE

Whether the carrier can be held liable for the loss of cargo resulting from the sinking of a ship it does not own (YES)

RULING

Based on the agreement signed by the parties and the testimony of petitioner's operations manager, it is clear that it was a contract of carriage petitioner signed with MCCII. It actively negotiated and solicited MCCII's account, offered its services to ship the silica quartz and proposed to utilize the M/T Espiritu Santo in lieu of the M/T Seebees or the M/T Shirley (as previously agreed upon in the voyage charter) since these vessels had broken down.

There is no dispute that petitioner was a common carrier. At the time of the loss of the cargo, it was engaged in the business of carrying and transporting goods by water, for compensation, and offered its services to the public.

From the nature of their business and for reasons of public policy, common carriers are bound to observe extraordinary diligence over the goods they transport according to the circumstances of each case. In the event of loss of the goods, common carriers are responsible, unless they can prove that this was brought about by the causes specified in Article 1734 of the Civil Code. In all other cases, common carriers are presumed to be at fault or to have acted negligently, unless they prove that they observed extraordinary diligence.

Petitioner was the one which contracted with MCCII for the transport of the cargo. It had control over what vessel it would use. All throughout its dealings with MCCII, it represented itself as a common carrier. The fact that it did not own the vessel it decided to use to consummate the contract of carriage did not negate its character and duties as a common carrier. The MCCII (respondent's subrogor) could not be reasonably expected to inquire about the ownership of the vessels which petitioner carrier offered to utilize. As a practical matter, it is very difficult and often impossible for the general public to enforce its rights of action under a contract of carriage if it should be required to know who the actual owner of the vessel is. In fact, in this case, the voyage charter itself denominated petitioner as the "owner/operator" of the vessel.

Petitioner next contends that if there was a contract of carriage, then it was between MCCII and ALS as evidenced by the bill of lading ALS issued.

Again, we disagree.

The bill of lading was merely a receipt issued by ALS to evidence the fact that the goods had been received for transportation. It was not signed by MCCII, as in fact it was simply signed by the supercargo of ALS. This is consistent with the fact that MCCII did not contract directly with ALS. While it is true that a bill of lading may serve as the contract of carriage between the parties, it cannot prevail over the express provision of the voyage charter that MCCII and petitioner executed:
[I]n cases where a Bill of Lading has been issued by a carrier covering goods shipped aboard a vessel under a charter party, and the charterer is also the holder of the bill of lading, "the bill of lading operates as the receipt for the goods, and as document of title passing the property of the

goods, but not as varying the contract between the charterer and the shipowner." The Bill of Lading becomes, therefore, only a receipt and not the contract of carriage in a charter of the entire vessel, for the contract is the Charter Party, and is the law between the parties who are bound by its terms and condition provided that these are not contrary to law, morals, good customs, public order and public policy.

Finally, petitioner asserts that MCCII should be held liable for its own loss since the voyage charter stipulated that cargo insurance was for the charterer's account. This deserves scant consideration. This simply meant that the charterer would take care of having the goods insured. It could not exculpate the carrier from liability for the breach of its contract of carriage. The law, in fact, prohibits it and condemns it as unjust and contrary to public policy.

To summarize, a contract of carriage of goods was shown to exist; the cargo was loaded on board the vessel; loss or non-delivery of the cargo was proven; and petitioner failed to prove that it exercised extraordinary diligence to prevent such loss or that it was due to some casualty or *force majeure*. The voyage charter here being a contract of affreightment, the carrier was answerable for the loss of the goods received for transportation.

The idea proposed by petitioner is not only preposterous, it is also dangerous. It says that a carrier that enters into a contract of carriage is not liable to the charterer or shipper if it does not own the vessel it chooses to use. MCCII never dealt with ALS and yet petitioner insists that MCCII should sue ALS for reimbursement for its loss. Certainly, to permit a common carrier to escape its responsibility for the goods it agreed to transport (by the expedient of alleging non-ownership of the vessel it employed) would radically derogate from the carrier's duty of extraordinary diligence. It would also open the door to collusion between the carrier and the supposed owner and to the possible shifting of liability from the carrier to one without any financial capability to answer for the resulting damages.

O. Examples of common carrier

1. Pipeline operator

- First Philippine Industrial Corporation vs. Court of Appeals, G.R. No. 125948, December 29, 1989

FIRST PHILIPPINE INDUSTRIAL CORPORATION, *Petitioner,* -versus- COURT OF APPEALS, HONORABLE PATERNO V. TAC-AN, BATANGAS CITY and ADORACION C. ARELLANO, in her official capacity as City Treasurer of Batangas, *Respondents*
G.R. No. 125948, SECOND DIVISION, December 29, 1998, MARTINEZ, *J.*

As correctly pointed out by petitioner, the definition of "common carriers" in the Civil Code makes no distinction as to the means of transporting, as long as it is by land, water or air. It does not provide that the transportation of the passengers or goods should be by motor vehicle. In fact, in the United States, oil pipe line operators are considered common carriers.

FACTS

Petitioner is a grantee of a pipeline concession under Republic Act No. 387, as amended, to contract, install and operate oil pipelines.

Sometime in January 1995, petitioner applied for a mayor's permit with the Office of the Mayor of Batangas City. However, before the mayor's permit could be issued, the respondent City Treasurer required petitioner to pay a local tax based on its gross receipts for the fiscal year 1993 pursuant to the Local Government Code. The respondent City Treasurer assessed a business tax on the petitioner. In order not to hamper its operations, petitioner paid the tax under protest.
On January 20, 1994, petitioner filed a letter-protest addressed to the respondent City Treasurer claiming that it is exempt from said tax because if is a transportation contractor.

Respondent City Treasurer denied the protest contending that petitioner cannot be considered engaged in transportation business, thus it cannot claim exemption under Section 133 (j) of the Local Government Code

Petitioner filed with the Regional Trial Court of Batangas City a complaint6 for tax refund with prayer for writ of preliminary injunction against respondents City of Batangas and Adoracion Arellano in her capacity as City Treasurer. In its complaint, petitioner alleged, inter alia, that: (1) the imposition and collection of the business tax on its gross receipts violates Section 133 of the Local Government Code; (2) the authority of cities to impose and collect a tax on the gross receipts of "contractors and independent contractors" under Sec. 141 (e) and 151 does not include the authority to collect such taxes on transportation contractors for, as defined under Sec. 131 (h), the term "contractors" excludes transportation contractors; and, (3) the City Treasurer illegally and erroneously imposed and collected the said tax, thus meriting the immediate refund of the tax paid.

ISSUE

Whether the petitioner is a common carrier (YES)

RULING

"Common carrier" may be defined, broadly, as one who holds himself out to the public as engaged in the business of transporting persons or property from place to place, for compensation, offering his services to the public generally.

Art. 1732 of the Civil Code defines a "common carrier" as "any person, corporation, firm or association engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public."

The test for determining whether a party is a common carrier of goods is:
1. He must be engaged in the business of carrying goods for others as a public employment, and must hold himself out as ready to engage in the transportation of goods for person generally as a business and not as a casual occupation;
2. He must undertake to carry goods of the kind to which his business is confined;
3. He must undertake to carry by the method by which his business is conducted and over his established roads; and
4. The transportation must be for hire.

Based on the above definitions and requirements, there is no doubt that petitioner is a common carrier. It is engaged in the business of transporting or carrying goods, *i.e*. petroleum products, for hire as a public employment. It undertakes to carry for all persons indifferently, that is, to all persons who choose to employ its services, and transports the goods by land and for compensation. The fact that petitioner has a limited clientele does not exclude it from the definition of a common carrier.

Also, respondent's argument that the term "common carrier" as used in Section 133 (j) of the Local Government Code refers only to common carriers transporting goods and passengers through moving vehicles or vessels either by land, sea or water, is erroneous.

As correctly pointed out by petitioner, the definition of "common carriers" in the Civil Code makes no distinction as to the means of transporting, as long as it is by land, water or air. It does not provide that the transportation of the passengers or goods should be by motor vehicle. In fact, in the United States, oil pipe line operators are considered common carriers.

Under the Petroleum Act of the Philippines (Republic Act 387), petitioner is considered a "common carrier."

The Bureau of Internal Revenue likewise considers the petitioner a "common carrier." In BIR Ruling No. 069-83, it declared:

> . . . since [petitioner] is a pipeline concessionaire that is engaged only in transporting petroleum products, it is considered a common carrier under Republic Act No. 387 . . . . Such being the case, it is not subject to withholding tax prescribed by Revenue Regulations No. 13-78, as amended.

From the foregoing disquisition, there is no doubt that petitioner is a "common carrier" and, therefore, exempt from the business tax as provided for in Section 133 (j), of the Local Government Code.

It is clear that the legislative intent in excluding from the taxing power of the local government unit the imposition of business tax against common carriers is to prevent a duplication of the so-called "common carrier's tax."

Petitioner is already paying three (3%) percent common carrier's tax on its gross sales/earnings under the National Internal Revenue Code. To tax petitioner again on its gross receipts in its transportation of petroleum business would defeat the purpose of the Local Government Code.

A.F. SANCHEZ BROKERAGE INC., *Petitioner*, -versus – THE HON. COURT OF APPEALS and FGU INSURANCE CORPORATION, *Respondents.*

G.R. No. 147079, THIRD DIVISION, December 21, 2004, CARPIO MORALES, *J.*

Article 1732 does not distinguish between one whose principal business activity is the carrying of goods and one who does such carrying only as an ancillary activity. The contention, therefore, of

petitioner that it is not a common carrier but a customs broker whose principal function is to prepare the correct customs declaration and proper shipping documents as required by law is bereft of merit. It suffices that petitioner undertakes to deliver the goods for pecuniary consideration.

In this light, petitioner as a common carrier is mandated to observe, under Article 1733 of the Civil Code, extraordinary diligence in the vigilance over the goods it transports according to all the circumstances of each case. In the event that the goods are lost, destroyed or deteriorated, it is presumed to have been at fault or to have acted negligently, unless it proves that it observed extraordinary diligence.

FACTS

On July 8, 1992, Wyeth-Pharma GMBH shipped on board an aircraft of KLM Royal Dutch Airlines at Dusseldorf, Germany oral contraceptives consisting of 86,800 Blisters Femenal tablets, 14,000 Blisters Nordiol tablets and 42,000 Blisters Trinordiol tablets for delivery to Manila in favor of the consignee, Wyeth-Suaco Laboratories, Inc. Wyeth-Suaco insured the shipment against all risks with FGU Insurance.

Upon arrival of the shipment, it was discharged "without exception" and delivered to the warehouse of the Philippine Skylanders, Inc. (PSI) located also at the NAIA for safekeeping.

In order to secure the release of the cargoes, Wyeth-Suaco engaged the services of Sanchez Brokerage.

Wyeth-Suaco being a regular importer, the customs examiner did not inspect the cargoes which were thereupon stripped from the aluminum containers and loaded inside two transport vehicles hired by Sanchez Brokerage.

Upon instructions of Wyeth-Suaco, the cargoes were delivered to Hizon Laboratories Inc. in Antipolo City for quality control check. Upon inspection, it was discovered that 44 cartons containing Femenal and Nordiol tablets were in bad order. The remaining 160 cartons of oral contraceptives were accepted as complete and in good order.

Wyeth-Suaco later demanded, by letter from Sanchez Brokerage the payment of P191,384.25 representing the value of its loss arising from the damaged tablets. As the Sanchez Brokerage refused to heed the demand, Wyeth-Suaco filed an insurance claim against FGU Insurance which paid Wyeth-Suaco the amount of P181,431.49 in settlement of its claim. Wyeth-Suaco thus issued Subrogation Receipt30 in favor of FGU Insurance.

On demand by FGU Insurance for payment of the amount of P181,431.49 it paid Wyeth-Suaco, Sanchez Brokerage, by letter of January 7, 1993, disclaimed liability for the damaged goods, positing that the damage was due to improper and insufficient export packaging; that when the sealed containers were opened outside the PSI warehouse.

Hence, FGU Insurance of a complaint for damages before the Regional Trial Court of Makati City against the Sanchez Brokerage. The trial court dismissed the complaint. On appeal, the appellate court reversed the decision of the trial court, it holding that the Sanchez Brokerage engaged not only in the business of customs brokerage but also in the transportation and delivery of the cargo of its clients, hence, a common carrier within the context of Article 1732 of the New Civil Code.

ISSUE

Whether petitioner is a "common carrier" within the context of Article 1732 of the New Civil Code. (YES)

RULING

The appellate court did not err in finding petitioner, a customs broker, to be also a common carrier, as defined under Article 1732 of the Civil Code, to wit:

Art. 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.

Anacleto F. Sanchez, Jr., the Manager and Principal Broker of Sanchez Brokerage himself testified that the services the firm offers include the delivery of goods to the warehouse of the consignee or importer, stating:

"As customs broker, we calculate the taxes that has to be paid in cargos, and those upon approval of the importer, we prepare the entry together for processing and claims from customs and finally deliver the goods to the warehouse of the importer."

Article 1732 does not distinguish between one whose principal business activity is the carrying of goods and one who does such carrying only as an ancillary activity. The contention, therefore, of petitioner that it is not a common carrier but a customs broker whose principal function is to prepare the correct customs declaration and proper shipping documents as required by law is bereft of merit. It suffices that petitioner undertakes to deliver the goods for pecuniary consideration.

In this light, petitioner as a common carrier is mandated to observe, under Article 1733 of the Civil Code, extraordinary diligence in the vigilance over the goods it transports according to all the circumstances of each case. In the event that the goods are lost, destroyed or deteriorated, it is presumed to have been at fault or to have acted negligently, unless it proves that it observed extraordinary diligence.

The concept of "extra-ordinary diligence" was explained in *Compania Maritima v. Court of Appeals*:

The extraordinary diligence in the vigilance over the goods tendered for shipment requires the common carrier to know and to follow the required precaution for avoiding damage to, or destruction of the goods entrusted to it for sale, carriage and delivery. It requires common carriers to render service with the greatest skill and foresight and "to use all reasonable means to ascertain the nature and characteristics of goods tendered for shipment, and to exercise due care in the handling and stowage, including such methods as their nature requires."

In the case at bar, it was established that petitioner received the cargoes from the PSI warehouse in NAIA in good order and condition; and that upon delivery by petitioner to Hizon Laboratories Inc., some of the cargoes were found to be in bad order, as noted in the Delivery Receipt issued by petitioner, and as indicated in the Survey Report of Elite Surveyors and the Destruction Report of Hizon Laboratories, Inc.

In an attempt to free itself from responsibility for the damage to the goods, petitioner posits that they were damaged due to the fault or negligence of the shipper for failing to properly pack them and to the inherent characteristics of the goods; and that it should not be faulted for following the instructions of Calicdan of Wyeth-Suaco to proceed with the delivery despite information conveyed to the latter that some of the cartons, on examination outside the PSI warehouse, were found to be wet.

While paragraph No. 4 of Article 1734 of the Civil Code exempts a common carrier from liability if the loss or damage is due to the character of the goods or defects in the packing or in the containers, the rule is that if the improper packing is known to the carrier or his employees or is apparent upon ordinary observation, but he nevertheless accepts the same without protest or exception notwithstanding such condition, he is not relieved of liability for the resulting damage.

Since petitioner received all the cargoes in good order and condition at the time they were turned over by the PSI warehouseman, and upon their delivery to Hizon Laboratories, Inc. a portion thereof was found to be in bad order, it was incumbent on petitioner to prove that it exercised extraordinary diligence in the carriage of the goods. It did not, however. Hence, its presumed negligence under Article 1735 of the Civil Code remains unrebutted.

LOADMASTERS CUSTOMS SERVICES, INC., *Petitioner*, -versus – GLODEL BROKERAGE CORPORATION and R&B INSURANCE CORPORATION,, *Respondents.*
G.R. No. 179446, SECOND DIVISION, January 10, 2011, MENDOZA, *J.*

Under Article 1732 of the Civil Code, common carriers are persons, corporations, firms, or associations engaged in the business of carrying or transporting passenger or goods, or both by land, water or air for compensation, offering their services to the public.

Loadmasters is a common carrier because it is engaged in the business of transporting goods by land, through its trucking service. In the present case, there is no indication that the undertaking in the contract between Loadmasters and Glodel was private in character. There is no showing that Loadmasters solely and exclusively rendered services to Glodel.

In the same vein, Glodel is also considered a common carrier within the context of Article 1732. In its Memorandum, it states that it "is a corporation duly organized and existing under the laws of the Republic of the Philippines and is engaged in the business of customs brokering." It cannot be considered otherwise because as held by this Court in Schmitz Transport & Brokerage Corporation v. Transport Venture, Inc., a customs broker is also regarded as a common carrier, the transportation of goods being an integral part of its business.

FACTS

R&B Insurance issued Marine Policy in favor of Columbia to insure the shipment of 132 bundles of electric copper cathodes against All Risks. The cargoes were shipped on board the vessel "Richard Rey" from Isabela, Leyte, to Pier 10, North Harbor, Manila.

Columbia engaged the services of Glodel for the release and withdrawal of the cargoes from the pier and the subsequent delivery to its warehouses/plants. Glodel, in turn, engaged the services of Loadmasters for the use of its delivery trucks to transport the cargoes to Columbia's warehouses/plants in Bulacan and Valenzuela City.

The goods were loaded on board twelve (12) trucks owned by Loadmasters, driven by its employed drivers and accompanied by its employed truck helpers. Six (6) truckloads of copper cathodes were to be delivered to Balagtas, Bulacan, while the other six (6) truckloads were destined for Lawang Bato, Valenzuela City. The cargoes in six truckloads for Lawang Bato were duly delivered in Columbia's warehouses there. Of the six (6) trucks en route to Balagtas, Bulacan, however, only five (5) reached the destination. One (1) truck, loaded with 11 bundles or 232 pieces of copper cathodes, failed to deliver its cargo.

Later on, the said truck was recovered but without the copper cathodes. Columbia then filed with R&B Insurance a claim for insurance indemnity to which R&B paid. R&B Insurance, thereafter, filed a complaint for damages against both Loadmasters and Glodel. It sought reimbursement of the amount it had paid to Columbia. It claimed that it had been subrogated "to the right of the consignee to recover from the party/parties who may be held legally liable for the loss."

The RTC rendered Glodel liable for damages for the loss of the subject cargo and dismissing Loadmasters' counterclaim for damages and attorney's fees against R&B Insurance.

Upon appeal of both R&B Insurance and Glodel, the Court of Appeals held Loadmasters liable to Glodel representing the insurance indemnity appellant Glodel has been held liable to appellant R&B Insurance Corporation.

ISSUE

Whether Loadmasters and Glodel are common carriers. (YES)

Under Article 1732 of the Civil Code, common carriers are persons, corporations, firms, or associations engaged in the business of carrying or transporting passenger or goods, or both by land, water or air for compensation, offering their services to the public.

Loadmasters is a common carrier because it is engaged in the business of transporting goods by land, through its trucking service. It is a common carrier as distinguished from a private carrier wherein the carriage is generally undertaken by special agreement and it does not hold itself out to carry goods for the general public. The distinction is significant in the sense that "the rights and obligations of the parties to a contract of private carriage are governed principally by their stipulations, not by the law on common carriers."

In the present case, there is no indication that the undertaking in the contract between Loadmasters and Glodel was private in character. There is no showing that Loadmasters solely and exclusively rendered services to Glodel.

In fact, Loadmasters admitted that it is a common carrier.

In the same vein, Glodel is also considered a common carrier within the context of Article 1732. In its Memorandum, it states that it "is a corporation duly organized and existing under the laws of the Republic of the Philippines and is engaged in the business of customs brokering." It cannot be considered otherwise because as held by this Court in Schmitz Transport & Brokerage Corporation v. Transport Venture, Inc., a customs broker is also regarded as a common carrier, the transportation of goods being an integral part of its business.

Loadmasters and Glodel, being both common carriers, are mandated from the nature of their business and for reasons of public policy, to observe the extraordinary diligence in the vigilance over the goods transported by them according to all the circumstances of such case, as required by Article 1733 of the Civil Code. When the Court speaks of extraordinary diligence, it is that extreme measure of care and caution which persons of unusual prudence and circumspection observe for securing and preserving their own property or rights. This exacting standard imposed on common carriers in a contract of carriage of goods is intended to tilt the scales in favor of the shipper who is at the mercy of the common carrier once the goods have been lodged for shipment. Thus, in case of loss of the goods, the common carrier is presumed to have been at fault or to have acted negligently. This presumption of fault or negligence, however, may be rebutted by proof that the common carrier has observed extraordinary diligence over the goods.

With respect to the time frame of this extraordinary responsibility, the Civil Code provides that the exercise of extraordinary diligence 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.

Premises considered, the Court is of the view that both Loadmasters and Glodel are jointly and severally liable to R & B Insurance for the loss of the subject cargo. Under Article 2194 of the New Civil Code, "the responsibility of two or more persons who are liable for a quasi-delict is solidary."

UNSWORTH TRANSPORT INTERNATIONAL (PHILS.), INC., *Petitioner*, -versus – COURT OF APPEALS and PIONEER INSURANCE AND SURETY CORPORATION,, *Respondents.*
G.R. No. 166250, SECOND DIVISION, July 26, 2010, NACHURA, *J.*

A freight forwarder's liability is limited to damages arising from its own negligence, including negligence in choosing the carrier; however, where the forwarder contracts to deliver goods to their destination instead of merely arranging for their transportation, it becomes liable as a common carrier for loss or damage to goods. A freight forwarder assumes the responsibility of a carrier, which actually executes the transport, even though the forwarder does not carry the merchandise itself.

It is undisputed that UTI issued a bill of lading in favor of Unilab. Pursuant thereto, petitioner undertook to transport, ship, and deliver the 27 drums of raw materials for pharmaceutical manufacturing to the consignee.

FACTS

Sylvex Purchasing Corporation delivered to UTI a shipment of 27 drums of various raw materials for pharmaceutical manufacturing. UTI issued Bill of Lading covering the aforesaid shipment. The shipment was insured with Pioneer Insurance and Surety Corporation in favor of Unilab against all risks.

The shipment arrived at the port of Manila and petitioner received the said shipment in its warehouse. Three days thereafter, Oceanica Cargo Marine Surveyors Corporation (OCMSC) conducted a stripping survey of the shipment located in petitioner's warehouse which states that a steel drum of STC Vitamin B Complex Extra[ct] was with cut/hole on side, with approx. spilling of 1%.

The shipment arrived in Unilab's warehouse and was immediately surveyed by an independent surveyor, J.G. Bernas Adjusters & Surveyors, Inc. (J.G. Bernas). The report stated lacking items and spillage.

Consequently, Unilab filed a formal claim for the damage against Pioneer Insurance and Surety Corporation and UTI. UTI denied liability, while Pioneer Insurance and Surety Corporation paid the claimed. By virtue of the Loss and Subrogation Receipt issued by Unilab in favor of private respondent, the latter filed a complaint for Damages against APL and UTI.

The RTC decided in favor of private respondent and against APL, UTI and petitioner. On appeal, the CA affirmed the RTC decision.

ISSUE

1. Whether petitioner UTI is a common carrier. (YES)
2. Whether petitioner UTI exercised extraordinary diligence. (NO)

RULING

1. Admittedly, petitioner is a freight forwarder. The term "freight forwarder" refers to a firm holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and, in the ordinary course of its business, (1) to assemble and consolidate, or to provide for assembling and consolidating, shipments, and to perform or provide for break-bulk and distribution operations of the shipments; (2) to assume responsibility for the transportation of goods from the place of receipt to the place of destination; and (3) to use for any part of the transportation a carrier subject to the federal law pertaining to common carriers.

A freight forwarder's liability is limited to damages arising from its own negligence, including negligence in choosing the carrier; however, where the forwarder contracts to deliver goods to their destination instead of merely arranging for their transportation, it becomes liable as a common carrier for loss or damage to goods. A freight forwarder assumes the responsibility of a carrier, which actually executes the transport, even though the forwarder does not carry the merchandise itself.

It is undisputed that UTI issued a bill of lading in favor of Unilab. Pursuant thereto, petitioner undertook to transport, ship, and deliver the 27 drums of raw materials for pharmaceutical manufacturing to the consignee.

A bill of lading is a written acknowledgement of the receipt of goods and an agreement to transport and to deliver them at a specified place to a person named or on his or her order. It operates both as

a receipt and as a contract. It is a receipt for the goods shipped and a contract to transport and deliver the same as therein stipulated. As a receipt, it recites the date and place of shipment, describes the goods as to quantity, weight, dimensions, identification marks, condition, quality, and value. As a contract, it names the contracting parties, which include the consignee; fixes the route, destination, and freight rate or charges; and stipulates the rights and obligations assumed by the parties. Undoubtedly, UTI is liable as a common carrier.

2. 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 diligence. Mere proof of delivery of the goods in good order to a common carrier and of their arrival in bad order at their destination constitutes a prima facie case of fault or negligence against the carrier. If no adequate explanation is given as to how the deterioration, loss, or destruction of the goods happened, the transporter shall be held responsible.

Though it is not our function to evaluate anew the evidence presented, we refer to the records of the case to show that, as correctly found by the RTC and the CA, petitioner failed to rebut the prima facie presumption of negligence in the carriage of the subject shipment.

First, as stated in the bill of lading, the subject shipment was received by UTI in apparent good order and condition in New York, United States of America. Second, the OCMSC Survey Report stated that one steel drum STC Vitamin B Complex Extract was discovered to be with a cut/hole on the side, with approximate spilling of 1%. Third, though Gate Pass No. 7614, issued by Jardine, noted that the subject shipment was in good order and condition, it was specifically stated that there were 22 (should be 27 drums per Bill of Lading No. C320/C15991-2) drums of raw materials for pharmaceutical manufacturing. Last, J.G. Bernas' Survey Report stated that "1-s/drum was punctured and retaped on the bottom side and the content was lacking, and there was a short delivery of 5-drums."

All these conclusively prove the fact of shipment in good order and condition, and the consequent damage to one steel drum of Vitamin B Complex Extract while in the possession of petitioner which failed to explain the reason for the damage. Further, petitioner failed to prove that it observed the extraordinary diligence and precaution which the law requires a common carrier to exercise and to follow in order to avoid damage to or destruction of the goods entrusted to it for safe carriage and delivery.

SPOUSES TEODORO and NANETTE PERENA., *Petitioners*, -versus – SPOUSES TERESITA PHILIPPINE NICOLAS and L. ZARATE, NATIONAL RAILWAYS, and the COURT OF APPEALS, *Respondents.*

G.R. No. 157917, FIRST DIVISION, August 29, 2012, BERSAMIN, *J.*

The true test for a common carrier is not the quantity or extent of the business actually transacted, or the number and character of the conveyances used in the activity, but whether the undertaking is a part of the activity engaged in by the carrier that he has held out to the general public as his business or occupation.

Despite catering to a limited clientèle, the Pereñas operated as a common carrier because they held themselves out as a ready transportation indiscriminately to the students of a particular school living within or near where they operated the service and for a fee.

FACTS

The Pereñas were engaged in the business of transporting students from their respective residences in Parañaque City to Don Bosco in Pasong Tamo, Makati City, and back. They employed Clemente Alfaro (Alfaro) as driver of the van.

In June 1996, the Zarates contracted the Pereñas to transport Aaron to and from Don Bosco. Considering that the students were due at Don Bosco by 7:15 a.m., and that they were already running late because of the heavy vehicular traffic on the South Superhighway, Alfaro took the van to an alternate route. At about the time the van was to traverse the railroad crossing, PNR Commuter No. 302 (train) was in the vicinity of the Magallanes Interchange travelling northbound. The train hit the rear end of the van, and the impact threw nine of the 12 students in the rear, including Aaron, out of the van. Aaron landed in the path of the train, which dragged his body and severed his head, instantaneously killing him.

Devastated, the Zarates commenced an action for damages against Alfaro, the Pereñas, PNR and Alano. The RTC ruled in favor of the Zarates and held that the cooperative gross negligence of the Pereñas and PNR had caused the collision that led to the death of Aaron.

Upon appeal, the Court of Appealspromulgated its decision, affirming the findings of the RTC.

ISSUE

Whether defendant spouses Pereña are liable for breach of the contract of carriage with plaintiff-spouses in failing to provide adequate and safe transportation for the latter's son. (YES)

RULING

Although in this jurisdiction the operator of a school bus service has been usually regarded as a private carrier, primarily because he only caters to some specific or privileged individuals, and his operation is neither open to the indefinite public nor for public use, the exact nature of the operation of a school bus service has not been finally settled. This is the occasion to lay the matter to rest.
A carrier is a person or corporation who undertakes to transport or convey goods or persons from one place to another, gratuitously or for hire. The carrier is classified either as a private/special carrier or as a common/public carrier. A private carrier is one who, without making the activity a vocation, or without holding himself or itself out to the public as ready to act for all who may desire his or its services, undertakes, by special agreement in a particular instance only, to transport goods or persons from one place to another either gratuitously or for hire. The provisions on ordinary contracts of the Civil Code govern the contract of private carriage. The diligence required of a private carrier is only ordinary, that is, the diligence of a good father of the family. In contrast, a common carrier is a person, corporation, firm or association engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering such

services to the public. Contracts of common carriage are governed by the provisions on common carriers of the Civil Code, the Public Service Act, and other special laws relating to transportation. A common carrier is required to observe extraordinary diligence, and is presumed to be at fault or to have acted negligently in case of the loss of the effects of passengers, or the death or injuries to passengers.

In relation to common carriers, the Court defined public use in the following terms in United States v. Tan Piaco, viz:

"Public use" is the same as "use by the public". The essential feature of the public use is not confined to privileged individuals, but is open to the indefinite public. It is this indefinite or unrestricted quality that gives it its public character. In determining whether a use is public, we must look not only to the character of the business to be done, but also to the proposed mode of doing it. If the use is merely optional with the owners, or the public benefit is merely incidental, it is not a public use, authorizing the exercise of the jurisdiction of the public utility commission. There must be, in general, a right which the law compels the owner to give to the general public. It is not enough that the general prosperity of the public is promoted. Public use is not synonymous with public interest. The true criterion by which to judge the character of the use is whether the public may enjoy it by right or only by permission.

In De Guzman v. Court of Appeals, the Court noted that Article 1732 of the Civil Code avoided any distinction between a person or an enterprise offering transportation on a regular or an isolated basis; and has not distinguished a carrier offering his services to the general public, that is, the general community or population, from one offering his services only to a narrow segment of the general population.

Nonetheless, the concept of a common carrier embodied in Article 1732 of the Civil Code coincides neatly with the notion of public service under the Public Service Act, which supplements the law on common carriers found in the Civil Code. Public service, according to Section 13, paragraph (b) of the Public Service Act, includes:

x x x every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientèle, whether permanent or occasional, and done for the general business purposes, any common carrier, railroad, street railway, traction railway, subway motor vehicle, either for freight or passenger, or both, with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship line, pontines, ferries and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine repair shop, ice-refrigeration plant, canal, irrigation system, gas, electric light, heat and power, water supply and power petroleum, sewerage system, wire or wireless communications systems, wire or wireless broadcasting stations and other similar public services. x x x.

Given the breadth of the aforequoted characterization of a common carrier, the Court has considered as common carriers pipeline operators, custom brokers and warehousemen, and barge operators even if they had limited clientèle.

As all the foregoing indicate, the true test for a common carrier is not the quantity or extent of the business actually transacted, or the number and character of the conveyances used in the activity,

but whether the undertaking is a part of the activity engaged in by the carrier that he has held out to the general public as his business or occupation. If the undertaking is a single transaction, not a part of the general business or occupation engaged in, as advertised and held out to the general public, the individual or the entity rendering such service is a private, not a common, carrier. The question must be determined by the character of the business actually carried on by the carrier, not by any secret intention or mental reservation it may entertain or assert when charged with the duties and obligations that the law imposes.

Applying these considerations to the case before us, there is no question that the Pereñas as the operators of a school bus service were: (a) engaged in transporting passengers generally as a business, not just as a casual occupation; (b) undertaking to carry passengers over established roads by the method by which the business was conducted; and (c) transporting students for a fee. Despite catering to a limited clientèle, the Pereñas operated as a common carrier because they held themselves out as a ready transportation indiscriminately to the students of a particular school living within or near where they operated the service and for a fee.

PHILIPPINE AMERICAN GENERAL INSURANCE COMPANY, *Petitioner*, -versus – PKS SHIPPING COMPANY, *Respondent.*

G.R. No. 149038, FIRST DIVISION, April 9, 2003, VITUG, *J.*

A typical case is that of a charter party which includes both the vessel and its crew, such as in a bareboat or demise, where the charterer obtains the use and service of all or some part of a ship for a period of time or a voyage or voyages and gets the control of the vessel and its crew.

Contrary to the conclusion made by the appellate court, its factual findings indicate that PKS Shipping has engaged itself in the business of carrying goods for others, although for a limited clientele, undertaking to carry such goods for a fee. The regularity of its activities in this area indicates more than just a casual activity on its part. Neither can the concept of a common carrier change merely because individual contracts are executed or entered into with patrons of the carrier. Such restrictive interpretation would make it easy for a common carrier to escape liability by the simple expedient of entering into those distinct agreements with clients.

FACTS

Davao Union Marketing Corporation (DUMC) contracted the services of respondent PKS Shipping Company (PKS Shipping) for the shipment to Tacloban City of seventy-five thousand (75,000) bags of cement worth. DUMC insured the goods for its full value with petitioner Philippine American General Insurance Company (Philamgen). The goods were loaded aboard the dumb barge Limar I belonging to PKS Shipping. On the evening of 22 December 1988, about nine o'clock, while Limar I was being towed by respondent's tugboat, MT Iron Eagle, the barge sank a couple of miles off the coast of Dumagasa Point, in Zamboanga del Sur, bringing down with it the entire cargo of 75,000 bags of cement.

DUMC filed a formal claim with Philamgen for the full amount of the insurance. Philamgen promptly made payment; it then sought reimbursement from PKS Shipping of the sum paid to DUMC but the shipping company refused to pay, prompting Philamgen to file suit against PKS Shipping with the Makati RTC.

The RTC dismissed the complaint after finding that the total loss of the cargo could have been caused either by a fortuitous event, in which case the ship owner was not liable, or through the negligence of the captain and crew of the vessel and that, under Article 587 of the Code of Commerce adopting the "Limited Liability Rule," the ship owner could free itself of liability by abandoning, as it apparently so did, the vessel with all her equipment and earned freightage.

Philamgen interposed an appeal to the Court of Appeals which affirmed in toto the decision of the trial court. The appellate court ruled that evidence to establish that PKS Shipping was a common carrier at the time it undertook to transport the bags of cement was wanting because the peculiar method of the shipping company's carrying goods for others was not generally held out as a business but as a casual occupation. It then concluded that PKS Shipping, not being a common carrier, was not expected to observe the stringent extraordinary diligence required of common carriers in the care of goods. The appellate court, moreover, found that the loss of the goods was sufficiently established as having been due to fortuitous event, negating any liability on the part of PKS Shipping to the shipper.

ISSUES

1. Whether PKS Shipping is a common carrier. (YES)
2. Whether PKS Shipping is liable. (NO)

RULING

1. The Civil Code defines "common carriers" in the following terms:
"Article 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air for compensation, offering their services to the public."

Complementary to the codal definition is Section 13, paragraph (b), of the Public Service Act; it defines "public service" to be –

"x x x every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, subway motor vehicle, either for freight or passenger, or both, with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship, or steamship line, pontines, ferries and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine repair shop, wharf or dock, ice plant, ice refrigeration plant, canal, irrigation system, gas, electric light, heat and power, water supply and power petroleum, sewerage system, wire or wireless communication systems, wire or wireless broadcasting stations and other similar public services. x x x. (Underscoring supplied)."

The prevailing doctrine on the question is that enunciated in the leading case of *De Guzman vs. Court of Appeals*. Applying Article 1732 of the Code, in conjunction with Section 13(b) of the Public Service Act, this Court has held:

"The above article makes no distinction between one whose principal business activity is the carrying of persons or goods or both, and one who does such carrying only as an ancillary activity (in local idiom, as `a sideline'). Article 1732 also carefully avoids making any distinction between a

person or enterprise offering transportation service on a regular or scheduled basis and one offering such service on an occasional, episodic or unscheduled basis. Neither does Article 1732 distinguish between a carrier offering its services to the `general public,' i.e., the general community or population, and one who offers services or solicits business only from a narrow segment of the general population. We think that Article 1732 deliberately refrained from making such distinctions.

"So understood, the concept of `common carrier' under Article 1732 may be seen to coincide neatly with the notion of `public service,' under the Public Service Act (Commonwealth Act No. 1416, as amended) which at least partially supplements the law on common carriers set forth in the Civil Code."

Much of the distinction between a "common or public carrier" and a "private or special carrier" lies in the character of the business, such that if the undertaking is an isolated transaction, not a part of the business or occupation, and the carrier does not hold itself out to carry the goods for the general public or to a limited clientele, although involving the carriage of goods for a fee, the person or corporation providing such service could very well be just a private carrier. A typical case is that of a charter party which includes both the vessel and its crew, such as in a bareboat or demise, where the charterer obtains the use and service of all or some part of a ship for a period of time or a voyage or voyages and gets the control of the vessel and its crew.

Contrary to the conclusion made by the appellate court, its factual findings indicate that PKS Shipping has engaged itself in the business of carrying goods for others, although for a limited clientele, undertaking to carry such goods for a fee. The regularity of its activities in this area indicates more than just a casual activity on its part. Neither can the concept of a common carrier change merely because individual contracts are executed or entered into with patrons of the carrier. Such restrictive interpretation would make it easy for a common carrier to escape liability by the simple expedient of entering into those distinct agreements with clients.

2. Article 1733 of the Civil Code requires common carriers to observe extraordinary diligence in the vigilance over the goods they carry. In case of loss, destruction or deterioration of goods, common carriers are presumed to have been at fault or to have acted negligently, and the burden of proving otherwise rests on them. The provisions of Article 1733, notwithstanding, common carriers are exempt from liability for loss, destruction, or deterioration of the goods due to any of the following causes:

(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; and

(5) Order or act of competent public authority.

The appellate court ruled, gathered from the testimonies and sworn marine protests of the respective vessel masters of Limar I and MT Iron Eagle, that there was no way by which the barge's or the tugboat's crew could have prevented the sinking of Limar I. The vessel was suddenly tossed by waves of extraordinary height of six (6) to eight (8) feet and buffeted by strong winds of 1.5 knots resulting in the entry of water into the barge's hatches. The official Certificate of Inspection of the barge issued by the Philippine Coastguard and the Coastwise Load Line Certificate would attest to the seaworthiness of Limar I and should strengthen the factual findings of the appellate court.

All given then, the appellate court did not err in its judgment absolving PKS Shipping from liability for the loss of the DUMC cargo.

HEIRS OF AMPARO DE LOS SANTOS, HEIRS OF ERNANIE DELOS SANTOS, HEIRS OF AMABELLA DELOS SANTOS, HEIRS OF LENNY DELOS SANTOS, HEIRS OF MELANY DELOS SANTOS, HEIRS OF TERESA PAMATIAN, HEIRS OF DIEGO SALEM, AND RUBEN REYES, *Petitioners*, -versus – HONORABLE COURT OF APPEALS AND COMPANIA MARITIMA, *Respondents.*
G.R. No. L-51165, FIRST DIVISION, June 21, 1990, MEDIALDEA, *J.*

Owing to the nature of their business and for reasons of public policy, common carriers are tasked to observe extraordinary diligence in the vigilance over the goods and for the safety of its passengers (Article 1733, New Civil Code). Further, they are bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances (Article 1755, New Civil Code). Whenever death or injury to a passenger occurs, common carriers are presumed to have been at fault or to have acted negligently unless they prove that they observed extraordinary diligence as prescribed by Articles 1733 and 1755 (Article 1756, New Civil Code).

In this case, Maritima, could not present evidence that it specifically installed a radar which could have allowed the vessel to navigate safely for shelter during a storm. This clearly demonstrated that Maritima's lack of extraordinary diligence coupled with the negligence of the captain as found by the appellate court were the proximate causes of the sinking of M/V Mindoro.

FACTS

M/V 'Mindoro of Compania Maritima sailed from pier 8 North Harbor, Manila, on November 2,1967 at about 2:00 (should have been 6:00 p.m.) in the afternoon bound for New Washington, Aklan, with many passengers aboard. It appeared that said vessel met typhoon 'Welming' causing the death of many of its passengers, although about 136 survived. This is a complaint originally filed on October 21, 1968 (p. 1, rec.) and amended on October 24, 1968 (p. 16 rec.) by the heirs of Delos Santos and others as pauper litigants against the Compania Maritima, for damages due to the death of several passengers as a result of the sinking of the vessel of defendant, the M/V 'Mindoro', on November 4, 196
The heirs of Delos Santos and others as pauper litigants filed complaint against the Compania Maritima, for damages due to the death of several passengers as a result of the sinking of the vessel of defendant.

In alleging negligence on the part of the vessel, plaintiffs introduced in evidence a certified true copy of the Special Permit to the Compania Maritima issued by the Bureau of Customs limiting the vessel to only 193 passengers.

It appeared that in a decision of the Board of Marine Inquiry, it was found that the captain and some officers of the crew were negligent in operating the vessel and imposed upon them a suspension and/or revocation of their license certificates.

However, defendant company alleged that no negligence was ever established and, in fact, the shipowners and their officers took all the necessary precautions in operating the vessel. Furthermore, the loss of lives as a result of the drowning of some passengers, including the relatives of the herein plaintiff, was due to force majeure because of the strong typhoon 'Welming.'

It appeared also that there were findings and recommendations made by the Board of Marine Inquiry, recommending among other things that the captain of the M/V 'Mindoro,' Felicito Irineo, should be exonerated. The board report stated "Moreover, Captain Irineo went down with the vessel and his lips are forever sealed and could no longer defend himself. The body also found that the ship's compliment (sic) and crew were all complete and the vessel was in seaworthy condition. If the M/V Mindoro' sank, it was through force majeure"

The trial court sustained the position of private respondent Compania Maritima (Maritima, for short).

Petitioners' heirs and Reyes brought an appeal to the Court of Appeals. The appellate court affirmed the decision on appeal. While it found that there was concurring negligence on the part of the captain which must be imputable to Maritima, the Court of Appeals ruled that Maritima cannot be held liable in damages.

ISSUE

Whether Compania Maritima is liable for the deaths and injury of the victims. (YES)

RULING

Art. 587. The ship agent shall also be civilly liable for indemnities in favor of third persons 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.

A shipowner or agent has the right of abandonment; and by necessary implication, his liability is confined to that which he is entitled as of right to abandon-"the vessel with all her equipments and the freight it may have earned during the voyage" *(Yangco v. Laserna, et al., 73 Phil. 330, 332*).

It must be stressed at this point that Article 587 speaks only of situations where the fault or negligence is committed solely by the captain. In cases where the shipowner is likewise to be blamed, Article 587 does not apply (see Manila Steamship Co., Inc. v. Abdulhanan, et al., 100 Phil. 32, 38). Such a situation will be covered by the provisions of the New Civil Code on Common Carriers. Owing to the nature of their business and for reasons of public policy, common carriers are tasked to observe extraordinary diligence in the vigilance over the goods and for the safety of its passengers (Article 1733, New Civil Code). Further, they are bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious

persons, with a due regard for all the circumstances (Article 1755, New Civil Code). Whenever death or injury to a passenger occurs, common carriers are presumed to have been at fault or to have acted negligently unless they prove that they observed extraordinary diligence as prescribed by Articles 1733 and 1755 (Article 1756, New Civil Code).

Maritima presented evidence of the seaworthy condition of the ship prior to its departure to prove that it exercised extraordinary diligence in this case. M/V Mindoro was drydocked for about a month. Necessary repairs were made on the ship. Life saving equipment and navigational instruments were installed.

While indeed it is true that all these things were done on the vessel, Maritima, however, could not present evidence that it specifically installed a radar which could have allowed the vessel to navigate safely for shelter during a storm. Consequently, the vessel was left at the mercy of ''Welming' in the open sea because although it was already in the vicinity of the Aklan river, it was unable to enter the mouth of Aklan River to get into New Washington, Aklan due to darkness and the Floripon Lighthouse at the entrance of the Aklan River was not functioning or could not be seen at all. Storms and typhoons are not strange occurrences. In 1967 alone before 'Welming,' there were about 17 typhoons that hit the country, the latest of which was typhoon Uring which occurred on October 20-25, which cost so much damage to lives and properties. With the impending threat of 'Welming,' an important device such as the radar could have enabled the ship to pass through the river and to safety.

These clearly demonstrated that Maritima's lack of extraordinary diligence coupled with the negligence of the captain as found by the appellate court were the proximate causes of the sinking of M/V Mindoro.

Hence, Maritima is liable for the deaths and injury of the victims.

AMERICAN HOME ASSURANCE, COMPANY, *Petitioner*, -versus – THE COURT OF APPEALS and NATIONAL MARINE CORPORATION and/or NATIONAL MARINE CORPORATION (Manila),, *Respondents.*

G.R. No. 94149, SECOND DIVISION, May 5, 1992, PARAS, *J.*

Article 1734 of the Civil Code provides that common carriers are responsible for loss, destruction or deterioration of the goods, unless due to any of the causes enumerated therein.

It is obvious that the case at bar does not fall under any of the exceptions. Thus, American Home Assurance Company is entitled to reimbursement of what it paid to Mayleen Paper, Inc. as insurer.

FACTS

Cheng Hwa Pulp Corporation shipped 5,000 bales (1,000 ADMT) of bleached kraft pulp from Haulien, Taiwan on board "SS Kaunlaran", which is owned and operated by herein respondent National Marine Corporation. The said shipment was consigned to Mayleen Paper, Inc. of Manila, which insured the shipment with herein petitioner American Home Assurance Co.

The shipment arrived in Manila and was discharged into the custody of the Marina Port Services, Inc., for eventual delivery to the consignee-assured. However, upon delivery of the shipment to Mayleen Paper, Inc., it was found that 122 bales had either been damaged or lost. Mayleen Paper, Inc. then duly demanded indemnification from respondent National Marine Corporation for the aforesaid damages/losses in the shipment but, for apparently no justifiable reason, said demand was not heeded.

As the shipment was insured with petitioner, Mayleen Paper, Inc. sought recovery from the former. American Home Assurance paid Mayleen Paper, Inc. hence, the former was subrogated to the rights and interests on Mayleen Paper, Inc.

The petitioner, as subrogee, then filed a complaint for recovery of sum of money against respondent.

Respondent, National Marine Corporation, filed a motion to dismiss stating that American Home Assurance Company had no cause of action based on Article 848 of the Code of Commerce which provides "that claims for averages shall not be admitted if they do not exceed 5% of the interest which the claimant may have in the vessel or in the cargo if it be gross average and 1% of the goods damaged if particular average, deducting in both cases the expenses of appraisal, unless there is an agreement to the contrary." It contended that based on the allegations of the complaint, the loss sustained in the case was P35,506.75 which is only .18% of P17,420,000.00, the total value of the cargo.

On the other hand, petitioner countered that Article 848 does not apply as it refers to averages and that a particular average presupposes that the loss or damages is due to an inherent defect of the goods, an accident of the sea, or a force majeure or the negligence of the crew of the carrier, while claims for damages due to the negligence of the common carrier are governed by the Civil Code provisions on Common Carriers.

The Regional Trial Court sustained private respondent's contention. But the Court of Appeals, upon appeal, dismissed the petition.

Hence, this petition.

ISSUE

Whether respondent is liable. (YES)

RULING

The Court held that under Article 1733 of 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 the goods and for the safety of passengers transported by them according to all circumstances of each case. Thus, under Article 1735 of the same Code, in all cases other than those mentioned in Article 1734 thereof, 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 diligence required by law (Ibid., p. 595).

But more importantly, the Court ruled that common carriers cannot limit their liability for injury or loss of goods where such injury or loss was caused by its own negligence. Otherwise stated, the law on averages under the Code of Commerce cannot be applied in determining liability where there is negligence (Ibid., p. 606).

Under the foregoing principle and in line with the Civil Code's mandatory requirement of extraordinary diligence on common carriers in the car care of goods placed in their stead, it is but reasonable to conclude that the issue of negligence must first be addressed before the proper provisions of the Code of Commerce on the extent of liability may be applied.

The records show that upon delivery of the shipment in question of Mayleen's warehouse in Manila, 122 bales were found to be damaged/lost with straps cut or loose, calculated by the so-called "percentage method" at 4,360 kilograms and amounting to P61,263.41 (Rollo, p. 68). Instead of presenting proof of the exercise of extraordinary diligence as required by law, National Marine Corporation (NMC) filed its Motion to Dismiss dated August 7, 1989, hypothetically admitting the truth of the facts alleged in the complaint to the effect that the loss or damage to the 122 bales was due to the negligence or fault of NMC (Rollo, p. 179). As ruled by this Court, the filing of a motion to dismiss on the ground of lack of cause of action carries with it the admission of the material facts pleaded in the complaint (Sunbeam Convenience Foods, Inc. v. C.A., 181 SCRA 443 [1990]). Such being the case, it is evident that the Code of Commerce provisions on averages cannot apply.

On the other hand, Article 1734 of the Civil Code provides that common carriers are responsible for loss, destruction or deterioration of the goods, unless due to any of the causes enumerated therein. It is obvious that the case at bar does not fall under any of the exceptions. Thus, American Home Assurance Company is entitled to reimbursement of what it paid to Mayleen Paper, Inc. as insurer.

Accordingly, it is evident that the findings of respondent Court of Appeals, affirming the findings and conclusions of the court a quo are not supported by law and jurisprudence.

PHILIPPINE AIRLINES, INC*, Petitioner*, -versus – COURT OF APPEALS and PEDRO ZAPATOS, *Respondents.*

G.R. No. L-82619, FIRST DIVISION, September 15, 1993, BELLOSILLO, *J.*

In Air France v. Carrascoso, the Supreme Court held that —

A contract to transport passengers is quite different in kind and degree from any other contractual relation. And this, because of the relation which an air carrier sustains with the public. Its business is mainly with the travelling public. It invites people to avail of the comforts and advantages it offers. The contract of air carriage, therefore, generates a relation attended with a public duty . . . . (emphasis supplied).

Being in the business of air carriage and the sole one to operate in the country, PAL is deemed equipped to deal with situations as in the case at bar. Hence, PAL necessarily would still have to exercise extraordinary diligence in safeguarding the comfort, convenience and safety of its stranded passengers until they have reached their final destination. On this score, PAL grossly failed considering the then ongoing battle between government forces and Muslim rebels in Cotabato City and the fact that the private respondent was a stranger to the place.

FACTS

Private respondent was among the twenty-one (21) passengers of PAL Flight 477 that took off from Cebu bound for Ozamiz City. However, due to heavy rains and inclement weather, PAL bypassed Ozamiz and proceeded to Cotabato City instead.

PAL informed the passengers of their options to return to Cebu on flight 560 of the same day and then to Ozamiz City, or take the next flight to Cebu the following day, or remain at Cotabato and take the next available flight to Ozamiz City. However, Flight 560 bound for Manila would make a stop-over at Cebu to bring some of the diverted passengers; that there were only six (6) seats available.

Private respondent chose to return to Cebu but was not accommodated because he checked-in as passenger No. 9 on Flight 477. He insisted on being given priority over the confirmed passengers in the accommodation, but PAL refused, explaining that the latter's predicament was not due to PAL's own doing but to be a force majeure.

Private respondent tried to stop the departure of Flight 560 as his personal belongings were still on board. His plea fell on deaf ears. PAL then issued to private respondent a free ticket to Iligan city, which the latter received under protest. The following day, private respondent purchased a PAL ticket to Iligan City. In Iligan City, private respondent hired a car from the airport to Kolambugan, Lanao del Norte, reaching Ozamiz City by crossing the bay in a launch. His personal effects were no longer recovered.

Private respondent then filed complaint for damages against PAL.

PAL filed its answer denying that it unjustifiably refused to accommodate private respondent. It alleged that there was simply no more seat for private respondent on Flight 560 since there were only six (6) seats and that the reason for their pilot's inability to land at Ozamis City airport was because the runway was wet due to rains thus posing a threat to the safety of both passengers and aircraft; and, that such reason of force majeure was a valid justification for the pilot to bypass Ozamiz City and proceed directly to Cotabato City.

The trial court rendered its decision in favor of the plaintiff and against the defendant Philippine AirLines, Inc. PAL appealed to the Court of Appeals, however the appellate court, affirmed the judgment of the trial court.

ISSUE

Whether PAL is negligent and, consequently, liable for damages. (YES)

RULING

The contract of air carriage is a peculiar one. Being imbued with public interest, the law requires common carriers to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances. In *Air France v. Carrascoso*, we held that —

A contract to transport passengers is quite different in kind and degree from any other contractual relation. And this, because of the relation which an air carrier sustains with the public. Its business is mainly with the travelling public. It invites people to avail of the comforts and advantages it offers. The contract of air carriage, therefore, generates a relation attended with a public duty . . . . (emphasis supplied).

The position taken by PAL in this case clearly illustrates its failure to grasp the exacting standard required by law. Undisputably, PAL's diversion of its flight due to inclement weather was a fortuitous event. Nonetheless, such occurrence did not terminate PAL's contract with its passengers. Being in the business of air carriage and the sole one to operate in the country, PAL is deemed equipped to deal with situations as in the case at bar. What we said in one case once again must be stressed, i.e., the relation of carrier and passenger continues until the latter has been landed at the port of destination and has left the carrier's premises. Hence, PAL necessarily would still have to exercise extraordinary diligence in safeguarding the comfort, convenience and safety of its stranded passengers until they have reached their final destination. On this score, PAL grossly failed considering the then ongoing battle between government forces and Muslim rebels in Cotabato City and the fact that the private respondent was a stranger to the place. As the appellate court correctly ruled —

While the failure of plaintiff in the first instance to reach his destination at Ozamis City in accordance with the contract of carriage was due to the closure of the airport on account of rain and inclement weather which was radioed to defendant 15 minutes before landing, it has not been disputed by defendant airline that Ozamis City has no all-weather airport and has to cancel its flight to Ozamis City or by-pass it in the event of inclement weather. Knowing this fact, it becomes the duty of defendant to provide all means of comfort and convenience to its passengers when they would have to be left in a strange place in case of such by-passing. The steps taken by defendant airline company towards this end has not been put in evidence, especially for those 7 others who were not accommodated in the return trip to Cebu, only 6 of the 21 having been so accommodated. It appears that plaintiff had to leave on the next flight 2 days later. If the cause of non-fulfillment of the contract is due to a fortuitous event, it has to be the sole and only cause (Art. 1755 CC., Art. 1733 C.C.) Since part of the failure to comply with the obligation of common carrier to deliver its passengers safely to their destination lay in the defendant's failure to provide comfort and convenience to its stranded passengers using extra-ordinary diligence, the cause of non-fulfillment is not solely and exclusively due to fortuitous event, but due to something which defendant airline could have prevented, defendant becomes liable to plaintiff.

B**ENITO MACAM doing business under the name and style BEN-MAC ENTERPRISES*,* *Petitioner*, -versus – COURT OF APPEALS, CHINA OCEAN SHIPPING CO., and/or WALLEM PHILIPPINES SHIPPING, INC*, Respondents.***

G.R. No. 125524, SECOND DIVISION, August 25, 1999, BELLOSILLO, *J.*

Extraordinary responsibility of the common carriers lasts until actual or constructive delivery of the cargoes to the consignee or to the person who has a right to receive them.

PAKISTAN BANK was indicated in the bills of lading as consignee whereas GPC was the notify party. However, in the export invoices GPC was clearly named as buyer/importer. Petitioner also referred to GPC as such in his demand letter to respondent WALLEM and in his complaint before the trial court. This premise draws us to conclude that the delivery of the cargoes to GPC as buyer/importer which, conformably with Art. 1736 had, other than the consignee, the right to receive them was proper.

FACTS

Benito Macam, doing business under the name and style Ben-Mac Enterprises, shipped on board the vessel Nen Jiang, owned and operated by respondent China Ocean Shipping Co., through local agent respondent Wallem Philippines Shipping, Inc. 3,500 boxes of watermelons and 1,611 boxes of fresh mangoes. The shipment was bound for Hongkong with PAKISTAN BANK as consignee and Great Prospect Company of Kowloon, Hongkong as notify party.

Upon arrival in Hongkong, the shipment was delivered by respondent WALLEM directly to GPC, not to PAKISTAN BANK, and without the required bill of lading having been surrendered. Subsequently, GPC failed to pay PAKISTAN BANK such that the latter, still in possession of the original bills of lading, refused to pay petitioner through SOLIDBANK. Since SOLIDBANK already pre-paid petitioner the value of the shipment, it demanded payment from respondent WALLEM through five (5) letters but was refused. Petitioner was thus allegedly constrained to return the amount involved to SOLIDBANK, then demanded payment from respondent WALLEM in writing but to no avail.

Petitioner sought collection of the value of the shipment from respondents before the Regional Trial Court of Manila, based on delivery of the shipment to GPC without presentation of the bills of lading and bank guarantee.

Respondents contended that the shipment was delivered to GPC without presentation of the bills of lading and bank guarantee per request of petitioner himself because the shipment consisted of perishable goods.

Respondents explained that it is a standard maritime practice, when immediate delivery is of the essence, for the shipper to request or instruct the carrier to deliver the goods to the buyer upon arrival at the port of destination without requiring presentation of the bill of lading as that usually takes time. As proof thereof, respondents apprised the trial court that for the duration of their two-year business relationship with petitioner concerning similar shipments to GPC deliveries were effected without presentation of the bills of lading. Respondents advanced next that the refusal of PAKISTAN BANK to pay the letters of credit to SOLIDBANK was due to the latter's failure to submit a Certificate of Quantity and Quality.

The trial court ordered respondents to pay, jointly and severally. Respondent Court of Appeals appreciated the evidence in a different manner. According to it, as established by previous similar transactions between the parties, shipped cargoes were sometimes actually delivered not to the consignee but to notify party GPC without need of the bills of lading or bank guarantee. Respondent

court set aside the decision of the trial court and dismissed the complaint together with the counterclaims.

ISSUE

Whether private respondents are liable to petitioner for releasing the goods to GPC without the bills of lading or bank guarantee.(NO)

RULING

Article 1736 of the Civil Code provides —

Art. 1736. The extraordinary responsibility of the common carriers 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, without prejudice to the provisions of article 1738.12

The Court emphasized that the extraordinary responsibility of the common carriers lasts until actual or constructive delivery of the cargoes to the consignee or to the person who has a right to receive them. PAKISTAN BANK was indicated in the bills of lading as consignee whereas GPC was the notify party. However, in the export invoices GPC was clearly named as buyer/importer. Petitioner also referred to GPC as such in his demand letter to respondent WALLEM and in his complaint before the trial court. This premise draws us to conclude that the delivery of the cargoes to GPC as buyer/importer which, conformably with Art. 1736 had, other than the consignee, the right to receive them was proper.

Respondents submitted in evidence a telex dated 5 April 1989 as basis for delivering the cargoes to GPC without the bills of lading and bank guarantee. The telex instructed delivery of various shipments to the respective consignees without need of presenting the bill of lading and bank guarantee per the respective shipper's request since "for prepaid shipt ofrt charges already fully paid." Petitioner was named therein as shipper and GPC as consignee with respect to Bill of Lading Nos. HKG 99012 and HKG 99013. Petitioner disputes the existence of such instruction and claims that this evidence is self-serving.

From the testimony of petitioner, we gather that he has been transacting with GPC as buyer/importer for around two (2) or three (3) years already. It has been the practice of petitioner to request the shipping lines to immediately release perishable cargoes such as watermelons and fresh mangoes through telephone calls by himself or his "people." In transactions covered by a letter of credit, bank guarantee is normally required by the shipping lines prior to releasing the goods. But for buyers using telegraphic transfers, petitioner dispenses with the bank guarantee because the goods are already fully paid. In his several years of business relationship with GPC and respondents, there was not a single instance when the bill of lading was first presented before the release of the cargoes. He admitted the existence of the telex of 3 July 1989 containing his request to deliver the shipment to the consignee without presentation of the bill of lading but not the telex of 5 April 1989 because he could not remember having made such request.

Conformably, to implement the said telex instruction, the delivery of the shipment must be to GPC, the notify party or real importer/buyer of the goods and not the Pakistani Bank since the latter can

very well present the original Bills of Lading in its possession. Likewise, if it were the Pakistani Bank to whom the cargoes were to be strictly delivered, it will no longer be proper to require a bank guarantee as a substitute for the Bill of Lading. To construe otherwise will render meaningless the telex instruction. After all, the cargoes consist of perishable fresh fruits and immediate delivery thereof to the buyer/importer is essentially a factor to reckon with. Besides, GPC is listed as one among the several consignees in the telex (Exhibit 5-B) and the instruction in the telex was to arrange delivery of A/M shipment (not any party) to respective consignees without presentation of OB/L and bank guarantee . . . .

Apart from the foregoing obstacles to the success of petitioner's cause, petitioner failed to substantiate his claim that he returned to SOLIDBANK the full amount of the value of the cargoes. It is not far-fetched to entertain the notion, as did respondent court, that he merely accommodated SOLIDBANK in order to recover the cost of the shipped cargoes from respondents. We note that it was SOLIDBANK which initially demanded payment from respondents through five (5) letters. SOLIDBANK must have realized the absence of privity of contract between itself and respondents. That is why petitioner conveniently took the cudgels for the bank.

In view of petitioner's utter failure to establish the liability of respondents over the cargoes, no reversible error was committed by respondent court in ruling against him.

VIRGINES CALVO doing business under the name and style TRANSORIENT CONTAINER TERMINAL SERVICES, INC., *Petitioner*, -versus – UCPB GENERAL INSURANCE CO., INC. (formerly Allied Guarantee Ins. Co., Inc.), *Respondent.*
G.R. No. 148496, SECOND DIVISION, March 19, 2002, MENDOZA, *J.*

Art. 1733 of the Civil Code provides:

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 and for the safety of the passengers transported by them, according to all the circumstances of each case. . . .

Anent petitioner's insistence that the cargo could not have been damaged while in her custody as she immediately delivered the containers to SMC's compound, suffice it to say that to prove the exercise of extraordinary diligence, petitioner must do more than merely show the possibility that some other party could be responsible for the damage. It must prove that it used "all reasonable means to ascertain the nature and characteristic of goods tendered for [transport] and that [it] exercise[d] due care in the handling [thereof]." Petitioner failed to do this.

FACTS

Petitioner Virgines Calvo is the owner of Transorient Container Terminal Services, Inc. (TCTSI), a sole proprietorship customs broker. Petitioner entered into a contract with San Miguel Corporation (SMC) for the transfer of 114 reels of semi-chemical fluting paper and 124 reels of kraft liner board from the Port Area in Manila to SMC's warehouse at the Tabacalera Compound, Romualdez St., Ermita, Manila. The cargo was insured by respondent UCPB General Insurance Co., Inc.

Petitioner, pursuant to her contract with SMC, withdrew the cargo from the arrastre operator and delivered it to SMC's warehouse in Ermita, Manila. When the goods were inspected by Marine Cargo

Surveyors, it was found that 15 reels of the semi-chemical fluting paper were "wet/stained/torn" and 3 reels of kraft liner board were likewise torn. SMC collected payment from respondent UCPB under its insurance contract. In turn, respondent, as subrogee of SMC, brought suit against petitioner in the Regional Trial Court of Makati which rendered judgment finding petitioner liable to respondent for the damage to the shipment.

The decision was affirmed by the Court of Appeals on appeal. Hence the petition.

ISSUE

1. Whether petitioner is a common carrier and not a private or special carrier. (YES)
2. Whether petitioner is liable.

RULING

1. In *De Guzman v. Court of Appeals*, the Court dismissed a similar contention and held the party to be a common carrier, thus —

The Civil Code defines "common carriers" in the following terms:

"Article 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air for compensation, offering their services to the public."

The above article makes no distinction between one whose principal business activity is the carrying of persons or goods or both, and one who does such carrying only as an ancillary activity. Article 1732 also carefully avoids making any distinction between a person or enterprise offering transportation service on a regular or scheduled basis and one offering such service on an occasional, episodic or unscheduled basis. Neither does Article 1732 distinguish between a carrier offering its services to the "general public," i.e., the general community or population, and one who offers services or solicits business only from a narrow segment of the general population. We think that Article 1732 deliberately refrained from making such distinctions.

So understood, the concept of "common carrier" under Article 1732 may be seen to coincide neatly with the notion of "public service," under the Public Service Act (Commonwealth Act No. 1416, as amended) which at least partially supplements the law on common carriers set forth in the Civil Code. Under Section 13, paragraph (b) of the Public Service Act, "public service" includes:
". . . every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, traction railway, subway motor vehicle, either for freight or passenger, or both, with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship line, pontines, ferries and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine repair shop, wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, gas, electric light, heat and power, water supply and power petroleum, sewerage system, wire or wireless communications systems, wire or wireless broadcasting stations and other similar public services. . ."

There is greater reason for holding petitioner to be a common carrier because the transportation of goods is an integral part of her business. To uphold petitioner's contention would be to deprive those with whom she contracts the protection which the law affords them notwithstanding the fact that the obligation to carry goods for her customers, as already noted, is part and parcel of petitioner's business.

2.

Art. 1733 of the Civil Code provides:

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 and for the safety of the passengers transported by them, according to all the circumstances of each case. . . .

In Compania Maritima v. Court of Appeals, the meaning of "extraordinary diligence in the vigilance over goods" was explained thus:

The extraordinary diligence in the vigilance over the goods tendered for shipment requires the common carrier to know and to follow the required precaution for avoiding damage to, or destruction of the goods entrusted to it for sale, carriage and delivery. It requires common carriers to render service with the greatest skill and foresight and "to use all reasonable means to ascertain the nature and characteristic of goods tendered for shipment, and to exercise due care in the handling and stowage, including such methods as their nature requires." In the case at bar, petitioner denies liability for the damage to the cargo. She claims that the "spoilage or wettage" took place while the goods were in the custody of either the carrying vessel "M/V Hayakawa Maru," which transported the cargo to Manila, or the arrastre operator, to whom the goods were unloaded and who allegedly kept them in open air for nine days from July 14 to July 23, 1998 notwithstanding the fact that some of the containers were deformed, cracked, or otherwise damage.

Anent petitioner's insistence that the cargo could not have been damaged while in her custody as she immediately delivered the containers to SMC's compound, suffice it to say that to prove the exercise of extraordinary diligence, petitioner must do more than merely show the possibility that some other party could be responsible for the damage. It must prove that it used "all reasonable means to ascertain the nature and characteristic of goods tendered for [transport] and that [it] exercise[d] due care in the handling [thereof]." Petitioner failed to do this.

Nor is there basis to exempt petitioner from liability under Art. 1734(4), which provides —
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:
. . . .

(4) The character of the goods or defects in the packing or in the containers.

. . . .

For this provision to apply, the rule is that if the improper packing or, in this case, the defect/s in the container, is/are known to the carrier or his employees or apparent upon ordinary observation, but he nevertheless accepts the same without protest or exception notwithstanding such condition, he is not relieved of liability for damage resulting therefrom. In this case, petitioner accepted the

cargo without exception despite the apparent defects in some of the container vans. Hence, for failure of petitioner to prove that she exercised extraordinary diligence in the carriage of goods in this case or that she is exempt from liability, the presumption of negligence as provided under Art. 1735 holds.

VECTOR SHIPPING CORPORATION AND FRANCISCO SORIANO, *Petitioners*, -versus ADELFO B. MACASA, EMELIA B. MACASA, TIMOTEO B. MACASA, CORNELIO B. MACASA, JR., and ROSARIO C. MACASA, SULPICIO LINES, INC., GO GUIOC SO, ENRIQUE S. GO, EUSEBIO S. GO, RICARDO S. GO, VICTORIANO S. GO, EDWARD S. GO, ARTURO S. GO, EDGAR S. GO and EDMUNDO S. GO, *Respondent.*

G.R. No. 160219, THIRD DIVISION, July 21, 2008, NACHURA, *J.*

In Caltex (Philippines), Inc. v. Sulpicio Lines, Inc., we held that MT Vector fits the definition of a common carrier under Article 1732 of the New Civil Code. Our ruling in that case is instructive:

Thus, the carriers are deemed to warrant impliedly the seaworthiness of the ship. For a vessel to be seaworthy, it must be adequately equipped for the voyage and manned with a sufficient number of competent officers and crew. The failure of a common carrier to maintain in seaworthy condition the vessel involved in its contract of carriage is a clear breach of its duty prescribed in Article 1755 of the Civil Code.

All evidence points to the fact that it was MT Vector's negligent officers and crew which caused it to ram into MV Doña Paz. More so, MT Vector was found to be carrying expired coastwise license and permits and was not properly manned. As the records would also disclose, there is a defect in the ignition system of the vessel, and it was not convincingly shown whether the necessitated repairs were in fact undertaken before the said ship had set to sea. In short, MT Vector was unseaworthy at the time of the mishap. That the said vessel was allowed to set sail when it was, to everyone in the group's knowledge, not fit to do so translates into rashness and imprudence.

FACTS

Spouses Cornelio (Cornelio) and Anacleta Macasa (Anacleta), together with their eight-year-old grandson, Ritchie Macasa, (Ritchie) boarded the MV Doña Paz, owned and operated by respondent Sulpicio Lines, Inc. (Sulpicio Lines), at Tacloban, Leyte bound for Manila. MV Doña Paz collided with the MT Vector, an oil tanker owned and operated by petitioners Vector Shipping Corporation (Vector Shipping) and Francisco Soriano (Soriano). Only twenty-six persons survived: 24 passengers of MV Doña Paz and 2 crew members of MT Vector. Both vessels were never retrieved.
Respondents Adelfo, Emilia, Timoteo, and Cornelio, Jr., all surnamed Macasa, are the children of Cornelio and Anacleta. On the other hand, Timoteo and his wife, respondent Rosario Macasa, are the parents of Ritchie (the Macasas.

The Macasas filed a Complaint for Damages arising out of breach of contract of carriage against Sulpicio Lines before the RTC. The complaint imputed negligence to Sulpicio Lines because it was remiss in its obligations as a common carrier.

Sulpicio Lines traversed the complaint, alleging, among others that (1) MV Doña Paz was seaworthy in all aspects; (2) it exercised extraordinary diligence in transporting their passengers and goods; (3) it acted in good faith as it gave immediate assistance to the survivors and kin of the victims; (4) the sinking of MV Doña Paz was without contributory negligence on its part; and (5) the collision was MT Vector's fault since it was allowed to sail with an expired coastwise license, expired certificate of inspection and it was manned by unqualified and incompetent crew members per findings of the Board of Marine Inquiry (BMI).

The RTC ruled in favor of petitioners. Aggrieved, Sulpicio Lines, Caltex, Vector Shipping and Soriano appealed to the CA. The Court of Appeals affirmed the RTC decision with modification on the amount of damages awarded.

ISSUE

Whether petitioner is liable.

RULING

In *Caltex (Philippines), Inc. v. Sulpicio Lines, Inc*., we held that MT Vector fits the definition of a common carrier under Article 1732 of the New Civil Code. Our ruling in that case is instructive:

Thus, the carriers are deemed to warrant impliedly the seaworthiness of the ship. For a vessel to be seaworthy, it must be adequately equipped for the voyage and manned with a sufficient number of competent officers and crew. The failure of a common carrier to maintain in seaworthy condition the vessel involved in its contract of carriage is a clear breach of its duty prescribed in Article 1755 of the Civil Code.

The provisions owed their conception to the nature of the business of common carriers. This business is impressed with a special public duty. The public must of necessity rely on the care and skill of common carriers in the vigilance over the goods and safety of the passengers, especially because with the modern development of science and invention, transportation has become more rapid, more complicated and somehow more hazardous. For these reasons, a passenger or a shipper of goods is under no obligation to conduct an inspection of the ship and its crew, the carrier being obliged by law to impliedly warrant its seaworthiness.

Thus, the Court was disposed to agree with the findings of the CA when it aptly held:

We are not swayed by the lengthy disquisition of MT Vector and Francisco Soriano urging this Court to absolve them from liability. All evidence points to the fact that it was MT Vector's negligent officers and crew which caused it to ram into MV Doña Paz. More so, MT Vector was found to be carrying expired coastwise license and permits and was not properly manned. As the records would also disclose, there is a defect in the ignition system of the vessel, and it was not convincingly shown whether the necessitated repairs were in fact undertaken before the said ship had set to sea. In short, MT Vector was unseaworthy at the time of the mishap. That the said vessel was allowed to set sail when it was, to everyone in the group's knowledge, not fit to do so translates into rashness and imprudence.

In its ruling, the Supreme Court held that, the rule that findings of fact of the CA are generally binding and conclusive on this Court. While this Court has recognized several exceptions to this rule, none of these exceptions finds application in this case. It bears emphasis also that this Court accords respect to the factual findings of the trial court, especially if affirmed by the CA on appeal. Unless the trial court overlooked substantial matters that would alter the outcome of the case, this Court will not disturb such findings. In any event, we have meticulously reviewed the records of the case and found no reason to depart from the rule.

Lastly, the Court cannot turn a blind eye to this gruesome maritime tragedy which is now a dark page in our nation's history. We commiserate with all the victims, particularly with the Macasas who were denied justice for almost two decades in this case. To accept petitioners' submission that this Court, along with the RTC and the CA, should await the review by the Department of National Defense of the BMI findings, would, in effect, limit the courts' jurisdiction to expeditiously try, hear and decide cases filed before them. It would not only prolong the Macasas' agony but would result in yet another tragedy at the expense of speedy justice. This, we cannot allow.

R TRANSPORT CORPORATION, represented by its owner/President RIZALINA LAMZON, *Petitioner*, -versus- EDUARDO PANTE, *Respondent.*
G.R. No. 162104, THIRD DIVISION, September 15, 2009, PERALTA, *J.*

Under the Civil Code, common carriers, like petitioner bus company, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence for the safety of the passengers transported by them, according to all the circumstances of each case. They are bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances.

In this case, the testimonial evidence of respondent showed that petitioner, through its bus driver, failed to observe extraordinary diligence, and was, therefore, negligent in transporting the passengers of the bus safely to Gapan, Nueva Ecija on January 27, 1995, since the bus bumped a tree and a house, and caused physical injuries to respondent.

FACTS

Petitioner R Transport Corporation, represented by its owner and president, Rizalina Lamzon, is a common carrier engaged in operating a bus line transporting passengers to Gapan, Nueva Ecija from Cubao, Quezon City and back.

Respondent Eduardo Pante rode petitioner's R. L. Bus Liner in Cubao, Quezon City bound for Gapan, Nueva Ecija. While traveling along the Doña Remedios Trinidad Highway in Baliuag, Bulacan, the bus hit a tree and a house due to the fast and reckless driving of the bus driver, Johnny Merdiquia. Respondent sustained physical injuries as a result of the vehicular accident.
By way of initial assistance, petitioner gave respondent's wife, Analiza P. Pante, the sum of P7,000.00, which was spent for the stainless steel instrument used in his fractured arm. After the first operation, respondent demanded from petitioner, through its manager, Michael Cando, the full payment or reimbursement of his medical and hospitalization expenses, but petitioner refused

payment. Four years later, respondent underwent a second operation. He spent P15,170.00 for medical and hospitalization expenses.

On March 14, 1995, respondent filed a Complaint for damages against petitioner with the RTC for the injuries he sustained as a result of the vehicular accident.

Petitioner put up the defense that it had always exercised the diligence of a good father of a family in the selection and supervision of its employees, and that the accident was a force majeure for which it should not be held liable.

The trial court ruled that plaintiffs is entitled to damages and ordering defendants to pay. The trial court held that the provisions of the Civil Code on common carriers govern this case. Article 1756 of the Civil Code states that "[i]n case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed by Articles 1733 and 1755." The trial court ruled that since petitioner failed to dispute said presumption despite the many opportunities given to it, such presumption of negligence stands.

Petitioner appealed the decision of the trial court to the Court of Appeals which affirmed the decision of the trial court.

ISSUE

Whether or not petitioner is liable to respondent for damages. (YES)

RULING

Under the Civil Code, common carriers, like petitioner bus company, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence for the safety of the passengers transported by them, according to all the circumstances of each case. They are bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances.

Article 1756 of the Civil Code states that "[i]n case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed by Articles 1733 and 1755."

Further, Article 1759 of the Civil Code provides that "[c]ommon carriers are liable for the death or injury to passengers through the negligence or willful acts of the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers. This liability of the common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees."

In this case, the testimonial evidence of respondent showed that petitioner, through its bus driver, failed to observe extraordinary diligence, and was, therefore, negligent in transporting the passengers of the bus safely to Gapan, Nueva Ecija on January 27, 1995, since the bus bumped a tree and a house, and caused physical injuries to respondent. Article 1759 of the Civil Code explicitly

states that the common carrier is liable for the death or injury to passengers through the negligence or willful acts of its employees, and that such liability does not cease upon proof that the common carrier exercised all the diligence of a good father of a family in the selection and supervision of its employees. Hence, even if petitioner was able to prove that it exercised the diligence of a good father of the family in the selection and supervision of its bus driver, it is still liable to respondent for the physical injuries he sustained due to the vehicular accident.

NEDLLOYD LIJNEN B.V. ROTTERDAM and THE EAST ASIATIC CO., LTD., *Petitioners*, -versus- GLOW LAKS ENTERPRISES, LTD., *Respondent.*
G.R. No. 156330, FIRST DIVISION, November 19, 2014, PEREZ, *J.*

A common carrier is presumed to have been negligent if it fails to prove that it exercised extraordinary vigilance over the goods it transported. When the goods shipped are either lost or arrived in damaged condition, a presumption arises against the carrier of its failure to observe that diligence, and there need not be an express finding of negligence to hold it liable. To overcome the presumption of negligence, the common carrier must establish by adequate proof that it exercised extraordinary diligence over the goods. It must do more than merely show that some other party could be responsible for the damage.

In the present case, petitioners failed to prove that they did exercise the degree of diligence required by law over the goods they transported. Indeed, aside from their persistent disavowal of liability by conveniently posing an excuse that their extraordinary responsibility is terminated upon release of the goods to the Panamanian Ports Authority, petitioners failed to adduce sufficient evidence they exercised extraordinary care to prevent unauthorized withdrawal of the shipments.

FACTS

Petitioner Nedlloyd Lijnen B.V. Rotterdam (Nedlloyd) is a foreign corporation engaged in the business of carrying goods by sea, whose vessels regularly call at the port of Manila. It is doing business in the Philippines thru its local ship agent, co-petitioner East Asiatic Co., Ltd. (East Asiatic).

Respondent Glow Laks Enterprises,Ltd., is likewise a foreign corporation organized and existing under the laws of Hong Kong. It is not licensed to do, and it is not doing business in, the Philippines.

Respondent loaded on board M/S Scandutch at the Port of Manila a total 343 cartoons of garments, complete and in good order for pre-carriage to the Port of Hong Kong. The goods arrived in good condition in Hong Kong and were transferred to M/S Amethyst for final carriage to Colon, Free Zone, Panama. Both vessels, M/S Scandutch and M/S Amethyst, are owned by Nedlloyd represented in the Phlippines by its agent, East Asiatic. Upon arrival of the vessel at the Port of Colon, petitioners purportedly notified the consignee of the arrival of the shipments, and its custody was turned over tothe National Ports Authority in accordance with the laws, customs regulations and practice of trade in Panama. By an unfortunate turn of events, however, unauthorized persons managed to forge the covering bills of lading and on the basis of the falsified documents, the ports authority released the goods.
Respondent filed a formal claim with Nedlloyd for the recovery of the amount of US representing the invoice value of the shipment but to no avail, subsequently, respondent initiated a civil case against Nedlloyd seeking for the recovery of the amount of the shipment.

Petitioners however disclaimed liability and asserted in their Answer that they were never remiss in their obligation as a common carrier and the goods were discharged in good order and condition into the custody of the National Ports Authority of Panama in accordance with the Panamanian law. They averred that they cannot be faulted for the release of the goods to unauthorized persons, their extraordinary responsibility as a common carrier having ceased at the time the possession of the goods were turned over to the possession of the port authorities.

The trial court ordered the dismissal of the complaint. On appeal, the Court of Appeals reversed the findings of the RTC and held that under the New Civil Code, the discharge of the goods in to the custody of the ports authority therefore does not relieve the common carrier from liability because the extraordinary responsibility of the common carriers lasts until actual or constructive delivery of the cargoes to the consignee or to the person who has the right to receive them. Absent any proof that the notify party or the consignee was informed of the arrival of the goods, the appellate court held that the extraordinary responsibility of common carriers remains.

ISSUE

Whether petitioners are liable for the misdelivery of goods under Philippine laws. (YES)

RULING

Under the New 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 the circumstances of each case. Common carriers are responsible for loss, destruction or deterioration of the goods unless the same is due to flood, storm, earthquake or other natural disaster or calamity. Extraordinary diligence is that extreme care and caution which persons of unusual prudence and circumspection use for securing or preserving their own property or rights. This expecting standard imposed on common carriers in contract of carrier of goods is intended to tilt the scales in favor of the shipper who is at the mercy of the common carrier once the goods have been lodged for the shipment. Hence, in case of loss of goods in transit, the common carrier is presumed under the law to have been in fault or negligent.

Article 1736 and Article 1738 are the provisions in the New Civil Code which define the period when the common carrier is required to exercise diligence lasts, viz:

Article 1736. The extraordinary responsibility of the common carrier lasts from the time the goodsare 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, without prejudice to the provisions of article 1738.

Article 1738. The extraordinary liability of the common carrier continues to be operative even during the time the goods are stored in a warehouse of the carrier at the place of destination, until the consignee has been advised of the arrival of the goods and has had reasonable opportunity thereafter to remove them or otherwise dispose of them.
Explicit is the rule under Article 1736 of the Civil Code that the extraordinary responsibility of the common carrier begins from the time the goods are delivered to the carrier. This responsibility remains in full force and effect even when they are temporarily unloaded or stored in transit, unless the shipper or owner exercises the right of stop page in transitu, and terminates only after the lapse

of a reasonable time for the acceptance, of the goods by the consignee or such other person entitled to receive them.

It was further provided in the same statute that the carrier may be relieved from the responsibility for loss or damage to the goods upon actual or constructive delivery of the same by the carrier to the consignee or to the person who has the right to receive them. In sales, actual delivery has been defined as the ceding of the corporeal possession by the seller, and the actual apprehension of the corporeal possession by the buyer or by some person authorized by him to receive the goods as his representative for the purpose of custody or disposal. By the same token, there is actual delivery in contracts for the transport of goods when possession has been turned over to the consignee or to his duly authorized agent and a reasonable time is given him to remove the goods.

In this case, there is no dispute that the custody of the goods was never turned over to the consignee or his agents but was lost into the hands of unauthorized persons who secured possession thereof on the strength of falsified documents. The loss or the misdelivery of the goods in the instant case gave rise to the presumption that the common carrier is at fault or negligent.

A common carrier is presumed to have been negligent if it fails to prove that it exercised extraordinary vigilance over the goods it transported. When the goods shipped are either lost or arrived in damaged condition, a presumption arises against the carrier of its failure to observe that diligence, and there need not be an express finding of negligence to hold it liable. To overcome the presumption of negligence, the common carrier must establish by adequateproof that it exercised extraordinary diligence over the goods. It must do more than merely show that some other party could be responsible for the damage.

In the present case, petitioners failed to prove that they did exercise the degree of diligence required by law over the goods they transported. Indeed, aside from their persistent disavowal of liability by conveniently posing an excuse that their extraordinary responsibility is terminated upon release of the goods to the Panamanian Ports Authority, petitioners failed to adduce sufficient evidence they exercised extraordinary care to prevent unauthorized withdrawal of the shipments. Nothing in the New Civil Code, however, suggests, even remotely, that the common carriers' responsibility over the goods ceased upon delivery thereof to the custom authorities. To the mind of this Court, the contract of carriage remains in full force and effect even after the delivery of the goods to the port authorities; the only delivery that releases it from their obligation to observe extraordinary care is the delivery to the consignee or his agents. Even more telling of petitioners' continuing liability for the goods transported to the fact that the original bills of lading up to this time, remains in the possession of the notify party or consignee.

It is evident from the review of the records and by the evidence adduced by the respondent that petitioners failed to rebut the prima facie presumption of negligence. We find no compelling reason to depa1i from the ruling of the Court of Appeals that under the contract of carriage, petitioners are liable for the value of the misdelivered goods.

EASTERN SHIPPING LINES, INC., *Petitioners*, -versus- BPI/MS INSURANCE CORP., & MITSUI SUMITOMO INSURANCE CO., LTD*, Respondent.*
G.R. No. 182864, FIRST DIVISION, January 12, 2015, PEREZ, *J.*

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.

Mere proof of delivery of the goods in good order to a common carrier and of their arrival in bad order at their destination constitutes a prima facie case of fault or negligence against the carrier. If no adequate explanation is given as to how the deterioration, loss, or destruction of the goods happened, the transporter shall be held responsible. From the foregoing, the fault is attributable to ESLI. While no longer an issue, it may be nonetheless state that ATI was correctly absolved of liability for the damage.

FACTS

BPI/MS and Mitsui alleged that on 2 February 2004 at Yokohama, Japan, Sumitomo Corporation shipped on board ESLI's vessel M/V "Eastern Venus 22" 22 coils of various Steel Sheet weighing 159,534 kilograms in good order and condition for transportation to and delivery at the port of Manila, Philippines in favor of consignee Calamba Steel Center, Inc. (Calamba Steel) located in Saimsim, Calamba, Laguna. The shipment was insured with the respondents BPI/MS and Mitsui against all risks.

Upon withdrawal of the shipment by the Calamba Steel's representative, it was found out that part of the shipment was damaged and was in bad order condition prompting Calamba Steel to reject the damaged shipment for being unfit for the intended purpose.

Kashima, Japan, Sumitomo Corporation again shipped on board ESLI's vessel M/V "Eastern Venus 25" 50 coils in various Steel Sheet weighing 383,532 kilograms in good order and condition for transportation to and delivery at the port of Manila, Philippines in favor of the same consignee Calamba Steel. The shipment was insured with the respondents BPI/MS and Mitsui against all risks.

ESLI's vessel with the second shipment arrived at the port of Manila partly damaged and in bad order. The coils sustained further damage during the discharge from vessel to shore until its turnover to ATI's custody for safekeeping. As it did before, Calamba Steel rejected the damaged shipment for being unfit for the intended purpose.

Calamba Steel attributed the damages on both shipments to ESLI as the carrier and ATI as the arrastre operator in charge of the handling and discharge of the coils and filed a claim against them. When ESLI and ATI refused to pay, Calamba Steel filed an insurance claim for the total amount of the cargo against BPI/MS and Mitsui as cargo insurers. As a result, BPI/MS and Mitsui became subrogated in place of and with all the rights and defenses accorded by law in favor of Calamba Steel.

Opposing the complaint, ATI, in its Answer, denied the allegations and insisted that the coils in two shipments were already damaged upon receipt from ESLI's vessels. It likewise insisted that it exercised due diligence in the handling of the shipments and invoked that in case of adverse decision, its liability should not exceed P5,000.00 pursuant to Section 7.01, Article VII4 of the Contract for Cargo Handling Services between Philippine Ports Authority (PPA) and ATI.

The RTC rendered a decision finding both the ESLI and ATI liable for the damages sustained by the two shipments. Upon appeal, the Court of Appeals absolved ATI from liability but affirmed the liability of ESLI.

ISSUE

Whether ESLI is liable. (YES)

RULING

Common carriers, from the nature of their business and on public policy considerations, are bound to observe extraordinary diligence in the vigilance over the goods transported by them. Subject to certain exceptions enumerated under Article 1734 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.

In maritime transportation, a bill of lading is issued by a common carrier as a contract, receipt and symbol of the goods covered by it. If it has no notation of any defect or damage in the goods, it is considered as a "clean bill of lading." A clean bill of lading constitutes prima facie evidence of the receipt by the carrier of the goods as therein described.

Based on the bills of lading issued, it is undisputed that ESLI received the two shipments of coils from shipper Sumitomo Corporation in good condition at the ports of Yokohama and Kashima, Japan. However, upon arrival at the port of Manila, some coils from the two shipments were partly dented and crumpled.

Mere proof of delivery of the goods in good order to a common carrier and of their arrival in bad order at their destination constitutes a prima facie case of fault or negligence against the carrier. If no adequate explanation is given as to how the deterioration, loss, or destruction of the goods happened, the transporter shall be held responsible. From the foregoing, the fault is attributable to ESLI. While no longer an issue, it may be nonetheless state that ATI was correctly absolved of liability for the damage.

ASIAN TERMINALS, INC., *Petitioners*, -versus- BPI/MS INSURANCE CORP., & MITSUI SUMITOMO INSURANCE CO., LTD*, Respondent.*

G.R. No. 177116, FIRST DIVISION, February 27, 2013, VILLARAMA, JR., J.:

Though it is true that common carriers are presumed to have been at fault or to have acted negligently if the goods transported by them are lost, destroyed, or deteriorated, and that the common carrier must prove that it exercised extraordinary diligence in order to overcome the presumption, the plaintiff must still, before the burden is shifted to the defendant, prove that the subject shipment suffered actual shortage. This can only be done if the weight of the shipment at the port of origin and its subsequent weight at the port of arrival have been proven by a preponderance of evidence, and it can be seen that the former weight is considerably greater than the latter weight, taking into consideration the exceptions provided in Article 1734 of the Civil Code.

In this case, respondent failed to prove that the subject shipment suffered shortage, for it was not able to establish that the subject shipment was weighed at the port of origin at Darrow, Louisiana, U.S.A. and that the actual weight of the said shipment was 3,300 metric tons.

FACTS

Contiquincybunge Export Company loaded 6,843.700 metric tons of U.S. Soybean Meal in Bulk on board the vessel M/V "Sea Dream" at the Port of Darrow, Louisiana, U.S.A., for delivery to the Port of Manila to respondent Simon Enterprises, Inc., as consignee. When the vessel arrived at the South Harbor in Manila, the shipment was discharged to the receiving barges of petitioner Asian Terminals, Inc. (ATI), the arrastre operator. Respondent later received the shipment but claimed having received only 6,825.144 metric tons of U.S. Soybean Meal, or short by 18.556 metric tons.

Contiquincybunge Export Company made another shipment to respondent and allegedly loaded on board the vessel M/V "Tern" at the Port of Darrow, Louisiana, U.S.A. 3,300.000 metric tons of U.S. Soybean Meal in Bulk for delivery to respondent at the Port of Manila. Respondent however, reported receiving only 3,100.137 metric tons instead of the manifested 3,300.000 metric tons of shipment.

Respondent filed with the RTC Manila an action for damages against the unknown owner of the vessels M/V "Sea Dream" and M/V "Tern," its local agent Inter-Asia Marine Transport, Inc., and petitioner ATI alleging that it suffered the losses through the fault or negligence of the said defendants.

In their Answer, the unknown owner of the vessel M/V "Tern" and its local agent Inter-Asia Marine Transport, Inc., prayed for the dismissal of the complaint essentially alleging lack of cause of action and prescription. Petitioner ATI meanwhile alleged in its Answer that it exercised the required diligence in handling the subject shipment.

The RTC held petitioner ATI and its co-defendants solidarily liable to respondent for damages arising from the shortage.

Upon appeal, the Court of Appeals affirmed the RTC. The CA held that there is no justification to disturb the factual findings of the trial court which are entitled to respect on appeal as they were supported by substantial evidence. It agreed with the findings of the trial court that the unknown owner of the vessel M/V "Tern" and Inter-Asia Marine Transport, Inc. failed to establish that they exercised extraordinary diligence in transporting the goods or exercised due diligence to forestall or lessen the loss as provided in Article 174214 of the Civil Code. The CA also ruled that petitioner ATI, as the arrastre operator, should be held jointly and severally liable with the carrier considering that petitioner ATI's stevedores were under the direct supervision of the unknown owner of M/V "Tern" and that the spillages occurred when the cargoes were being unloaded by petitioner ATI's stevedores.

ISSUE

Whether the appellate court erred in affirming the decision of the trial court holding petitioner ATI solidarily liable with its co-defendants for the shortage incurred in the shipment of the goods to respondent. (YES)

RULING

First, petitioner ATI is correct in arguing that the respondent failed to prove that the subject shipment suffered actual shortage, as there was no competent evidence to prove that it actually weighed 3,300 metric tons at the port of origin.

Though it is true that common carriers are presumed to have been at fault or to have acted negligently if the goods transported by them are lost, destroyed, or deteriorated, and that the common carrier must prove that it exercised extraordinary diligence in order to overcome the presumption, the plaintiff must still, before the burden is shifted to the defendant, prove that the subject shipment suffered actual shortage. This can only be done if the weight of the shipment at the port of origin and its subsequent weight at the port of arrival have been proven by a preponderance of evidence, and it can be seen that the former weight is considerably greater than the latter weight, taking into consideration the exceptions provided in Article 1734 of the Civil Code.

In this case, respondent failed to prove that the subject shipment suffered shortage, for it was not able to establish that the subject shipment was weighed at the port of origin at Darrow, Louisiana, U.S.A. and that the actual weight of the said shipment was 3,300 metric tons.

The weight of the shipment as indicated in the bill of lading is not conclusive as to the actual weight of the goods. Consequently, the respondent must still prove the actual weight of the subject shipment at the time it was loaded at the port of origin so that a conclusion may be made as to whether there was indeed a shortage for which petitioner must be liable. This, the respondent failed to do.

The bill of lading carried an added clause – the shipment's weight, measure, quantity, quality, condition, contents and value unknown. Evidently, the weight of the cargo could not be gauged from the bill of lading. (Italics in the original; emphasis supplied)

The respondent having failed to present evidence to prove the actual weight of the subject shipment when it was loaded onto the M/V "Tern," its cause of action must then fail because it cannot prove the shortage that it was alleging. Indeed, if the claimant cannot definitively establish the weight of the subject shipment at the point of origin, the fact of shortage or loss cannot be ascertained. The claimant then has no basis for claiming damages resulting from an alleged shortage. Again, *Malayan Insurance Co., Inc.*, provides jurisprudential basis:

In the absence of clear, convincing and competent evidence to prove that the cargo indeed weighed, albeit the Bill of Lading qualified it by the phrase "said to weigh," 6,599.23 MT at the port of origin when it was loaded onto the MV Hoegh, the fact of loss or shortage in the cargo upon its arrival in Manila cannot be definitively established. The legal basis for attributing liability to either of the respondents is thus sorely wanting. (Emphasis supplied)
Second, as correctly asserted by petitioner ATI, the shortage, if any, may have been due to the inherent nature of the subject shipment or its packaging since the subject cargo was shipped in bulk and had a moisture content of 12.5%.

It should be noted that the shortage being claimed by the respondent is minimal, and is an indication that it could be due to consolidation or settlement of the subject shipment, as accurately observed by the petitioner. A Kansas State University study on the handling and storage of soybeans and soybean meal35 is instructive on this matter. Pertinent portions of the study reads:

Soybean meal is difficult to handle because of poor flow ability and bridging characteristics. Soybean meal tends to settle or consolidate over time. This phenomenon occurs in most granular materials and becomes more severe with increased moisture, time and small particle size x x x.

x x x x

Moisture is perhaps the most important single factor affecting storage of soybeans and soybean meal. Soybeans contain moisture ranging from 12% to 15% (wet basis) at harvest time x x x.

x x x x

Soybeans and soybean meal are hygroscopic materials and will either lose (desorb) or gain (adsorb) moisture from the surrounding air. The moisture level reached by a product at a given constant temperature and equilibrium relative humidity (ERH) is its equilibrium moisture content (EMC) x x x. (Emphasis supplied)

As indicated in the Proforma Invoice, the moisture content of the subject shipment was 12.5%. Taking into consideration the phenomena of desorption, the change in temperature surrounding the Soybean Meal from the time it left wintertime Darrow, Louisiana, U.S.A. and the time it arrived in Manila, and the fact that the voyage of the subject cargo from the point of loading to the point of unloading was 36 days, the shipment could have definitely lost weight, corresponding to the amount of moisture it lost during transit.

Respondent relied on the Survey Reports of Del Pan Surveyors to prove that the subject shipment suffered loss. The conclusion that there was a shortage arose from an evaluation of the weight of the cargo using the barge displacement method. This is a type of draught survey, which is a method of cargo weight determination by ship's displacement calculations. The basic principle upon which the draught survey methodology is based is the Principle of Archimedes, i.e., a vessel when floating in water, will displace a weight of water equal to its own weight. It then follows that if a weight of cargo is loaded on (or unloaded from) a vessel freely floating in water, then the vessel will sink (or float) into the water until the total weight of water displaced is equal to the original weight of the vessel, plus (or minus) the cargo which has been loaded (or unloaded) and plus (or minus) density variation of the water between the starting survey (first measurement) and the finishing survey (second measurement). It can be seen that this method does not entail the weighing of the cargo itself, but as correctly stated by the petitioner, the weight of the shipment is being measured by mere estimation of the water displaced by the barges before and after the cargo is unloaded from the said barges.

In addition, the fact that the measurements were done by Del Pan Surveyors in prevailing slight to slightly rough sea condition supports the conclusion that the resulting measurement may not be accurate. A United Nations study on draught surveys in fact states that the accuracy of draught surveys will be dependent upon several factors, one of which is the weather and seas condition in the harbor.

Considering that respondent was not able to establish conclusively that the subject shipment weighed 3,300 metric tons at the port of loading, and that it cannot therefore be concluded that there was a shortage for which petitioner should be responsible; bearing in mind that the subject shipment most likely lost weight in transit due to the inherent nature of Soya Bean Meal; assuming that the shipment lost weight in transit due to desorption, the shortage of 199.863 metric tons that respondent alleges is a minimal 6.05% of the weight of the entire shipment, which is within the allowable 10% allowance for loss; and noting that the respondent was not able to show negligence on the part of the petitioner and that the weighing methods which respondent relied upon to establish the shortage it alleges is inaccurate, respondent cannot fairly claim damages against petitioner for the subject shipment's alleged shortage.

ALFREDO MANAY, JR., FIDELINO SAN LUIS, ADRIAN SAN LUIS, ANNALEE SAN LUIS, MARK ANDREW JOSE, MELISSA JOSE, CHARLOTTE JOSE, DAN JOHN DE GUZMAN, PAUL MARK BALUYOT, AND CARLOS S. JOSE, *Petitioners*, -versus- CEBU AIR,INC, *Respondent.*
G.R. No. 210621, SECOND DIVISION, April 04, 2016, LEONEN., J.:

The airline must exercise extraordinary diligence in the fulfillment of the terms and conditions of the contract of carriage. The passenger, however, has the correlative obligation to exercise ordinary diligence in the conduct of his or her affairs.

Contrary to petitioner's claim, the evidence on record shows that respondent exercised due diligence in performing its obligations under the contract and followed standard procedure in rendering its services to petitioner. As correctly observed by the lower court, the plane ticket issued to petitioner clearly reflected the departure date and time, contrary to petitioner's contention. The travel documents, consisting of the tour itinerary, vouchers and instructions, were likewise delivered to petitioner two days prior to the trip. Respondent also properly booked petitioner for the tour, prepared the necessary documents and procured the plane tickets. It arranged petitioner's hotel accommodation as well as food, land transfers and sightseeing excursions, in accordance with its avowed undertaking.

FACTS

On June 13, 2008, Carlos S. Jose (Jose) purchased 20 Cebu Pacific round-trip tickets from Manila to Palawan for himself and on behalf of his relatives and friends. He made the purchase at Cebu Pacific's branch office in Robinsons Galleria.

Jose alleged that he specified to "Alou," the Cebu Pacific ticketing agent, that his preferred date and time of departure from Manila to Palawan should be on July 20, 2008 at 0820 (or 8:20 a.m.) and that his preferred date and time for their flight back to Manila should be on July 22, 2008 at 1615 (or 4:15 p.m.). He alleged that after paying for the tickets, Alou printed the tickets, which consisted of three (3) pages, and recapped only the first page to him. Since the first page contained the details he specified to Alou, he no longer read the other pages of the flight information.
Jose and his 19 companions boarded the 0820 Cebu Pacific flight to Palawan and had an enjoyable stay. However, during the processing of their boarding passes for their flight back to Manila, they were informed by Cebu Pacific personnel that nine (9)17 of them could not be admitted because their tickets were for the 1005 (or 10:05 a.m.) flight earlier that day. Jose informed the ground

personnel that he personally purchased the tickets and specifically instructed the ticketing agent that all 20 of them should be on the 4:15 p.m. flight to Manila.

Upon checking the tickets, they learned that only the first two (2) pages had the schedule Jose specified. They were left with no other option but to rebook their tickets.

Later in July 2008, Jose went to Cebu Pacific's ticketing office in Robinsons Galleria to complain about the allegedly erroneous booking and the rude treatment that his group encountered from the ground personnel in Palawan. He alleged that instead of being assured by the airline that someone would address the issues he raised, he was merely "given a run around."

Jose and his companions were frustrated and annoyed by Cebu Pacific's handling of the incident so they sent the airline demand letters asking for a reimbursement of P42,955.00, representing the additional amounts spent to purchase the nine (9) tickets, the accommodation, and meals of the four (4) that were left behind. Eventually, Jose and his companions were filed a Complaint for Damages against Cebu Pacific.

In its Answer, Cebu Pacific essentially denied all the allegations in the Complaint and insisted that Jose was given a full recap of the tickets. It also argued that Jose had possession of the tickets 37 days before the scheduled flight; hence, he had sufficient time and opportunity to check the flight information and itinerary.

The Metropolitan Trial Court rendered its Decision ordering Cebu Pacific to pay Jose and his companions. The Metropolitan Trial Court found that as a common carrier, Cebu Pacific should have exercised extraordinary diligence in performing its contractual obligations.

Cebu Pacific appealed to the Regional Trial Court, reiterating that its ticketing agent gave Jose a full recap of the tickets he purchased. The RTC rendered the Decision dismissing the appeal. Upon appeal, the Court of Appeals reversed the decisions of the Metropolitan Trial Court and the Regional Trial Court. According to the Court of Appeals, the extraordinary diligence expected of common carriers only applies to the carriage of passengers and not to the act of encoding the requested flight schedule. It was incumbent upon the passenger to exercise ordinary care in reviewing flight details and checking schedules.

ISSUE

Whether Cebu Pacific is liable. (NO)

RULING

Common carriers are required to exercise extraordinary diligence in the performance of its obligations under the contract of carriage. This extraordinary diligence must be observed not only in the transportation of goods and services but also in the issuance of the contract of carriage, including its ticketing operations.

Respondent, as one of the four domestic airlines in the country, is a common carrier required by law to exercise extraordinary diligence. Extraordinary diligence requires that the common carrier must transport goods and passengers "safely as far as human care and foresight can provide," and it must exercise the "utmost diligence of very cautious persons . . . with due regard for all the circumstances."

When a common carrier, through its ticketing agent, has not yet issued a ticket to the prospective passenger, the transaction between them is still that of a seller and a buyer. The obligation of the airline to exercise extraordinary diligence commences upon the issuance of the contract of carriage. Ticketing, as the act of issuing the contract of carriage, is necessarily included in the exercise of extraordinary diligence.

A contract of carriage is defined as "one whereby a certain person or association of persons obligate themselves to transport persons, things, or news from one place to another for a fixed price."In *Cathay Pacific Airways v. Reyes:*

[W]hen an airline issues a ticket to a passenger confirmed on a particular flight, on a certain date, a contract of carriage arises, and the passenger has every right to expect that he would fly on that flight and on that date. If he does not, then the carrier opens itself to a suit for breach of contract of carriage. (Emphasis supplied)

Once a plane ticket is issued, the common carrier binds itself to deliver the passenger safely on the date and time stated in the ticket. The contractual obligation of the common carrier to the passenger is governed principally by what is written on the contract of carriage.

In this case, both parties stipulated that the flight schedule stated on the nine (9) disputed tickets was the 10:05 a.m. flight of July 22, 2008. According to the contract of carriage, respondent's obligation as a common carrier was to transport nine (9) of the petitioners safely on the 10:05 a.m. flight of July 22, 2008.

The common carrier's obligation to exercise extraordinary diligence in the issuance of the contract of carriage is fulfilled by requiring a full review of the flight schedules to be given to a prospective passenger before payment. Based on the information stated on the contract of carriage, all three (3) pages were recapped to petitioner Jose.

The only evidence petitioners have in order to prove their true intent of having the entire group on the 4:15 p.m. flight is petitioner Jose's self-serving testimony that the airline failed to recap the last page of the tickets to him. They have neither shown nor introduced any other evidence before the Metropolitan Trial Court, Regional Trial Court, Court of Appeals, or this Court.

Even assuming that the ticketing agent encoded the incorrect flight information, it is incumbent upon the purchaser of the tickets to at least check if all the information is correct before making the purchase. Once the ticket is paid for and printed, the purchaser is presumed to have agreed to all its terms and conditions. In *Ong Yiu v. Court of Appeals*:

While it may be true that petitioner had not signed the plane ticket, he is nevertheless bound by the provisions thereof. "Such provisions have been held to be a part of the contract of carriage, and valid and binding upon the passenger regardless of the latter's lack of knowledge or assent to the regulation." It is what is known as a contract of "adhesion," in regards which it has been said that contracts of adhesion wherein one party imposes a ready made form of contract on the other, as the plane ticket in the case at bar, are contracts not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his consent.

This is not the first time that this Court has explained that an air passenger has the correlative duty to exercise ordinary care in the conduct of his or her affairs.

In *Crisostomo v. Court of Appeals*, Estela Crisostomo booked a European tour with Caravan Travel and Tours, a travel agency. She was informed by Caravan's travel agent to be at the airport on Saturday, two (2) hours before her flight. Without checking her travel documents, she proceeded to the airport as planned, only to find out that her flight was actually scheduled the day before. She subsequently filed a suit for damages against Caravan Travel and Tours based on the alleged negligence of their travel agent in informing her of the wrong flight details.

This Court, while ruling that a travel agency was not a common carrier and was not bound to exercise extraordinary diligence in the performance of its obligations, also laid down the degree of diligence concurrently required of passengers:

Contrary to petitioner's claim, the evidence on record shows that respondent exercised due diligence in performing its obligations under the contract and followed standard procedure in rendering its services to petitioner. As correctly observed by the lower court, the plane ticket issued to petitioner clearly reflected the departure date and time, contrary to petitioner's contention. The travel documents, consisting of the tour itinerary, vouchers and instructions, were likewise delivered to petitioner two days prior to the trip. Respondent also properly booked petitioner for the tour, prepared the necessary documents and procured the plane tickets. It arranged petitioner's hotel accommodation as well as food, land transfers and sightseeing excursions, in accordance with its avowed undertaking.

Therefore, it is clear that respondent performed its prestation under the contract as well as everything else that was essential to book petitioner for the tour. Had petitioner exercised due diligence in the conduct of her affairs, there would have been no reason for her to miss the flight. Needless to say, after the travel papers were delivered to petitioner, it became incumbent upon her to take ordinary care of her concerns. This undoubtedly would require that she at least read the documents in order to assure herself of the important details regarding the trip. (Emphasis supplied)

Most of the petitioners were balikbayans. It is reasonable to presume that they were adequately versed with the procedures of air travel, including familiarizing themselves with the itinerary before departure. Moreover, the tickets were issued 37 days before their departure from Manila and 39 days from their departure from Palawan. There was more than enough time to correct any alleged mistake in the flight schedule.

Petitioners, in failing to exercise the necessary care in the conduct of their affairs, were without a doubt negligent. Thus, they are not entitled to damages.

GREENSTAR EXPRESS, INC. AND FRUTO L. SAYSON, JR., *Petitioners*, -versus- UNIVERSAL ROBINA CORPORATION AND NISSIN UNIVERSAL ROBINA CORPORATION, *Respondents.*
G.R. No. 205090, SECOND DIVISION, October 17, 2016, DEL CASTILLO, J.:

The law exacts from common carriers (i.e., those persons, corporations, firms, or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for

compensation, offering their services to the public) the highest degree of diligence (i.e., extraordinary diligence) in ensuring the safety of its passengers.

However, in this case, Sayson took no defensive maneuver whatsoever in spite of the fact that he saw Bicomong drive his van in a precarious manner, as far as 250 meters away - or at a point in time and space where Sayson had all the opportunity to prepare and avert a possible collision. The collision was certainly foreseen and avoidable but Sayson took no measures to avoid it.

FACTS

Petitioner Greenstar Express, Inc. (Grepistar) is a domestic corporation engaged in the business of public transportation, while petitioner Fruto L. Sayson, Jr. (Sayson) is one of its bus drivers. Respondents Universal Robina Corporation (URC) and Nissin Universal Robina Corporation (NURC) are domestic corporations engaged in the food business. NURC is a subsidiary of URC.
URC is the registered owner of a Mitsubishi L-300 van with plate number WRN 403 (URC van).

Petitioner's bus, which was then being driven toward the direction of Manila by Sayson, collided head-on with the URC van, which was then being driven Quezon province-bound by NURC's Operations Manager, Renante Bicomong (Bicomong). Bicomong died on the spot, while the colliding vehicles sustained considerable damage.

Petitioners filed a Complaint against NURC to recover damages sustained during the collision, premised on negligence and was later amended, wherein URC was impleaded as additional defendant.

URC and NURC filed their respective Answers, where they particularly alleged and claimed lack of negligence on their part and on the part of Bicomong.

The trial court ruled that plaintiff has no cause of action and cannot recover from the defendants even assuming that the direct and proximate cause of the accident was the negligence of the defendant's employee Renato Bicomong.

Upon appeal, the Court of Appeals affiremed the decision of the trial court.

WHEREFORE, the trial court's Decision dated April 4, 2011 is affirmed.

ISSUE

Whether respondent is liable for the damages sustained. (NO)

RULING

The law exacts from common carriers (i.e., those persons, corporations, firms, or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public) the highest degree of diligence (i.e., extraordinary diligence) in ensuring the safety of its passengers. Articles 1733 and 1755 of the Civil Code state:

Art. 1733. 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 and for the safety of the passengers transported by them, according to all the circumstances of each case.

Art. 1755. A common carrier is bound to carry the passengers safely as far as human care arid foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.

In this relation, Article 1756 of the Civil Code provides that '[i]n case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in Articles 1733 and 1755.

However, Sayson took no defensive maneuver whatsoever in spite of the fact that he saw Bicomong drive his van in a precarious manner, as far as 250 meters away - or at a point in time and space where Sayson had all the opportunity to prepare and avert a possible collision. The collision was certainly foreseen and avoidable but Sayson took no measures to avoid it. Rather than exhibit concern for the welfare of his passengers and the driver of the oncoming vehicle, who might have fallen asleep or suddenly fallen ill at the wheel, Sayson coldly and uncaringly stood his ground^ closed his eyes, and left everything to fate, without due regard for the consequences. Such a suicidal mindset cannot be tolerated, for the grave danger it poses to the public and passengers availing of petitioners' services. To add insult to injury, Sayson hastily fled the scene of the collision instead of rendering assistance to the victims - thus exhibiting a selfish, cold-blooded attitude and utter lack of concern motivated by the self-centered desire to escape liability, inconvenience, and possible detention by the authorities, rather than secure the well-being of the victims of his own negligent act.

x x x The doctrine of last clear chance provides that where both parties are negligent but the negligent act of one is appreciably later in point of time than that of the other, or where it is impossible to determine whose fault or negligence brought about the occurrence of the incident, the one who had the last clear opportunity to avoid the impending harm but failed to do so, is chargeable with the consequences arising therefrom. Stated differently, the rule is that the antecedent negligence of a person does not preclude recovery of damages caused by the supervening negligence of the latter, who had the last fair chance to prevent the impending harm by the exercise of due diligence, x x x

Petitioners might object to the treatment of their case in the foregoing manner, what with the additional finding that Sayson was negligent under the circumstances. But their Petition, "once accepted by this Court, throws the entire case open to review, and xxx this Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case."

LINDA CACHO, MINORS SARAH JANE, JACQUELINE, FIRE RINA AND MARK LOUISE ALL SURNAMED CACHO, ALL REPRESENTED BY THEIR MOTHER AND GUARDIAN AD LITEM LINDA CACHO., *Petitioners*, -versus- UNIVERSAL ROBINA CORPORATION AND NISSIN UNIVERSAL ROBINA CORPORATI GERARDO MANAHAN, DAGUPAN BUS CO., INC., AND RENATO DE VERA DOING BUSINESS UNDER THE NAME R. M. DE VERA CONSTRUCTION*, Respondents.*

G.R. No. 203081, THIRD DIVISION, January 17, 2018, MARTIRES, J.:

Given the nature of the business and for reasons of public policy, the common carrier is 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

Manahan was clearly negligent when he was relatively driving fast on a narrow highway and approaching a similarly narrow bridge. We must bear in mind that a bus is a significantly large vehicle which would be difficult to maneuver and stop if it were travelling at a high speed. On top of this, the time of the accident was on or about sunrise when visibility on the road was compromised. Manahan should have been more prudent and careful in his driving the bus especially considering that Dagupan Bus is a common carrier.

FACTS

Bismark Cacho was driving a Nissan Sentra from Alaminos, Pangasinan to Bani, Pangasinan, when it collided with a Dagupan Bus traversing on the opposite lane. The car had already crossed the bridge when it collided with the bus which was just about to enter the bridge. The collision caused heavy damage to the front of the bus, the total wreckage of the Nissan Sentra, Cacho's instant death, and multiple injuries to three (3) passengers inside the car.

The complaint alleged that Cacho's car was hit by the bus because the latter swerved to the left lane as it tried to avoid a pile of boulders placed on the shoulder of the road. These boulders were negligently placed by De Vera Construction contracted by the local government to do some work on the Embarcadero Bridge.

Dagupan Bus, the owner and operator of the bus, and Manahan, the bus driver claimed that it was Cacho who drove fast coming from the bridge and bumped into the bus that was on full stop; and that Cacho had to swerve to the left because there were boulders of rocks scattered on his lane. Also, Dagupan Bus and Manahan argued that the proximate cause of the accident was because of De Vera Construction's negligence for leaving the boulders of rocks on both shoulders of the national highway.

De Vera maintained that he ensured the safety of the road by piling the boulders in a safe place to make sure they did not encroach upon the road and blamed Cacho for driving recklessly and causing the collision with the bus.

The petitioners, the wife and children of Cacho, filed a complaint for damages against Gerardo Manahan (Manahan), Dagupan Bus Co., Inc. (Dagupan Bus), and Renato de Vera (De Vera), the owner of R.M. De Vera Construction (De Vera Construction).

The trial court held Dagupan Bus, Manahan, and De Vera jointly and severally liable to pay the petitioners. The trial court held that the proximate cause of the incident was the negligence of Manahan in driving the bus as well as the negligence on the part of De Vera for allowing his employees to place boulders near the bridge.

Upon appeal, the CA reversed the trial court's ruling. The CA did not believe that the bus was running very fast and that it suddenly swerved to the left to avoid the boulders.

ISSUE

Whether Dagupan Bus and Manahan are liable. (YES)

RULING

In *Picart v. Smith*, the Supreme Court laid down the test by which to determine the existence of negligence, viz:

The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinary prudent person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet paterfamilias of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.

The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. Abstract speculations cannot here be of much value but this much can be profitably said: Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence they can be expected to take care only when there is something before them to suggest or warn of danger. Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. Reasonable foresight of harm, followed by the ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist. Stated in these terms, the proper criterion for determining the existence of negligence in a given case is this: Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing conduct or guarding against its consequences.

Using this test, Manahan was clearly negligent when he was relatively driving fast on a narrow highway and approaching a similarly narrow bridge. We must bear in mind that a bus is a significantly large vehicle which would be difficult to maneuver and stop if it were travelling at a high speed. On top of this, the time of the accident was on or about sunrise when visibility on the road was compromised. Manahan should have been more prudent and careful in his driving the bus especially considering that Dagupan Bus is a common carrier. Given the nature of the business and for reasons of public policy, the common carrier is 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."

Moreover, we can also say that Manahan was legally presumed negligent under Article 2185 of the Civil Code, which provides: "unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was [in violation of] any traffic regulation." Based on the place and time of the accident, Manahan was actually violating a traffic rule found in R.A. No. 4136, otherwise known as the Land Transportation and Traffic Code.

FEDERAL EXPRESS CORPORATION*, Petitioner*, -versus- LUWALHATI R. ANTONINO AND ELIZA BETTINA RICASA ANTONINO*, Respondents.*
G.R. No. 199455, THIRD DIVISION, June 27, 2018, LEONEN, J.:

The Civil Code mandates common carriers to observe extraordinary diligence in caring for the goods they are transporting.

Petitioner is unable to prove that it exercised extraordinary diligence in ensuring delivery of the package to its designated consignee. It claims to have made a delivery but it even admits that it was not to the designated consignee. It asserts instead that it was authorized to release the package without the signature of the designated recipient and that the neighbor of the consignee, one identified only as "LGAA 385507," received it. This failed to impress.

FACTS

Eliza was the owner of Unit 22-A (the Unit) in Allegro Condominium, located at 62 West 62nd St., New York, United States. However, when the monthly charges for the unit were due, Luwalhati and Eliza were in the Philippines. With this, on December 15, 2003, they decided to send several Citibank checks to Veronica Z. Sison (Sison), who was based in New York. Citibank checks allegedly for the payment of monthly charges and for the payment of real estate taxes through FedEx. Sison allegedly did not receive the package, resulting in the non-payment of Luwalhati and Eliza's obligations and the foreclosure of the Unit.

According to Sison she contacted FedEx to inquire about the non-delivery and was informed that the package was delivered to her neighbor but there was no signed receipt.

On March 14, 2004, Luwalhati and Eliza, through their counsel, sent a demand letter to FedEx for payment of damages due to the non-delivery of the package, but FedEx refused to heed their demand. Hence, they filed their Complaint for damages.

FedEx claimed that Luwalhati and Eliza "ha[d] no cause of action against it because [they] failed to comply with a condition precedent, that of filing a written notice of claim within the 45 calendar days from the acceptance of the shipment." It added that it was absolved of liability as Luwalhati and Eliza shipped prohibited items and misdeclared these items as "documents." It pointed to conditions under its Air Waybill prohibiting the "transportation of money (including but not limited to coins or negotiable instruments equivalent to cash such as endorsed stocks and bonds)."

The trial court ruled for Luwalhati and Eliza, awarding them moral and exemplary damages, and attorney's fees and held that common carriers are presumed to be at fault whenever goods are lost.

Upon appeal, the Court of Appeals affirmed the ruling of the Regional Trial Court. According to it, by accepting the package despite its supposed defect, FedEx was deemed to have acquiesced to the transaction. Thus, it must deliver the package in good condition and could not subsequently deny liability for loss.

ISSUE

Whether petitioner Federal Express Corporation may be held liable for damages on account of its failure to deliver the checks shipped by respondents Luwalhati R. Antonino and Eliza Bettina Ricasa Antonino to the consignee Veronica Sison.

RULING

The Civil Code mandates common carriers to observe extraordinary diligence in caring for the goods they are transporting:

Article 1733. 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 and for the safety of the passengers transported by them, according to all the circumstances of each case.

"Extraordinary diligence is that extreme measure of care and caution which persons of unusual prudence and circumspection use for securing and preserving their own property or rights."45 Consistent with the mandate of extraordinary diligence, the Civil Code stipulates that in case of loss or damage to goods, common carriers are presumed to be negligent or at fault,46 except in the following instances:

(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 or competent public authority.

In all other cases, common carriers must prove that they exercised extraordinary diligence in the performance of their duties, if they are to be absolved of liability.

The responsibility of common carriers to exercise extraordinary diligence lasts from the time the goods are unconditionally placed in their possession until they are delivered "to the consignee, or to the person who has a right to receive them." Thus, part of the extraordinary responsibility of common carriers is the duty to ensure that shipments are received by none but "the person who has a right to receive them." Common carriers must ascertain the identity of the recipient. Failing to deliver shipment to the designated recipient amounts to a failure to deliver. The shipment shall then be considered lost, and liability for this loss ensues.

Petitioner is unable to prove that it exercised extraordinary diligence in ensuring delivery of the package to its designated consignee. It claims to have made a delivery but it even admits that it was not to the designated consignee. It asserts instead that it was authorized to release the package without the signature of the designated recipient and that the neighbor of the consignee, one identified only as "LGAA 385507," received it. This failed to impress.

The assertion that receipt was made by "LGAA 385507" amounts to little, if any, value in proving petitioner's successful discharge of its duty. "LGAA 385507" is nothing but an alphanumeric code

that outside of petitioner's personnel and internal systems signifies nothing. This code does not represent a definite, readily identifiable person, contrary to how commonly accepted identifiers, such as numbers attached to official, public, or professional identifications like social security numbers and professional license numbers, function. Reliance on this code is tantamount to reliance on nothing more than petitioner's bare, self-serving allegations. Certainly, this cannot satisfy the requisite of extraordinary diligence consummated through delivery to none but "the person who has a right to receive"52 the package.

Given the circumstances in this case, the more reasonable conclusion is that the package was not delivered. The package shipped by respondents should then be considered lost, thereby engendering the liability of a common carrier for this loss.

Petitioner cannot but be liable for this loss. It failed to ensure that the package was delivered to the named consignee. It admitted to delivering to a mere neighbor. Even as it claimed this, it failed to identify that neighbor.

KEIHIN-EVERETT FORWARDING CO., INC., *Petitioner*, -versus- MARINE MALAYAN INSURANCE CO., INC. AND SUNFREIGHT FORWARDERS & CUSTOMS BROKERAGE, INC., *Respondents.***
G.R. No. 212107, SECOND DIVISION, January 28, 2019, REYES, J. JR., J.:

Under Article 1733 of the Civil Code, extraordinary diligence in the vigilance over the goods it transports according to all the circumstances of each case. In the event that the goods are lost, destroyed or deteriorated, it is presumed to have been at fault or to have acted negligently, unless it proves that it observed extraordinary diligence.

Hence, at the time Keihin-Everett turned over the custody of the cargoes to Sunfreight Forwarders for inland transportation, it is still required to observe extraordinary diligence in the vigilance of the goods.

Failure to successfully establish this carries with it the presumption of fault or negligence, thus, rendering Keihin-Everett liable to Honda Trading for breach of contract.

FACTS

In 2005, Honda Trading Phils. Ecozone Corporation (Honda Trading) ordered 80 bundles of Aluminum Alloy Ingots from PT Molten Aluminum Producer Indonesia (PT Molten). PT Molten loaded the goods in two container vans which were, in turn, received in Jakarta, Indonesia by Nippon Express Co., Ltd. for shipment to Manila.

Aside from insuring the entire shipment with Tokio Marine & Nichido Fire Insurance Co., Inc. (TMNFIC), Honda Trading also engaged the services of petitioner Keihin-Everett to clear and withdraw the cargo from the pier and to transport and deliver the same to its warehouse at the Laguna Technopark in Biñan, Laguna.Meanwhile, petitioner Keihin-Everett had an Accreditation Agreement with respondent Sunfreight Forwarders whereby the latter undertook to render common carrier services for the former and to transport inland goods within the Philippines.

Upon arrival in Manila, the shipment was caused to be released from the pier by petitioner Keihin-Everett and turned over to respondent Sunfreight Forwarders for delivery to Honda Trading. En

route to the latter's warehouse, the truck carrying the containers was hijacked and the one container van was reportedly taken away. As a consequence, Honda Trading suffered the lost 40 bundles of Aluminum Alloy Ingots.

Claiming to have paid Honda Trading's insurance claim for the loss it suffered, respondent Tokio Marine commenced the instant filing of its complaint for damages against petitioner Keihin-Everett. Respondent Tokio Marine maintained that it had been subrogated to all the rights and causes of action pertaining to Honda Trading.

Keihin-Everett denied liability for the lost shipment on the ground that the loss thereof occurred while the same was in the possession of respondent Sunfreight Forwarders who in turn, denied liability on the ground that it was not privy to the contract between Keihin-Everett and Honda Trading.

The trial court held

Ruling of the RTC petitioner Keihin-Everett and respondent Sunfreight Forwarders jointly and severally liable to pay respondent Tokio Marine's claim. Upon appeal, , the CA modified the ruling of the RTC insofar as the solidary liability of Keihin-Everett and Sunfreight Forwarders is concerned. The CA went to rule that solidarity is never presumed. There is solidary liability when the obligation so states, or when the law or the nature of the obligation requires the same. Thus, because of the lack of privity between Honda Trading and Sunfreight Forwarders, the latter cannot simply be held jointly and severally liable with Keihin-Everett for Tokio Marine's claim as subrogee.

ISSUES

1. Whether petitioner Keihin-Everett liable to respondent Tokio Marine. (YES)
2. Whether Keihin-Everett is entitled to be reimbursed by Sunfreight Forwarders verett. (YES)

RULING

1. Notwithstanding that the cargoes were in the possession of Sunfreight Forwarders when they were hijacked, Keihin-Everett is not absolved from its liability as a common carrier. Keihin-Everett seems to have overlooked that it was the one whose services were engaged by Honda Trading to clear and withdraw the cargoes from the pier and to transport and deliver the same to its warehouse. In turn, Keihin-Everett accredited Sunfreight Forwarders to render common carrier service for it by transporting inland goods. As correctly held by the CA, there was no privity of contract between Honda Trading (to whose rights Tokio Marine was subrogated) and Sunfreight Forwarders. Hence, Keihin-Everett, as the common carrier, remained responsible to Honda Trading for the lost cargoes.

In this light, Keihin-Everett, as a common carrier, is mandated to observe, under Article 1733 of the Civil Code, extraordinary diligence in the vigilance over the goods it transports according to all the circumstances of each case. In the event that the goods are lost, destroyed or deteriorated, it is presumed to have been at fault or to have acted negligently, unless it proves that it observed extraordinary diligence. To be sure, under Article 1736 of the Civil Code, a common carrier's extraordinary responsibility over the shipper's goods lasts from the time these goods are unconditionally placed in the possession of, and received by, the carrier for transportation, until

they are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them. Hence, at the time Keihin-Everett turned over the custody of the cargoes to Sunfreight Forwarders for inland transportation, it is still required to observe extraordinary diligence in the vigilance of the goods. Failure to successfully establish this carries with it the presumption of fault or negligence, thus, rendering Keihin-Everett liable to Honda Trading for breach of contract.

It bears to stress that the hijacking of the goods is not considered a fortuitous event or a force majeure. Nevertheless, a common carrier may absolve itself of liability for a resulting loss caused by robbery or hijacked if it is proven that the robbery or hijacking was attended by grave or irresistible threat, violence or force In this case, Keihin-Everett failed to prove the existence of the aforementioned instances.

2. It is undisputed that the cargoes were lost when they were in the custody of Sunfreight Forwarders. Hence, under Article 1735[36] of the Civil Code, the presumption of fault on the part of Sunfreight Forwarders (as common carrier) arose. Since Sunfreight Forwarders failed to prove that it observed extraordinary diligence in the performance of its obligation to Keihin-Everett, it is liable to the latter for breach of contract. Consequently, Keihin-Everett is entitled to be reimbursed by Sunfreight Forwarders due to the latter's own breach occasioned by the loss and damage to the cargoes under its care and custody. As with the cited Torres-Madrid Brokerage case, Sunfreight Forwarders, too, has the option to absorb the loss or to proceed after its missing driver, the suspect in the hijacking incident.

ANNIE TAN, *Petitioner*, -versus- GREAT HARVEST ENTERPRISES, INC., *Respondents.*
G.R. No. 220400, THIRD DIVISION, March 20, 2019, LEONEN, J.:

Common carriers are obligated to exercise extraordinary diligence over the goods entrusted to their care. This is due to the nature of their business, with the public policy behind it geared toward achieving allocative efficiency and minimizing the inherently inequitable dynamics between the parties to the transaction.

Here, petitioner is a common carrier obligated to exercise extraordinary diligence over the goods entrusted to her. Her responsibility began from the time she received the soya beans from respondent's broker and would only cease after she has delivered them to the consignee or any person with the right to receive them.

FACTS

On February 3, 1994, Great Harvest hired Tan to transport 430 bags of soya beans from Tacoma Integrated Port Services, Inc. (Tacoma) in Port Area, Manila to Selecta Feeds in Camarin, Novaliches, Quezon City. That same day, the bags of soya beans were loaded into Tan's hauling truck. Her employee, Rannie Sultan Cabugatan (Cabugatan), then delivered the goods to Selecta Feeds.

At Selecta Feeds, however, the shipment was rejected. Upon learning of the rejection, Great Harvest instructed Cabugatan to deliver and unload the soya beans at its warehouse in Malabon. Yet, the truck and its shipment never reached Great Harvest's warehouse.

Great Harvest asked Tan about the missing delivery. Tan admitted that she could not locate both her truck and Great Harvest's goods. She reported her missing truck to the Western Police District Anti-Carnapping Unit and the National Bureau of Investigation. The NBI informed Tan that her missing truck had been found in Cavite. However, the truck had been cannibalized and had no cargo in it.

Great Harvest filed a Complaint for sum of money against Tan for the continued refusal to pay the missing shipment.

Tan denied that she entered into a hauling contract with Great Harvest, insisting that she merely accommodated it. Tan also pointed out that since Great Harvest instructed her driver to change the point of delivery without her consent, it should bear the loss brought about by its deviation from the original unloading point.

The trial court granted Great Harvest's Complaint for sum of money. It found that Tan entered into a verbal contract of hauling with Great Harvest, and held her responsible for her driver's failure to deliver the soya beans to Great Harvest. Tan filed an Appeal, but the Court of Appeals dismissed it. The Court of Appeals also held that the cargo loss was due to Tan's failure to exercise the extraordinary level of diligence required of her as a common carrier, as she did not provide security for the cargo or take out insurance on it.

ISSUE

Whether petitioner Annie Tan should be held liable for the value of the stolen soya beans. (YES)

RULING

Article 1732 of the Civil Code defines common carriers as "persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water or air, for compensation, offering their services to the public." The Civil Code outlines the degree of diligence required of common carriers in Articles 1733, 1755, and 1756:

ARTICLE 1733. 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 and for the safety of the passengers transported by them, according to all the circumstances of each case.

. . . .

ARTICLE 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.

ARTICLE 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in articles 1733 and 1755.

Law and economics provide the policy justification of our existing jurisprudence. The extraordinary diligence required by the law of common carriers is primarily due to the nature of their business,

with the public policy behind it geared toward achieving allocative efficiency between the parties to the transaction.

Allocative efficiency is an economic term that describes an optimal market where customers are willing to pay for the goods produced. Thus, both consumers and producers benefit and stability is achieved.

The notion of common carriers is synonymous with public service under Commonwealth Act No. 146 or the Public Service Act. Due to the public nature of their business, common carriers are compelled to exercise extraordinary diligence since they will be burdened with the externalities or the cost of the consequences of their contract of carriage if they fail to take the precautions expected of them.

Common carriers are mandated to internalize or shoulder the costs under the contracts of carriage. This is so because a contract of carriage is structured in such a way that passengers or shippers surrender total control over their persons or goods to common carriers, fully trusting that the latter will safely and timely deliver them to their destination. In light of this inherently inequitable dynamics— and the potential harm that might befall passengers or shippers if common carriers exercise less than extraordinary diligence— the law is constrained to intervene and impose sanctions on common carriers for the parties to achieve allocative efficiency.

Here, petitioner is a common carrier obligated to exercise extraordinary diligence over the goods entrusted to her. Her responsibility began from the time she received the soya beans from respondent's broker and would only cease after she has delivered them to the consignee or any person with the right to receive them.

Furthermore, Article 1734 of the Civil Code holds a common carrier fully responsible for the goods entrusted to him or her, unless there is enough evidence to show that the loss, destruction, or deterioration of the goods falls under any of the enumerated exceptions:

ARTICLE 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.

Nothing in the records shows that any of these exceptions caused the loss of the soya beans. Petitioner failed to deliver the soya beans to respondent because her driver absconded with them. She cannot shift the blame for the loss to respondent's supposed diversion of the soya beans from the loading point to respondent's warehouse, as the evidence has conclusively shown that she had agreed beforehand to deliver the cargo to respondent's warehouse if the consignee refused to accept it.

Finally, petitioner's reliance on *De Guzman v. Court of Appeals* is misplaced. There, the common carrier was absolved of liability because the goods were stolen by robbers who used "grave or irresistible threat, violence[,] or force" to hijack the goods. De Guzman viewed the armed hijack as a fortuitous event:

Under Article 1745 (6) above, a common carrier is held responsible — and will not be allowed to divest or to diminish such responsibility — even for acts of strangers like thieves or robbers, except where such thieves or robbers in fact acted "with grave or irresistible threat, violence or force." We believe and so hold that the limits of the duty of extraordinary diligence in the vigilance over the goods carried are reached where the goods are lost as a result of a robbery which is attended by "grave or irresistible threat, violence[,] or force."

In contrast to De Guzman, the loss of the soya beans here was not attended by grave or irresistible threat, violence, or force. Instead, it was brought about by petitioner's failure to exercise extraordinary diligence when she neglected vetting her driver or providing security for the cargo and failing to take out insurance on the shipment's value.

MA. LUISA BENEDICTO*, Petitioner*, -versus- HON. INTERMEDIATE APPELLATE COURT and GREENHILLS WOOD INDUSTRIES COMPANY, INC.*, Respondents.*
G.R. No. 70876, THIRD DIVISION, July 19, 1990, FELICIANO, J.:

A common carrier, both from the nature of its business and for insistent reasons of public policy, is burdened by the law with the duty of exercising extraordinary diligence not only in ensuring the safety of passengers but also in caring for goods transported by it. The loss or destruction or deterioration of goods turned over to the common carrier for conveyance to a designated destination, raises instantly a presumption of fault or negligence on the part of the carrier, save only where such loss, destruction or damage arises from extreme circumstances such as a natural disaster or calamity or act of the public enemy in time of war, or from an act or omission of the shipper himself or from the character of the goods or their packaging or container.

Thus, to sustain petitioner Benedicto's contention, that is, to require the shipper to go behind a certificate of registration of a public utility vehicle, would be utterly subversive of the purpose of the law and doctrine.

FACTS

Private respondent Greenhills, a lumber manufacturing firm with business address at Dagupan City, operates a sawmill in Maddela, Quirino.

Sometime in 1980, respondent bound itself to sell and deliver to Blue Star Mahogany, Inc. a company with business operations in Valenzuela, Bulacan 100,000 board feet of sawn lumber with the understanding that an initial delivery would be made on 15 May 1980.

To effect its first delivery, private respondent's resident manager in Maddela, Dominador Cruz, contracted Virgilio Licuden, the driver of a cargo truck to transport its sawn lumber to the consignee Blue Star in Valenzuela, Bulacan. This cargo truck was registered in the name of petitioner Ma. Luisa Benedicto, the proprietor of Macoven Trucking, a business enterprise engaged in hauling freight.

Cruz in the presence and with the consent of driver Licuden, supervised the loading of 7,690 board feet of sawn lumber aboard the cargo truck. On 16 May 1980, the Manager of Blue Star called up

Greenhills' president, Henry Lee Chuy, informing him that the sawn lumber on board the subject cargo truck had not yet arrived in Valenzuela, Bulacan.

Private respondent Greenhills filed Criminal Case No. 668 against driver Licuden for estafa. Greenhills also filed against petitioner Benedicto civil case for recovery of the value of the lost sawn lumber plus damages before the RTC.

In her answer, petitioner Benedicto denied liability alleging that she was a complete stranger to the contract of carriage, the subject truck having been earlier sold by her to Benjamin Tee.. 7 She claimed that the truck had remained registered in her name however, it was Tee who had been operating the said truck in Central Luzon and that, therefore, Licuden was Tee's employee and not hers.

The trial court held petitioner Ma. Luisa Benedicto liable to pay private respondent Greenhills Wood Industries Company, Inc. for the cost of Greenhills' lost sawn lumber and attorney's fees.

Upon appeal, the Court of Appeals, affirmed the RTC decision. The appellate court held that since petitioner was the registered owner of the subject vehicle, Licuden, the driver of the truck, was her employee, and that accordingly petitioner should be responsible for the negligence of said driver and bear the loss of the sawn lumber plus damages. Petitioner moved for reconsideration, without success.

ISSUE

Whether the appellate court was correct in finding that petitioner should be held liable for the value of the undelivered or lost sawn lumber. (YES)

RULING

A common carrier, both from the nature of its business and for insistent reasons of public policy, is burdened by the law with the duty of exercising extraordinary diligence not only in ensuring the safety of passengers but also in caring for goods transported by it. The loss or destruction or deterioration of goods turned over to the common carrier for conveyance to a designated destination, raises instantly a presumption of fault or negligence on the part of the carrier, save only where such loss, destruction or damage arises from extreme circumstances such as a natural disaster or calamity or act of the public enemy in time of war, or from an act or omission of the shipper himself or from the character of the goods or their packaging or container.

This presumption may be overcome only by proof of extraordinary diligence on the part of the carrier. Clearly, to permit a common carrier to escape its responsibility for the passengers or goods transported by it by proving a prior sale of the vehicle or means of transportation to an alleged vendee would be to attenuate drastically the carrier's duty of extraordinary diligence. It would also open wide the door to collusion between the carrier and the supposed vendee and to shifting liability from the carrier to one without financial capability to respond for the resulting damages. In other words, the thrust of the public policy here involved is as sharp and real in the case of carriage of goods as it is in the transporting of human beings. Thus, to sustain petitioner Benedicto's

contention, that is, to require the shipper to go behind a certificate of registration of a public utility vehicle, would be utterly subversive of the purpose of the law and doctrine.

Petitioner further insists that there was no perfected contract of carriage for the reason that there was no proof that her consent or that of Tee had been obtained; no proof that the driver, Licuden, was authorized to bind the registered owner; and no proof that the parties had agreed on the freightage to be paid.

Once more, we are not persuaded by petitioner's arguments which appear to be a transparent attempt to evade statutory responsibilities. Driver Licuden was entrusted with possession and control of the freight truck by the registered owner (and by the alleged secret owner, for that matter). Driver Licuden, under the circumstances, was clothed with at least implied authority to contract to carry goods and to accept delivery of such goods for carriage to a specified destination. That the freight to be paid may not have been fixed before loading and carriage, did not prevent the contract of carriage from arising, since the freight was at least determinable if not fixed by the tariff schedules in petitioner's main business office. Put in somewhat different terms, driver Licuden is in law regarded as the employee and agent of the petitioner, for whose acts petitioner must respond. A contract of carriage of goods was shown; the sawn lumber was loaded on board the freight truck; loss or non-delivery of the lumber at Blue Star's premises in Valenzuela, Bulacan was also proven; and petitioner has not proven either that she had exercised extraordinary diligence to prevent such loss or non-delivery or that the loss or non-delivery was due to some casualty or force majeure inconsistent with her liability. Petitioner's liability to private respondent Greenhills was thus fixed and complete, without prejudice to petitioner's right to proceed against her putative transferee Benjamin Tee and driver Licuden for reimbursement or contribution.

COGEO-CUBAO OPERATORS AND DRIVERS ASSOCIATION, *Petitioner*, -versus- THE COURT OF APPEALS, LUNGSOD SILANGAN TRANSPORT SERVICES, CORP., INC., *Respondents.*
G.R. No. 100727, FIRST DIVISION, March 18, 1992, MEDIALDEA, J.:

Under the Public Service Law, a certificate of public convenience is an authorization issued by the Public Service Commission for the operation of public services for which no franchise is required by law.

In the instant case, a certificate of public convenience was issued to respondent corporation to operate a public utility jeepney service on the Cogeo-Cubao route. A certification of public convenience is included in the term "property" in the broad sense of the term.

FACTS

Perturbed by plaintiffs' Board Resolution No. 9 . . . adopting a Bandera' System under which a member of the cooperative is permitted to queue for passenger at the disputed pathway in exchange for the ticket worth twenty pesos, the proceeds of which shall be utilized for Christmas programs of the drivers and other benefits, and on the strength of defendants' registration as a collective body with the Securities and Exchange Commission, defendants-appellants, led by Romeo Oliva decided to form a human barricade on November 11, 1985 and assumed the dispatching of passenger jeepneys . . . This development as initiated by defendants-appellants gave rise to the suit for damages.

Defendant-Association's Answer contained vehement denials to the insinuation of take over and at the same time raised as a defense the circumstance that the organization was formed not to

compete with plaintiff-cooperative. It, however, admitted that it is not authorized to transport passengers . . .

The trial court rendered a decision in favor of respondent Lungsod Corp. Upon appeal, the appellate court affirmed the decision of the trial.

ISSUE

Whether petitioner usurped the property right of the respondent which shall entitle the latter to the award of nominal damages. (YES)

RULING

Under the Public Service Law, a certificate of public convenience is an authorization issued by the Public Service Commission for the operation of public services for which no franchise is required by law. In the instant case, a certificate of public convenience was issued to respondent corporation to operate a public utility jeepney service on the Cogeo-Cubao route.

A certification of public convenience is included in the term "property" in the broad sense of the term. Under the Public Service Law, a certificate of public convenience can be sold by the holder thereof because it has considerable material value and is considered as valuable asset (Raymundo v. Luneta Motor Co., et al., 58 Phil. 889). Although there is no doubt that it is private property, it is affected with a public interest and must be submitted to the control of the government for the common good (Pangasinan Transportation Co. v. PSC, 70 Phil 221). Hence, insofar as the interest of the State is involved, a certificate of public convenience does not confer upon the holder any proprietary right or interest or franchise in the route covered thereby and in the public highways (Lugue v. Villegas, L-22545, Nov . 28, 1969, 30 SCRA 409). However, with respect to other persons and other public utilities, a certificate of public convenience as property, which represents the right and authority to operate its facilities for public service, cannot be taken or interfered with without due process of law. Appropriate actions may be maintained in courts by the holder of the certificate against those who have not been authorized to operate in competition with the former and those who invade the rights which the former has pursuant to the authority granted by the Public Service Commission (A.L. Ammen Transportation Co. v. Golingco. 43 Phil. 280).

In the case at bar, the trial court found that petitioner association forcibly took over the operation of the jeepney service in the Cogeo-Cubao route without any authorization from the Public Service Commission and in violation of the right of respondent corporation to operate its services in the said route under its certificate of public convenience. These were its findings which were affirmed by the appellate court:

The Court from the testimony of plaintiff's witnesses as well as the documentary evidences presented is convinced that the actions taken by defendant herein though it admit that it did not have the authority to transport passenger did in fact assume the role as a common carrier engaged in the transport of passengers within that span of ten days beginning November 11, 1985 when it unilaterally took upon itself the operation and dispatching of jeepneys at St. Mary's St. The president of the defendant corporation. Romeo Oliva himself in his testimony confirmed that there was indeed a takeover of the operations at St. Mary's St. . . .

The findings of the trial court especially if affirmed by the appellate court bear great weight and will not be disturbed on appeal before this Court. Although there is no question that petitioner can

exercise their constitutional right to redress their grievances with respondent Lungsod Corp., the manner by which this constitutional right is to be, exercised should not undermine public peace and order nor should it violate the legal rights of other persons. Article 21 of the Civil Code provides that any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage. The provision covers a situation where a person has a legal right which was violated by another in a manner contrary to morals, good customs or public policy. It presupposes loss or injury, material or otherwise, which one may suffer as a result of such violation. It is clear form the facts of this case that petitioner formed a barricade and forcibly took over the motor units and personnel of the respondent corporation. This paralyzed the usual activities and earnings of the latter during the period of ten days and violated the right of respondent Lungsod Corp. To conduct its operations thru its authorized officers.

SPOUSES CESAR & SUTHIRA ZALAMEA AND LIANA ZALAMEA*, Petitioner*, -versus-
HONORABLE COURT OF APPEALS AND TRANSWORLD AIRLINES, INC*, Respondents.*
G.R. No. 104235, SECOND DIVISION, November 18, 1993, NOCON, J.:

In Zulueta v. Pan American World Airways, Inc. This is so, for a contract of carriage generates a relation attended with public duty — a duty to provide public service and convenience to its passengers which must be paramount to self-interest or enrichment. Thus, it was also held that the switch of planes from Lockheed 1011 to a smaller Boeing 707 because there were only 138 confirmed economy class passengers who could very well be accommodated in the smaller plane, thereby sacrificing the comfort of its first class passengers for the sake of economy, amounts to bad faith. Such inattention and lack of care for the interest of its passengers who are entitled to its utmost consideration entitles the passenger to an award of moral damages.

Even on the assumption that overbooking is allowed, respondent TWA is still guilty of bad faith in not informing its passengers beforehand that it could breach the contract of carriage even if they have confirmed tickets if there was overbooking. Respondent TWA should have incorporated stipulations on overbooking on the tickets issued or to properly inform its passengers about these policies so that the latter would be prepared for such eventuality or would have the choice to ride with another airline.

FACTS

Petitioners-spouses Cesar C. Zalamea and Suthira Zalamea, and their daughter, Liana Zalamea, purchased three (3) airline tickets from the Manila agent of respondent TransWorld Airlines, Inc. for a flight from New York to Los Angeles. The tickets of petitioners-spouses were purchased at a discount of 75% while that of their daughter was a full fare ticket. All three tickets represented confirmed reservations.

On the appointed date, however, petitioners checked in at 10:00 a.m., an hour earlier than the scheduled flight at 11:00 a.m. but were placed on the wait-list because the number of passengers who had checked in before them had already taken all the seats available on the flight. As it were, those holding full-fare tickets were given first priority among the wait-listed passengers. Mr. Zalamea, who was holding the full-fare ticket of his daughter, was allowed to board the plane; while his wife and daughter, who presented the discounted tickets were denied boarding.

Even in the next TWA flight to Los Angeles Mrs. Zalamea and her daughter, could not be accommodated because it was also fully booked. Thus, they were constrained to book in another

flight and purchased two tickets from American Airlines at a cost of Nine Hundred Eighteen ($918.00) Dollars.

Upon their arrival in the Philippines, petitioners filed an action for damages based on breach of contract of air carriage before the Regional Trial Court which ruled in favor of petitioners.

On appeal, the respondent Court of Appeals held that moral damages are recoverable in a damage suit predicated upon a breach of contract of carriage only where there is fraud or bad faith. Since it is a matter of record that overbooking of flights is a common and accepted practice of airlines in the United States and is specifically allowed under the Code of Federal Regulations by the Civil Aeronautics Board, no fraud nor bad faith could be imputed on respondent TransWorld Airlines.

Moreover, while respondent TWA was remiss in not informing petitioners that the flight was overbooked and that even a person with a confirmed reservation may be denied accommodation on an overbooked flight, nevertheless it ruled that such omission or negligence cannot under the circumstances be considered to be so gross as to amount to bad faith.

ISSUE

Whether respondent TWA is liable. (YES)

RULING

A contract to transport passengers is quite different in kind and degree from any other contractual relation. So ruled this Court in *Zulueta v. Pan American World Airways, Inc.* This is so, for a contract of carriage generates a relation attended with public duty — a duty to provide public service and convenience to its passengers which must be paramount to self-interest or enrichment. Thus, it was also held that the switch of planes from Lockheed 1011 to a smaller Boeing 707 because there were only 138 confirmed economy class passengers who could very well be accommodated in the smaller plane, thereby sacrificing the comfort of its first class passengers for the sake of economy, amounts to bad faith. Such inattention and lack of care for the interest of its passengers who are entitled to its utmost consideration entitles the passenger to an award of moral damages.

Even on the assumption that overbooking is allowed, respondent TWA is still guilty of bad faith in not informing its passengers beforehand that it could breach the contract of carriage even if they have confirmed tickets if there was overbooking. Respondent TWA should have incorporated stipulations on overbooking on the tickets issued or to properly inform its passengers about these policies so that the latter would be prepared for such eventuality or would have the choice to ride with another airline.

Moreover, respondent TWA was also guilty of not informing its passengers of its alleged policy of giving less priority to discounted tickets. While the petitioners had checked in at the same time, and held confirmed tickets, yet, only one of them was allowed to board the plane ten minutes before departure time because the full-fare ticket he was holding was given priority over discounted tickets. The other two petitioners were left behind.

It is respondent TWA's position that the practice of overbooking and the airline system of boarding priorities are reasonable policies, which when implemented do not amount to bad faith. But the issue raised in this case is not the reasonableness of said policies but whether or not said policies were incorporated or deemed written on petitioners' contracts of carriage. Respondent TWA failed to show that there are provisions to that effect. Neither did it present any argument of substance to show that petitioners were duly apprised of the overbooked condition of the flight or that there is a hierarchy of boarding priorities in booking passengers. It is evident that petitioners had the right to rely upon the assurance of respondent TWA, thru its agent in Manila, then in New York, that their tickets represented confirmed seats without any qualification. The failure of respondent TWA to so inform them when it could easily have done so thereby enabling respondent to hold on to them as passengers up to the last minute amounts to bad faith. Evidently, respondent TWA placed its self-interest over the rights of petitioners under their contracts of carriage. Such conscious disregard of petitioners' rights makes respondent TWA liable for moral damages. To deter breach of contracts by respondent TWA in similar fashion in the future, we adjudge respondent TWA liable for exemplary damages, as well.

Petitioners also assail the respondent court's decision not to require the refund of Liana Zalamea's ticket because the ticket was used by her father. On this score, we uphold the respondent court. Petitioners had not shown with certainty that the act of respondent TWA in allowing Mr. Zalamea to use the ticket of her daughter was due to inadvertence or deliberate act. Petitioners had also failed to establish that they did not accede to said arrangement. The logical conclusion, therefore, is that both petitioners and respondent TWA agreed, albeit impliedly, to the course of action taken.

PHILIPPINE AIRLINES, INC.*, Petitioner*, -versus- COURT OF APPEALS, DR. JOSEFINO MIRANDA and LUISA MIRANDA*, Respondents.*

G.R. No. 119641, SECOND DIVISION, May 17, 1996, REGALADO, J.:

Articles 17, 18 and 19 of the Warsaw Convention of 1929 merely declare the air carriers liable for damages in the cases enumerated therein, if the conditions specified are present. Neither the provisions of said articles nor others regulate or exclude liability for other breaches of contract by air carriers (Northwest Airlines, Inc. v. Nicolas Cuenca, Et Al., 14 SCRA 1 063)."

Appellees do not seek payment for loss of any baggage. They are claiming damages arising from the discriminatory off-loading of their baggag(e). That cannot be limited by the printed conditions in the tickets and baggage checks.

FACTS

Dr. Josefino Miranda and his wife, Luisa, who were residents of Surigao City, went to the United States of America on a regular flight of Philippine Airlines, Inc. (PAL). After a stay of over a month there, they obtained confirmed bookings from PAL's San Francisco Office for a flight from San Francisco to Manila via Honolulu; from Manila to Cebu; and from Cebu to Surigao.

Accordingly, private respondents boarded PAL flight in San Francisco with five (5) pieces of baggage. After a stopover at Honolulu, and upon arrival in Manila, they were told by the PAL personnel that their baggage consisting of two balikbayan boxes, two pieces of luggage and one fishing rod case were off-loaded at Honolulu, Hawaii due to weight limitations. Consequently,

private respondents missed their connecting flight from Manila to Cebu City and the other scheduled connecting flight from Cebu City to Surigao City.

Thereafter, they instituted an action for damages which, after trial as well as on appeal, was decided in their favor.

ISSUE

Whether the express provisions on private respondents' tickets stipulating that liability for delay in delivery of baggage shall be limited to US$20.00 per kilo of baggage delayed, unless the passenger declares a higher valuation constitutes the contract of carriage between PAL and private respondents (NO)

RULING

"The defense raised by defendant airlines that it can be held liable only under the terms of the Warsaw Convention (Answer, Special and Affirmative Defenses, dated October 26, 1988) is of no moment. For it has also been held that Articles 17, 18 and 19 of the Warsaw Convention of 1929 merely declare the air carriers liable for damages in the cases enumerated therein, if the conditions specified are present. Neither the provisions of said articles nor others regulate or exclude liability for other breaches of contract by air carriers (Northwest Airlines, Inc. v. Nicolas Cuenca, Et Al., 14 SCRA 1 063)."

This ruling of the trial court was affirmed by respondent Court of Appeals, thus:

"We are not persuaded. Appellees do not seek payment for loss of any baggage. They are claiming damages arising from the discriminatory off-loading of their baggag(e). That cannot be limited by the printed conditions in the tickets and baggage checks. Neither can the Warsaw Convention exclude nor regulate the liability for other breaches of contract by air carriers. A recognition of the Warsaw Convention does not preclude the operation of our Civil Code and related laws in determining the extent of liability of common carriers in breach of contract of carriage, particularly for willful misconduct of their employees."

The congruent finding of both the trial court and respondent court that there was discriminatory off-loading being a factual question is, as stated earlier, binding upon and can no longer be passed upon by this Court, especially in view of and in deference to the affirmance of the same by respondent appellate court.

There was no error on the part of the Court of Appeals when it refused to apply the provisions of the Warsaw Convention, for in the words of this Court in the aforequoted Cathay Pacific case:

". . . although the Warsaw Convention has the force and effect of law in this country, being a treaty commitment assumed by the Philippine government, said convention does not operate as an exclusive enumeration of the instances for declaring a carrier liable for breach of contract of carriage or as an absolute limit of the extent of that liability. The Warsaw Convention declares the carrier liable in the enumerated cases and under certain limitations. However, it must not be construed to preclude the operation of the Civil Code and pertinent laws. It does not regulate, much less exempt, the carrier from liability for damages for violating the rights of its passengers under the contract of carriage, especially if willful misconduct on the part of the carrier's employees is found or established, which is the case before Us. . ."

PHILIPPINE AIRLINES, INC., *Petitioner*, -versus- COURT OF APPEALS and LEOVIGILDO A. PANTEJO, *Respondents.*
G.R. No. 120262, SECOND DIVISION, July 17, 1997, REGALADO, J.:

It must be emphasized that a contract to transport passengers is quite different in kind and degree from any other contractual relation, and this is because of the relation which an air carrier sustains with the public. Its business is mainly with the travelling public. It invites people to avail of the comforts and advantages it offers. The contract of air carriage, therefore, generates a relation attended with a public duty. Neglect or malfeasance of the carrier's employees naturally could give ground for an action for damages.

Respondent Court of Appeals correctly concluded that the refund of hotel expenses was surreptitiously and discriminatorily made by herein petitioner since the same was not made known to everyone, except through word of mouth to a handful of passengers. This is a sad commentary on the quality of service and professionalism of an airline company, which is the country's flag carrier at that. On the bases of all the foregoing, the inescapable conclusion is that petitioner acted in bad faith in disregarding its duties as a common carrier to its passengers and in discriminating against herein respondent Pantejo. It was even oblivious to the fact that this respondent was exposed to humiliation and embarrassment especially because of his government position and social prominence, which altogether necessarily subjected him to ridicule, shame and anguish.

FACTS

Leovegildo A. Pantejo, then City Fiscal of Surigao City, was booked on a PAL flight to Cebu City, and from Cebu City he would take a connecting flight to Surigao City. But due to a typhoon, the connecting flight was cancelled. He asked PAL that he be billeted in a hotel at PAL's expense instead of the cash assistance given by PAL to its stranded passengers. PAL refused, and Pantejo was forced to seek and accept the generosity of a co-passenger, and he shared a room with him at the Sky View Hotel. Pantejo subsequently learned that hotel expenses of some of his co-passengers were shouldered by PAL. When Pantejo threatened to sue the airline for discriminating against him, PAL offered to pay him P300.00. He later sued PAL for damages.

The trial court rendered judgment in favor of Pantejo by awarding him damages and attorney's fees. The Court of Appeals affirmed the decision.

ISSUE

Whether PAL is liable for disregarding its duties as a common carrier and in discriminating against Pantejo. (YES)

RULING

To begin with, it must be emphasized that a contract to transport passengers is quite different in kind and degree from any other contractual relation, and this is because of the relation which an air carrier sustains with the public. Its business is mainly with the travelling public. It invites people to avail of the comforts and advantages it offers. The contract of air carriage, therefore, generates a

relation attended with a public duty. Neglect or malfeasance of the carrier's employees naturally could give ground for an action for damages.

In ruling for respondent Pantejo, both the trial court and the Court of Appeals found that herein petitioner acted in bad faith in refusing to provide hotel accommodations for respondent Pantejo or to reimburse him for hotel expenses incurred despite and in contrast to the fact that other passengers were so favored.

While petitioner now insists that the passengers were duly informed that they would be reimbursed for their hotel expenses, it miserably and significantly failed to explain why the other passengers were given reimbursements while private respondent was not. Although Gonzales was subsequently given a refund, this was only so because he came to know about it by accident through Mrs. Rocha, as earlier explained.

Petitioner could only offer the strained and flimsy pretext that possibly the passengers were not listening when the announcement was made. This is absurd because when respondent Pantejo came to know that his flight had been cancelled, he immediately proceeded to petitioner's office and requested for hotel accommodations. He was not only refused accommodations, but he was not even informed that he may later on be reimbursed for his hotel expenses. This explains why his co-passenger, Andoni Dumlao, offered to answer for respondent's hotel bill and the latter promised to pay him when they arrive in Surigao. Had both known that they would be reimbursed by the airline, such arrangement would not have been necessary.

Respondent Court of Appeals thus correctly concluded that the refund of hotel expenses was surreptitiously and discriminatorily made by herein petitioner since the same was not made known to everyone, except through word of mouth to a handful of passengers. This is a sad commentary on the quality of service and professionalism of an airline company, which is the country's flag carrier at that.

On the bases of all the foregoing, the inescapable conclusion is that petitioner acted in bad faith in disregarding its duties as a common carrier to its passengers and in discriminating against herein respondent Pantejo. It was even oblivious to the fact that this respondent was exposed to humiliation and embarrassment especially because of his government position and social prominence, which altogether necessarily subjected him to ridicule, shame and anguish. It remains uncontroverted that at the time of the incident, herein respondent was then the City Prosecutor of Surigao City, and that he is a member of the Philippine Jaycee Senate, past Lt. Governor of the Kiwanis Club of Surigao, a past Master of the Mount Diwata Lodge of Free Masons of the Philippines, member of the Philippine National Red Cross, Surigao Chapter, and past Chairman of the Boy Scout of the Philippines, Surigao del Norte Chapter.

CARLOS SINGSON, *Petitioner*, -versus OF APPEALS and CATHAY PACIFIC AIRWAYS, INC., *Respondents.*

G.R. No. 119995, FIRST DIVISION, November 18, 1997, BELLOSILLO, J.:

A contract of air carriage is a peculiar one. Imbued with public interest, common carriers are required by law to carry passengers safely as far as human care and foresight can provide, using the utmost diligence of a very cautious person, with due regard for all the circumstances. A contract to transport passengers is quite different in kind and degree from any other contractual relation. And this because its business is mainly with the traveling public. It invites people to avail of the comforts and advantages it offers. The contract of carriage, therefore, generates a relation attended with a public

duty. Failure of the carrier to observe this high degree of care and extraordinary diligence renders it liable for any damage that may be sustained by its passengers.

CATHAY undoubtedly committed a breach of contract when it refused to confirm petitioner's flight reservation back to the Philippines on account of his missing flight coupon. In fact, the contract of carriage in the instant case was already partially executed as the carrier complied with its obligation to transport the passenger to his destination, i.e., Los Angeles. Only the performance of the other half of the contract — which was to transport the passenger back to the Philippines — was left to be done.

FACTS

Carlos Singson and his cousin Crescentino Tiongson bought from Cathay Pacific Airways, Ltd. (CATHAY two (2) open-dated, identically routed, round trip plane tickets for the purpose of spending their vacation in the United States. Each ticket consisted of six (6) flight coupons corresponding to this itinerary: flight coupon no. 1 — Manila to Hongkong; flight coupon no. 2 — Hongkong to San Francisco; flight coupon no. 3 — San Francisco to Los Angeles; flight coupon no. 4 — Los Angeles back to San Francisco; flight coupon no. 5 — San Francisco to Hongkong; and, finally, flight coupon no. 6 — Hongkong to Manila. The procedure was that at the start of each leg of the trip a flight coupon corresponding to the particular sector of the travel would be removed from the ticket booklet so that at the end of the trip no more coupon would be left in the ticket booklet.

Singson and Tiongson left Manila on board CATHAY's Flight No. 902. They arrived safely in Los Angeles and after staying there for about three (3) weeks they decided to return to the Philippines. They arranged for their return flight and chose 1 July 1988 for their departure. While Tiongson easily got a booking for the flight, SINGSON was not as lucky. It was discovered that his ticket booklet did not have flight coupon no. 5 corresponding to the San Francisco-Hongkong leg of the trip. Instead, what was in his ticket was flight coupon no. 3 — San Francisco to Los Angeles — which was supposed to have been used and removed from the ticket booklet. It was not until 6 July 1988 that CATHAY was finally able to arrange for his return flight to Manila.

Singson then commenced an action for damages against CATHAY before the Regional Trial Court of Vigan, Ilocos Sur.

CATHAY denied the allegations and averred that since petitioner was holding an "open dated" ticket, which meant that he was not booked on a specific flight on a particular date, there was no contract of carriage yet existing such that CATHAY's refusal to immediately book him could not be construed as breach of contract of carriage.

The trial court rendered a decision in favor of petitioner herein holding that CATHAY was guilty of gross negligence amounting to malice and bad faith.

On appeal by CATHAY, the Court of Appeals reversed the trial court's finding that there was gross negligence amounting to bad faith or fraud and, accordingly, modified its judgment by deleting the awards for moral and exemplary damages, and the attorney's fees as well.

ISSUE

Whether a breach of contract was committed by CATHAY when it failed to confirm the booking of petitioner for its 1 July 1988 flight. (YES)

RULING

CATHAY undoubtedly committed a breach of contract when it refused to confirm petitioner's flight reservation back to the Philippines on account of his missing flight coupon. Its contention that there was no contract of carriage that was breached because petitioner's ticket was open-dated is untenable. To begin with, the round trip ticket issued by the carrier to the passenger was in itself a complete written contract by and between the carrier and the passenger. It had all the elements of a complete written contract, to wit: (a) the consent of the contracting parties manifested by the fact that the passenger agreed to be transported by the carrier to and from Los Angeles via San Francisco and Hongkong back to the Philippines, and the carrier's acceptance to bring him to his destination and then back home; (b) cause or consideration, which was the fare paid by the passenger as stated in his ticket; and, (c) object, which was the transportation of the passenger from the place of departure to the place of destination and back, which are also stated in his ticket. 6 In fact, the contract of carriage in the instant case was already partially executed as the carrier complied with its obligation to transport the passenger to his destination, i.e., Los Angeles. Only the performance of the other half of the contract — which was to transport the passenger back to the Philippines — was left to be done.

Clearly therefore petitioner was not a mere "chance passenger with no superior right to be boarded on a specific flight," as erroneously claimed by CATHAY and sustained by the appellate court.

Interestingly, it appears that CATHAY was responsible for the loss of the ticket. One of two (2) things may be surmised from the circumstances of this case: first, US Air (CATHAY's agent) had mistakenly detached the San Francisco-Hongkong flight coupon thinking that it was the San Francisco-Los Angeles portion; or, second, petitioner's booklet of tickets did not from issuance include a San Francisco-Hongkong flight coupon. In either case, the loss of the coupon was attributable to the negligence of CATHAY's agents and was the proximate cause of the non-confirmation of petitioner's return flight on 1 July 1988. It virtually prevented petitioner from demanding the fulfillment of the carrier's obligations under the contract. Had CATHAY's agents been diligent in double checking the coupons they were supposed to detach from the passengers' tickets, there would have been no reason for CATHAY not to confirm petitioner's booking as exemplified in the case of his cousin and flight companion Tiongson whose ticket booklet was found to be in order. Hence, to hold that no contractual breach was committed by CATHAY and totally absolve it from any liability would in effect put a premium on the negligence of its agents, contrary to the policy of the law requiring common carriers to exercise extraordinary diligence.

- Loadstar Shipping Co., Inc. vs. Court of Appeals, G.R. No. 131621, September 28, 1999

LOADSTAR SHIPPING CO., INC., Petitioner –versus- COURT OF APPEALS and THE MANILA INSURANCE CO., INC., *Respondents*.

G.R. No. 131621, FIRST DIVISION, September 28, 1999, DAVIDE, JR., *C.J*

For a vessel to be seaworthy, it must be adequately equipped for the voyage and manned with a sufficient number of competent officers and crew. The failure of a common carrier to maintain in seaworthy condition its vessel involved in a contract of carriage is a clear breach of its duty prescribed in Article 1755 of the Civil Code.

LOADSTAR was at fault or negligent in not maintaining a seaworthy vessel and in having allowed its vessel to sail despite knowledge of an approaching typhoon. The doctrine of limited liability does not apply where there was negligence on the part of the vessel owner or agent.

FACTS:

On 19 November 1984, LOADSTAR received on board its M/V "Cherokee" (hereafter, the vessel) goods for shipment. The goods, amounting to P6,067,178, were insured for the same amount with MIC against various risks including "TOTAL LOSS BY TOTAL OF THE LOSS THE VESSEL." The vessel, in turn, was insured by Prudential Guarantee & Assurance, Inc. (hereafter PGAI) for P4 million. on its way to Manila from the port of Nasipit, Agusan del Norte, the vessel, along with its cargo, sank off Limasawa Island. As a result of the total loss of its shipment, the consignee made a claim with LOADSTAR which, however, ignored the same. As the insurer, MIC paid P6,075,000 to the insured in full settlement of its claim, and the latter executed a subrogation receipt therefor.

MIC filed a complaint against LOADSTAR and PGAI, alleging that the sinking of the vessel was due to the fault and negligence of LOADSTAR and its employees. It also prayed that PGAI be ordered to pay the insurance proceeds from the loss the vessel directly to MIC, said amount to be deducted from MIC's claim from LOADSTAR.

In its answer, LOADSTAR denied any liability for the loss of the shipper's goods and claimed that sinking of its vessel was due to *force majeure*. PGAI, on the other hand, averred that MIC had no cause of action against it, LOADSTAR being the party insured. In any event, PGAI was later dropped as a party defendant after it paid the insurance proceeds to LOADSTAR.

As stated at the outset, the court *a quo* rendered judgment in favor of MIC, prompting LOADSTAR to elevate the matter to the court of Appeals, which, however, agreed with the trial court and affirmed its decision *in toto*.

LOADSTAR submits that the vessel was a private carrier because it was not issued certificate of public convenience, it did not have a regular trip or schedule nor a fixed route, and there was only "one shipper, one consignee for a special cargo." LOADSTAR argues that as a private carrier, it cannot be presumed to have been negligent, and the burden of proving otherwise devolved upon MIC.

In refutation, MIC argues that While it is true that the vessel had on board only the cargo of wood products for delivery to one consignee, it was also carrying passengers as part of its regular business. Moreover, the bills of lading in this case made no mention of any charter party but only a statement that the vessel was a "general cargo carrier." Neither was there any "special arrangement" between LOADSTAR and the shipper regarding the shipment of the cargo. The singular fact that the vessel was carrying a particular type of cargo for one shipper is not sufficient to convert the vessel into a private carrier.

ISSUES:

1. W/N the M/V "Cherokee" is a common carrier? (YES)
2. Did LOADSTAR observe due and/or ordinary diligence in these premises. (YES)

RULING:

1. We hold that LOADSTAR is a common carrier. It is not necessary that the carrier be issued a certificate of public convenience, and this public character is not altered by the fact that the carriage of the goods in question was periodic, occasional, episodic or unscheduled.

In support of its position, LOADSTAR relied on the 1968 case of *Home Insurance Co. v. American Steamship Agencies, Inc*., where this Court held that a common carrier transporting special cargo or chartering the vessel to a special person becomes a private carrier that is not subject to the provisions of the Civil Code. Any stipulation in the charter party absolving the owner from liability for loss due to the negligence of its agent is void only if the strict policy governing common carriers is upheld. Such policy has no force where the public at is not involved, as in the case of a ship totally chartered for the use of a single party. LOADSTAR also cited *Valenzuela Hardwood* and *Industrial Supply, Inc. v. Court of Appeals* and *National Steel Corp. v. Court of Appeals*, both of which upheld the Home Insurance doctrine.

These cases invoked by LOADSTAR are not applicable in the case at bar for the simple reason that the factual settings are different. The records do not disclose that the M/V "Cherokee," on the date in question, undertook to carry a special cargo or was chartered to a special person only. There was no charter party. The bills of lading failed to show any special arrangement, but only a general provision to the effect that the M/V"Cherokee" was a "*general cargo carrier*." Further, the bare fact that the vessel was carrying a particular type of cargo for one shipper, which appears to be purely coincidental, is not reason enough to convert the vessel from a common to a private carrier, especially where, as in this case, it was shown that the vessel was also carrying passengers.

Under the facts and circumstances obtaining in this case, LOADSTAR fits the definition of a common carrier under Article 1732 of the Civil Code. In the case of *De Guzman v. Court of Appeals*, the Court juxtaposed the statutory definition of "common carriers" with the peculiar circumstances of that case, *viz*.:

The Civil Code defines "common carriers" in the following terms:

Art. 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air for compensation, offering their services to the public.

The above article makes no distinction between one whose *principal* business activity is the carrying of persons or goods or both, and one who does such carrying only as *ancillary* activity (in local idiom, as "a sideline". Article 1732 also carefully avoids making any distinction between a person or enterprise offering transportation service on a *regular or scheduled basis* and one offering such service on an *occasional, episodic or unscheduled basis*. Neither does Article 1732 distinguish between a carrier offering its services to the "general public," *i.e*., the general community or population, and one who offers services or solicits business only from a narrow *segment* of the general population. We think that Article 1733 deliberately refrained from making such distinctions.

xxx xxx xxx

It appears to the Court that private respondent is properly characterized as a common carrier even though he merely "back-hauled" goods for other merchants from Manila to Pangasinan, although

such backhauling was done on a periodic or occasional rather than regular or scheduled manner, and eventhough private respondent's *principal* occupation was not the carriage of goods for others. There is no dispute that private respondent charged his customers a fee for hauling their goods; that fee frequently fell below commercial freight rates is not relevant here.

The Court of Appeals referred to the fact that private respondent held no certificate of public convenience, and concluded he was not a common carrier. This is palpable error. A certificate of public convenience is not a requisite for the incurring of liability under the Civil Code provisions governing common carriers. That liability arises the moment a person or firm acts as a common carrier, without regard to whether or not such carrier has also complied with the requirements of the applicable regulatory statute and implementing regulations and has been granted a certificate of public convenience or other franchise. To exempt private respondent from the liabilities of a common carrier because he has not secured the necessary certificate of public convenience, would be offensive to sound public policy; that would be to reward private respondent precisely for failing to comply with applicable statutory requirements The business of a common carrier impinges directly and intimately upon the safety and well being and property of those members of the general community who happen to deal with such carrier. The law imposes duties and liabilities upon common carriers for the safety and protection of those who utilize their services and the law cannot allow a common carrier to render such duties and liabilities merely facultative by simply failing to obtain the necessary permits and authorizations.

2. YES. We find that the M/V "Cherokee" was not seaworthy when it embarked on its voyage on 19 November 1984. The vessel was not even sufficiently manned at the time. "For a vessel to be seaworthy, it must be adequately equipped for the voyage and manned with a sufficient number of competent officers and crew. The failure of a common carrier to maintain in seaworthy condition its vessel involved in a contract of carriage is a clear breach of its duty prescribed in Article 1755 of the Civil Code.

Neither do we agree with LOADSTAR's argument that the "limited liability" theory should be applied in this case. The doctrine of limited liability does not apply where there was negligence on the part of the vessel owner or agent. LOADSTAR was at fault or negligent in not maintaining a seaworthy vessel and in having allowed its vessel to sail despite knowledge of an approaching typhoon. In any event, it did not sink because of any storm that may be deemed as *force majeure*, inasmuch as the wind condition in the performance of its duties, LOADSTAR cannot hide behind the "limited liability" doctrine to escape responsibility for the loss of the vessel and its cargo.

- Equitable Leasing Corporation vs. Lucita Suyom et al., G.R. No. 143360, September 5, 2002

EQUITABLE LEASING CORPORATION, *Petitioner* –versus- LUCITA SUYOM, MARISSA ENANO, MYRNA TAMAYO and FELIX OLEDAN, *Respondents.*

G.R. No. 143360, THIRD DIVISION September 5, 2002, PANGANIBAN, J.

In an action based on quasi delict, the registered owner of a motor vehicle is solidarily liable for the injuries and damages caused by the negligence of the driver, in spite of the fact that the vehicle may have already been the subject of an unregistered Deed of Sale in favor of another person. Unless registered with the Land Transportation Office, the sale — while valid and binding between the parties — does not affect third parties, especially the victims of accidents involving the said transport

equipment. Thus, in the present case, Petitioner, which is the registered owner, is liable for the acts of the driver employed by its former lessee who has become the owner of that vehicle by virtue of an unregistered Deed of Sale.

FACTS:

A Fuso Road Tractor driven by Raul Tutor rammed into the house cum store of Myrna Tamayo located at Pier 18, Vitas, Tondo, Manila. A portion of the house was destroyed. Pinned to death under the engine of the tractor were Respondent Myrna Tamayo's son, Reniel Tamayo, and Respondent Felix Oledan's daughter, Felmarie Oledan. Injured were Respondent Oledan himself, Respondent Marissa Enano, and two sons of Respondent Lucita Suyom.

Tutor was charged with and later convicted of reckless imprudence resulting in multiple homicide and multiple physical injuries.

The registered owner of the tractor was "Equitable Leasing Corporation/leased to Edwin Lim." respondents filed against Raul Tutor, Ecatine Corporation ("Ecatine") and Equitable Leasing Corporation ("Equitable") a Complaint for damages.
The trial court issued an Order dropping Raul Tutor, Ecatine and Edwin Lim from the Complaint, because they could not be located and served with summonses. On the other hand, in its Answer with Counterclaim, petitioner alleged that the vehicle had already been sold to Ecatine and that the former was no longer in possession and control thereof at the time of the incident. It also claimed that Tutor was an employee, not of Equitable, but of Ecatine.

After trial on the merits, the RTC held that since the Deed of Sale between petitioner and Ecatine had not been registered with the Land Transportation Office, (LTO), the legal owner was still Equitable. Thus, petitioner was liable to respondents.

Sustaining the RTC, the CA held that petitioner was still to be legally deemed the owner/operator of the tractor, even if that vehicle had been the subject of a Deed of Sale in favor of Ecatine on December 9, 1992. The reason cited by the CA was that the Certificate of Registration on file with the LTO still remained in petitioner's name. In order that a transfer of ownership of a motor vehicle can bind third persons, it must be duly recorded in the LTO.

Petitioner contends that it should not be held liable for the damages sustained by respondents and that arose from the negligence of the driver of the Fuso Road Tractor, which it had already sold to Ecatine at the time of the accident. Not having employed Raul Tutor, the driver of the vehicle, it could not have controlled or supervised him.

ISSUE:

Whether or not petitioner is liable for damages suffered by private respondents in an action based on quasi delict for the negligent acts of a driver who is not the employee of the petitioner. (YES)

RULING:

We hold petitioner liable for the deaths and the injuries complained of, because it was the registered owner of the tractor at the time of the accident on July 17, 1994. The Court has

consistently ruled that, regardless of sales made of a motor vehicle, the registered owner is the lawful operator insofar as the public and third persons are concerned; consequently, it is directly and primarily responsible for the consequences of its operation. In contemplation of law, the owner/operator of record is the employer of the driver, the actual operator and employer being considered as merely its agent. The same principle applies even if the registered owner of any vehicle does not use it for public service.

Since Equitable remained the registered owner of the tractor, it could not escape primary liability for the deaths and the injuries arising from the negligence of the driver.

The finance-lease agreement between Equitable on the one hand and Lim or Ecatine on the other has already been superseded by the sale. In any event, it does not bind third persons.

True, the LTO Certificate of Registration, dated "5/31/91," qualifies the name of the registered owner as "EQUITABLE LEASING CORPORATION/Leased to Edwin Lim." But the lease agreement between Equitable and Lim has been overtaken by the Deed of Sale on December 9, 1992, between petitioner and Ecatine. While this Deed does not affect respondents in this quasi delict suit, it definitely binds petitioner because, unlike them, it is a party to it.

We must stress that the failure of Equitable and/or Ecatine to register the sale with the LTO should not prejudice respondents, who have the legal right to rely on the legal principle that the registered vehicle owner is liable for the damages caused by the negligence of the driver. Petitioner cannot hide behind its allegation that Tutor was the employee of Ecatine. This will effectively prevent respondents from recovering their losses on the basis of the inaction or fault of petitioner in failing to register the sale. The non-registration is the fault of petitioner, which should thus face the legal consequences thereof.

- Light Rail Transit Authority & Rodolfo Roman vs. Marjorie Natividad, G.R. No. 145804, February 6, 2003

LIGHT RAIL TRANSIT AUTHORITY & RODOLFO ROMAN, *Petitioners* –versus- MARJORIE NAVIDAD, Heirs of the Late NICANOR NAVIDAD & PRUDENT SECURITY AGENCY, *Respondents*.
G.R. No. 145804, FIRST DIVISION, February 6, 2003, VITUG,J

A contract of carriage was created from the moment Navidad paid the fare at the LRT station and entered the premises of the latter, entitling Navidad to all the rights and protection under a contractual relation.

FACTS:

Navidad, then drunk, entered the EDSA LRT station after purchasing a token representing payment of the fare. While Navidad was standing on the platform near the LRT tracks, Escartin, the security guard assigned to the area approached Navidad. An altercation between the two ensued that led to a fist fight. No evidence was adduced to indicate how the fight started or who delivered the first blow or how Navidad later fell on the LRT tracks. At the exact moment that Navidad fell, an LRT train, operated by Roman, was coming in. Navidad was struck and killed instantaneously by the moving train. The widow of Navidad, along with her children, filed a complaint for damages against

Escartin, Roman, the LRTA, the Metro Transit Organization, Inc. (Metro Transit), and Prudent for the death of her husband.

The trial court ordered Prudent Security and Escartin to pay damages. On appeal, the appellate court exonerated Prudent from any liability for the death of Navidad and, instead, holding the LRTA and Roman jointly and severally liable. The appellate court ruled that while the deceased might not have then as yet boarded the train, a contract of carriage theretofore had already existed when the victim entered the place where passengers were supposed to be after paying the fare and getting the corresponding token therefor.

ISSUE:

Whether or not there exists a contract of carriage. (YES)

RULING:

A contract of carriage was created from the moment Navidad paid the fare at the LRT station and entered the premises of the latter, entitling Navidad to all the rights and protection under a contractual relation. LRTA and Roman are liable for the death of Navidad in failing to exercise extraordinary diligence imposed upon a common carrier. The law requires common carriers to carry passengers safely using the utmost diligence of very cautious persons with due regard for all circumstances. Such duty of a common carrier to provide safety to its passengers obligates it not only during the course of the trip but for so long as the passengers are within its premises and where they ought to be in pursuance to the contract of carriage.

A common carrier is liable for death of or injury to passengers (a) through the negligence or wilful acts of its employees or b) on account of wilful acts or negligence of other passengers or of strangers if the common carriers employees through the exercise of due diligence could have prevented or stopped the act or omission. In case of such death or injury, a carrier is presumed to have been at fault or been negligent, and by simple proof of injury, the passenger is relieved of the duty to still establish the fault or negligence of the carrier or of its employees and the burden shifts upon the carrier to prove that the injury is due to an unforeseen event or to force majeure. In the absence of satisfactory explanation by the carrier on how the accident occurred, the presumption would be that it has been at fault.

The foundation of LRTAs liability is the contract of carriage and its obligation to indemnify the victim arises from the breach of that contract by reason of its failure to exercise the high diligence required of the common carrier. In the discharge of its commitment to ensure the safety of passengers, a carrier may choose to hire its own employees or avail itself of the services of an outsider or an independent firm to undertake the task. In either case, the common carrier is not relieved of its responsibilities under the contract of carriage.

- Singapore Airlines Limited vs. Fernandez, G.R. No. 142305, December 10, 2003

SINGAPORE AIRLINES LIMITED, Petitioner –versus- ANDION FERNANDEZ, Respondent.
G.R. No. 142305, SECOND DIVISION, December 10, 2003, CALLEJO, SR., *J.*
If the cause of non-fulfillment of the contract is due to a fortuitous event, it has to be the sole and only cause. Since part of the failure to comply with the obligation of common carrier to deliver its

passengers safely to their destination lay in the defendant's failure to provide comfort and convenience to its stranded passengers using extraordinary diligence, the cause of non-fulfillment is not solely and exclusively due to fortuitous event, but due to something which defendant airline could have prevented, defendant becomes liable to plaintiff."

Indeed, in the instant case, petitioner was not without recourse to enable it to fulfill its obligation to transport the respondent safely as scheduled as far as human care and foresight can provide to her destination. Tagged as a premiere airline as it claims to be and with the complexities of air travel, it was certainly well-equipped to be able to foresee and deal with such situation.

The petitioner's diligence in communicating to its passengers the consequences of the delay in their flights was wanting

FACTS:

Respondent Andion Fernandez is an acclaimed soprano here in the Philippines and abroad. At the time of the incident, she was availing an educational grant from the Federal Republic of Germany, pursuing a Master's Degree in Music majoring in Voice.

She was invited to sing before the King and Queen of Malaysia on February 3 and 4, 1991. For this singing engagement, an airline passage ticket was purchased from petitioner Singapore Airlines which would transport her to Manila from Frankfurt, Germany on January 28, 1991. From Manila, she would proceed to Malaysia on the next day. It was necessary for the respondent to pass by Manila in order to gather her wardrobe; and to rehearse and coordinate with her pianist her repertoire for the aforesaid performance.

The petitioner issued the respondent a Singapore Airlines ticket for Flight No. SQ 27, leaving Frankfurt, Germany on January 27, 1991 bound for Singapore with onward connections from Singapore to Manila. Flight No. SQ 27 was scheduled to leave Frankfurt at 1:45 in the afternoon of January 27, 1991, arriving at Singapore at 8:50 in the morning of January 28, 1991. The connecting flight from Singapore to Manila, Flight No. SQ 72, was leaving Singapore at 11:00 in the morning of January 28, 1991, arriving in Manila at 2:20 in the afternoon of the same day.

On January 27, 1991, Flight No. SQ 27 left Frankfurt but arrived in Singapore two hours late or at about 11:00 in the morning of January 28, 1991. By then, the aircraft bound for Manila had left as scheduled, leaving the respondent and about 25 other passengers stranded in the Changi Airport in Singapore.

Upon disembarkation at Singapore, the respondent approached the transit counter who referred her to the nightstop counter and told the lady employee thereat that it was important for her to reach Manila on that day, January 28, 1991. The lady employee told her that there were no more flights to Manila for that day and that respondent had no choice but to stay in Singapore. Upon respondent's persistence, she was told that she can actually fly to Hong Kong going to Manila but since her ticket was non-transferable, she would have to pay for the ticket. The respondent could not accept the offer because she had no money to pay for it. Her pleas for the respondent to make arrangements to transport her to Manila were unheeded.

The respondent then requested the lady employee to use their phone to make a call to Manila. Over the employees' reluctance, the respondent telephoned her mother to inform the latter that she missed the connecting flight. The respondent was able to contact a family friend who picked her up from the airport for her overnight stay in Singapore.

The next day, after being brought back to the airport, the respondent proceeded to petitioner's counter which says: "Immediate Attention To Passengers with Immediate Booking." There were four or five passengers in line. The respondent approached petitioner's male employee at the counter to make arrangements for immediate booking only to be told: "Can't you see I am doing something." She explained her predicament but the male employee uncaringly retorted: "It's your problem, not ours."

The respondent never made it to Manila and was forced to take a direct flight from Singapore to Malaysia on January 29, 1991, through the efforts of her mother and travel agency in Manila. Her mother also had to travel to Malaysia bringing with her respondent's wardrobe and personal things needed for the performance that caused them to incur an expense of about P50,000.

As a result of this incident, the respondent's performance before the Royal Family of Malaysia was below par. Because of the rude and unkind treatment she received from the petitioner's personnel in Singapore, the respondent was engulfed with fear, anxiety, humiliation and embarrassment causing her to suffer mental fatigue and skin rashes. She was thereby compelled to seek immediate medical attention upon her return to Manila for "acute urticaria."

On June 15, 1993, the RTC awarded damages in favor of respondent.

The petitioner assails the award of damages contending that it exercised the extraordinary diligence required by law under the given circumstances. The delay of Flight No. SQ 27 from Frankfurt to Singapore on January 28, 1991 for more than two hours was due to a fortuitous event and beyond petitioner's control.

The petitioner further contends that it could not also be held in bad faith because its personnel did their best to look after the needs and interests of the passengers including the respondent. Because the respondent and the other 25 passengers missed their connecting flight to Manila, the petitioner automatically booked them to the flight the next day and gave them free hotel accommodations for the night. It was respondent who did not take petitioner's offer and opted to stay with a family friend in Singapore.

ISSUE:

W/N the petitioner exercise the extraordinary diligence required by law under the given circumstances. (NO)

RULING:

When an airline issues a ticket to a passenger, confirmed for a particular flight on a certain date, a contract of carriage arises. The passenger then has every right to expect that he be transported on

that flight and on that date. If he does not, then the carrier opens itself to a suit for a breach of contract of carriage.

In the case at bar, it is undisputed that the respondent carried a confirmed ticket for the two-legged trip from Frankfurt to Manila: 1) Frankfurt-Singapore; and 2) Singapore-Manila. In her contract of carriage with the petitioner, the respondent certainly expected that she would fly to Manila on Flight No. SQ 72 on January 28, 1991. Since the petitioner did not transport the respondent as covenanted by it on said terms, the petitioner clearly breached its contract of carriage with the respondent. The respondent had every right to sue the petitioner for this breach. The defense that the delay was due to fortuitous events and beyond petitioner's control is unavailing. In PAL vs. CA, we held that:

.... Undisputably, PAL's diversion of its flight due to inclement weather was a fortuitous event. Nonetheless, such occurrence did not terminate PAL's contract with its passengers. Being in the business of air carriage and the sole one to operate in the country, PAL is deemed to be equipped to deal with situations as in the case at bar. What we said in one case once again must be stressed, i.e., the relation of carrier and passenger continues until the latter has been landed at the port of destination and has left the carrier's premises. Hence, PAL necessarily would still have to exercise extraordinary diligence in safeguarding the comfort, convenience and safety of its stranded passengers until they have reached their final destination...

...

"...If the cause of non-fulfillment of the contract is due to a fortuitous event, it has to be the sole and only cause (Art. 1755 C.C., Art. 1733 C.C.). Since part of the failure to comply with the obligation of common carrier to deliver its passengers safely to their destination lay in the defendant's failure to provide comfort and convenience to its stranded passengers using extraordinary diligence, the cause of non-fulfillment is not solely and exclusively due to fortuitous event, but due to something which defendant airline could have prevented, defendant becomes liable to plaintiff."

Indeed, in the instant case, petitioner was not without recourse to enable it to fulfill its obligation to transport the respondent safely as scheduled as far as human care and foresight can provide to her destination. Tagged as a premiere airline as it claims to be and with the complexities of air travel, it was certainly well-equipped to be able to foresee and deal with such situation.

The petitioner's diligence in communicating to its passengers the consequences of the delay in their flights was wanting. As elucidated by the trial court:

It maybe that delay in the take off and arrival of commercial aircraft could not be avoided and may be caused by diverse factors such as those testified to by defendant's pilot. However, knowing fully well that even before the plaintiff boarded defendant's Jumbo aircraft in Frankfurt bound for Singapore, it has already incurred a delay of two hours. Nevertheless, defendant did not take the trouble of informing plaintiff, among its other passengers of such a delay and that in such a case, the usual practice of defendant airline will be that they have to stay overnight at their connecting airport; and much less did it inquire from the plaintiff and the other 25 passengers bound for Manila whether they are amenable to stay overnight in Singapore and to take the connecting flight to Manila the next day. Such information should have been given and inquiries made in Frankfurt because even the defendant airline's manual provides that in case of urgency to reach his or her

destination on the same date, the head office of defendant in Singapore must be informed by telephone or telefax so as the latter may make certain arrangements with other airlines in Frankfurt to bring such a passenger with urgent business to Singapore in such a manner that the latter can catch up with her connecting flight such as S-27/28 without spending the night in Singapore.

The respondent was not remiss in conveying her apprehension about the delay of the flight when she was still in Frankfurt. Upon the assurance of petitioner's personnel in Frankfurt that she will be transported to Manila on the same date, she had every right to expect that obligation fulfilled.

When a passenger contracts for a specific flight, he has a purpose in making that choice which must be respected. This choice, once exercised, must not be impaired by a breach on the part of the airline without the latter incurring any liability. For petitioner's failure to bring the respondent to her destination, as scheduled, we find the petitioner clearly liable for the breach of its contract of carriage with the respondent.

- Cathay Pacific Airways, Ltd., vs. Spouses Daniel Vazquez And Maria Luisa Madrigal Vazquez, G.R. No. 150843, March 14, 2003

CATHAY PACIFIC AIRWAYS, LTD., *Petitioner* –versus- SPOUSES DANIEL VAZQUEZ and MARIA LUISA MADRIGAL VAZQUEZ, *Respondents*.
G.R. No. 150843, FIRST DIVISION, March 14, 2003, DAVIDE, JR., *C.J*.

As members of the Club, they had priority for upgrading of their seat accommodation at no extra cost when an opportunity arises. But, just like other privileges, such priority could be waived. The Vazquezes should have been consulted first whether they wanted to avail themselves of the privilege or would consent to a change of seat accommodation before their seat assignments were given to other passengers.

Whatever their reason was and however odd it might be, the Vazquezes had every right to decline the upgrade and insist on the Business Class accommodation they had booked for and which was designated in their boarding passes. They clearly waived their priority or preference when they asked that other passengers be given the upgrade. It should not have been imposed on them over their vehement objection. By insisting on the upgrade, Cathay breached its contract of carriage with the Vazquezes.

FACTS:

Cathay is a common carrier engaged in the business of transporting passengers and goods by air. Among the many routes it services is the Manila-Hongkong-Manila course. As part of its marketing strategy, Cathay accords its frequent flyers membership in its Marco Polo Club. The members enjoy several privileges, such as priority for *upgrading* of booking without any extra charge whenever an opportunity arises. Thus, a frequent flyer booked in the Business Class has priority for upgrading to First Class if the Business Class Section is fully booked.

Respondents-spouses Dr. Daniel Earnshaw Vazquez and Maria Luisa Madrigal Vazquez are frequent flyers of Cathay and are Gold Card members of its Marco Polo Club. On 24 September 1996, the

Vazquezes, together with their maid and two friends Pacita Cruz and Josefina Vergel de Dios, went to Hongkong for pleasure and business.

For their return flight to Manila on 28 September 1996, they were booked on Cathay's Flight CX-905, with departure time at 9:20 p.m. Two hours before their time of departure, the Vazquezes and their companions checked in their luggage at Cathay's check-in counter at Kai Tak Airport and were given their respective boarding passes, to wit, Business Class boarding passes for the Vazquezes and their two friends. They then proceeded to the Business Class passenger lounge.

When boarding time was announced, the Vazquezes and their two friends went to Departure Gate No. 28, which was designated for Business Class passengers. Dr. Vazquez presented his boarding pass to the ground stewardess, who in turn inserted it into an electronic machine reader or computer at the gate. The ground stewardess was assisted by a ground attendant by the name of Clara Lai Han Chiu. When Ms. Chiu glanced at the computer monitor, she saw a message that there was a "seat change" from Business Class to First Class for the Vazquezes.

Ms. Chiu approached Dr. Vazquez and told him that the Vazquezes' accommodations were upgraded to First Class. Dr. Vazquez refused the upgrade, reasoning that it would not look nice for them as hosts to travel in First Class and their guests, in the Business Class; and moreover, they were going to discuss business matters during the flight. He also told Ms. Chiu that she could have other passengers instead transferred to the First Class Section. Taken aback by the refusal for upgrading, Ms. Chiu consulted her supervisor, who told her to handle the situation and convince the Vazquezes to accept the upgrading. Ms. Chiu informed the latter that the Business Class was fully booked, and that since they were Marco Polo Club members they had the priority to be upgraded to the First Class. Dr. Vazquez continued to refuse, so Ms. Chiu told them that if they would not avail themselves of the privilege, they would not be allowed to take the flight. Eventually, after talking to his two friends, Dr. Vazquez gave in. He and Mrs. Vazquez then proceeded to the First Class Cabin.

Upon their return to Manila, the Vazquezes, in a letter of 2 October 1996 addressed to Cathay's Country Manager, demanded that they be indemnified in the amount of P1million for the "humiliation and embarrassment" caused by its employees. They also demanded "a written apology from the management of Cathay, preferably a responsible person with a rank of no less than the Country Manager, as well as the apology from Ms. Chiu" within fifteen days from receipt of the letter.

after Cathay's failure to give them any feedback, the Vazquezes instituted before the Regional Trial Court of Makati City an action for damages against Cathay, praying for the payment to each of them the amounts of P250,000 as temperate damages; P500,000 as moral damages; P500,000 as exemplary or corrective damages; and P250,000 as attorney's fees.

The trial court found for the Vazquezes. According to the trial court, Cathay offers various classes of seats from which passengers are allowed to choose regardless of their reasons or motives, whether it be due to budgetary constraints or whim. The choice imposes a clear obligation on Cathay to transport the passengers in the class chosen by them. The carrier cannot, without exposing itself to liability, force a passenger to involuntarily change his choice. The upgrading of the Vazquezes' accommodation over and above their vehement objections was due to the overbooking of the Business Class. It was a pretext to pack as many passengers as possible into the plane to maximize

Cathay's revenues. Cathay's actuations in this case displayed deceit, gross negligence, and bad faith, which entitled the Vazquezes to awards for damages.

On appeal by the petitioners, the Court of Appeals, deleted the award for exemplary damages; and it reduced the awards for moral and nominal damages for each of the Vazquezes to P250,000 and P50,000, respectively, and the attorney's fees and litigation expenses to P50,000 for both of them.

The Court of Appeals ratiocinated that by upgrading the Vazquezes to First Class, Cathay novated the contract of carriage without the former's consent. There was a breach of contract not because Cathay overbooked the Business Class Section of Flight CX-905 but because the latter pushed through with the upgrading despite the objections of the Vazquezes.

ISSUES:

1. W/N by upgrading the seat accommodation of the Vazquezes from Business Class to First Class Cathay breached its contract of carriage with the Vazquezes. (YES)
2. W/N the upgrading was tainted with fraud or bad faith. (NO)
3. W/N the Vazquezes are entitled to damages.

RULING:

1. A contract is a meeting of minds between two persons whereby one agrees to give something or render some service to another for a consideration. There is no contract unless the following requisites concur: (1) consent of the contracting parties; (2) an object certain which is the subject of the contract; and (3) the cause of the obligation which is established.[4] Undoubtedly, a contract of carriage existed between Cathay and the Vazquezes. They voluntarily and freely gave their consent to an agreement whose object was the transportation of the Vazquezes from Manila to Hong Kong and back to Manila, with seats in the Business Class Section of the aircraft, and whose cause or consideration was the fare paid by the Vazquezes to Cathay.

Breach of contract is defined as the "failure without legal reason to comply with the terms of a contract." It is also defined as the "failure, without legal excuse, to perform any promise which forms the whole or part of the contract."

The contract between the parties was for Cathay to transport the Vazquezes to Manila on a Business Class accommodation in Flight CX-905. After checking-in their luggage at the Kai Tak Airport in Hong Kong, the Vazquezes were given boarding cards indicating their seat assignments in the Business Class Section. However, during the boarding time, when the Vazquezes presented their boarding passes, they were informed that they had a seat change from Business Class to First Class. It turned out that the Business Class was overbooked in that there were more passengers than the number of seats. Thus, the seat assignments of the Vazquezes were given to waitlisted passengers, and the Vazquezes, being members of the Marco Polo Club, were upgraded from Business Class to First Class.

We note that in all their pleadings, the Vazquezes never denied that they were members of Cathay's Marco Polo Club. They knew that as members of the Club, they had priority for upgrading of their seat accommodation at no extra cost when an opportunity arises. But, just like other privileges, such priority could be waived. The Vazquezes should have been consulted first whether they

wanted to avail themselves of the privilege or would consent to a change of seat accommodation before their seat assignments were given to other passengers. Normally, one would appreciate and accept an upgrading, for it would mean a better accommodation. But, whatever their reason was and however odd it might be, the Vazquezes had every right to decline the upgrade and insist on the Business Class accommodation they had booked for and which was designated in their boarding passes. They clearly waived their priority or preference when they asked that other passengers be given the upgrade. It should not have been imposed on them over their vehement objection. By insisting on the upgrade, Cathay breached its contract of carriage with the Vazquezes.

2. Bad faith and fraud are allegations of fact that demand clear and convincing proof. They are never presumed.

Fraud has been defined to include an inducement through insidious machination. Insidious machination refers to a deceitful scheme or plot with an evil or devious purpose. Deceit exists where the party, with intent to deceive, conceals or omits to state material facts and, by reason of such omission or concealment, the other party was induced to give consent that would not otherwise have been given.

Bad faith does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud.

We find no persuasive proof of fraud or bad faith in this case. The Vazquezes were not induced to agree to the upgrading through insidious words or deceitful machination or through willful concealment of material facts. Upon boarding, Ms. Chiu told the Vazquezes that their accommodations were upgraded to First Class in view of their being Gold Card members of Cathay's Marco Polo Club. She was honest in telling them that their seats were already given to other passengers and the Business Class Section was fully booked. Ms. Chiu might have failed to consider the remedy of offering the First Class seats to other passengers. But, we find no bad faith in her failure to do so, even if that amounted to an exercise of poor judgment.

Neither was the transfer of the Vazquezes effected for some evil or devious purpose. As testified to by Mr. Robson, the First Class Section is better than the Business Class Section in terms of comfort, quality of food, and service from the cabin crew; thus, the difference in fare between the First Class and Business Class at that time was $250.Needless to state, an upgrading is for the better condition and, definitely, for the benefit of the passenger.

We are not persuaded by the Vazquezes' argument that the overbooking of the Business Class Section constituted bad faith on the part of Cathay. Section 3 of the Economic Regulation No. 7 of the Civil Aeronautics Board,

Provides that an overbooking that does not exceed ten percent is not considered deliberate and therefore does not amount to bad faith. Here, while there was admittedly an overbooking of the Business Class, there was no evidence of overbooking of the plane beyond ten percent, and no passenger was ever bumped off or was refused to board the aircraft.

3. In this case, we have ruled that the breach of contract of carriage, which consisted in the involuntary upgrading of the Vazquezes' seat accommodation, was not attended by fraud or bad faith. The Court of Appeals' award of moral damages has, therefore, no leg to stand on.

The deletion of the award for exemplary damages by the Court of Appeals is correct. It is a requisite in the grant of exemplary damages that the act of the offender must be accompanied by bad faith or done in wanton, fraudulent or malevolent manner.[15] Such requisite is absent in this case. Moreover, to be entitled thereto the claimant must first establish his right to moral, temperate, or compensatory damages.[16] Since the Vazquezes are not entitled to any of these damages, the award for exemplary damages has no legal basis. And where the awards for moral and exemplary damages are eliminated, so must the award for attorney's fees.[17]

The most that can be adjudged in favor of the Vazquezes for Cathay's breach of contract is an award for nominal damages under Article 2221 of the Civil Code, which reads as follows:

Article 2221 of the Civil Code provides:

> Article 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

Nonetheless, considering that the breach was intended to give more benefit and advantage to the Vazquezes by upgrading their Business Class accommodation to First Class because of their valued status as Marco Polo members, we reduce the award for nominal damages to P5,000.

- William Tiu, doing business under the name and style of "D' Rough Riders" vs. Pedro A. Arriesgado, G.R. No. 138060, September 1, 2004

WILLIAM TIU, doing business under the name and style of "D' Rough Riders," and VIRGILIO TE LAS PIÑAS, *Petitioners* –versus- PEDRO A. ARRIESGADO, BENJAMIN CONDOR, SERGIO PEDRANO and PHILIPPINE PHOENIX SURETY AND INSURANCE, INC., *Respondents*.
G.R. No. 138060, SECOND DIVISION, September 1, 2004, CALLEJO, SR., *J*

We cannot subscribe to respondents Condor and Pedrano's claim that they should be absolved from liability because, as found by the trial and appellate courts, the proximate cause of the collision was the fast speed at which petitioner Laspiñas drove the bus. To accept this proposition would be to come too close to wiping out the fundamental principle of law that a man must respond for the foreseeable consequences of his own negligent act or omission. Indeed, our law on quasi-delicts seeks to reduce the risks and burdens of living in society and to allocate them among its members. To accept this proposition would be to weaken the very bonds of society.

FACTS:

At about 10:00 p.m. of March 15, 1987, the cargo truck marked "Condor Hollow Blocks and General Merchandise" bearing plate number GBP-675 was loaded with firewood in Bogo, Cebu and left for Cebu City.

Upon reaching Sitio Aggies, Poblacion, Compostela, Cebu, just as the truck passed over a bridge, one of its rear tires exploded. The driver, Sergio Pedrano, then parked along the right side of the national highway and removed the damaged tire to have it vulcanized at a nearby shop, about 700 meters away.

Pedrano left his helper, Jose Mitante, Jr. to keep watch over the stalled vehicle, and instructed the latter to place a spare tire six fathoms away behind the stalled truck to serve as a warning for oncoming vehicles. The truck's tail lights were also left on. It was about 12:00 a.m., March 16, 1987.

At about 4:45 a.m., D' Rough Riders passenger bus with plate number PBP-724 driven by Virgilio Te Laspiñas was cruising along the national highway of Sitio Aggies, Poblacion, Compostela, Cebu. The passenger bus was also bound for Cebu City, and had come from Maya, Daanbantayan, Cebu. Among its passengers were the Spouses Pedro A. Arriesgado and Felisa Pepito Arriesgado, who were seated at the right side of the bus, about three (3) or four (4) places from the front seat.

As the bus was approaching the bridge, Laspiñas saw the stalled truck, which was then about 25 meters away. He applied the breaks and tried to swerve to the left to avoid hitting the truck. But it was too late; the bus rammed into the truck's left rear. The impact damaged the right side of the bus and left several passengers injured. Pedro Arriesgado lost consciousness and suffered a fracture in his right colles. His wife, Felisa, was brought to the Danao City Hospital. She was later transferred to the Southern Island Medical Center where she died shortly thereafter.

Respondent Pedro A. Arriesgado then filed a complaint for breach of contract of carriage, damages and attorney's fees before the Regional Trial Court of Cebu City against the petitioners, D' Rough Riders bus operator William Tiu and his driver, Virgilio Te Laspiñas on May 27, 1987. The respondent alleged that the passenger bus in question was cruising at a fast and high speed along the national road, and that petitioner Laspiñas did not take precautionary measures to avoid the accident.

The petitioners, for their part, filed a Third-Party Complaint against the following: respondent Philippine Phoenix Surety and Insurance, Inc. (PPSII), petitioner Tiu's insurer; respondent Benjamin Condor, the registered owner of the cargo truck; and respondent Sergio Pedrano, the driver of the truck. They alleged that petitioner Laspiñas was negotiating the uphill climb along the national highway of Sitio Aggies, Poblacion, Compostela, in a moderate and normal speed. It was further alleged that the truck was parked in a slanted manner, its rear portion almost in the middle of the highway, and that no early warning device was displayed. Petitioner Laspiñas promptly applied the brakes and swerved to the left to avoid hitting the truck head-on, but despite his efforts to avoid damage to property and physical injuries on the passengers, the right side portion of the bus hit the cargo truck's left rear.

ISSUES:

1. W/N petitioner Laspiñas was negligent in driving the ill-fated bus. (Yes)
2. W/N petitioner Tiu failed to overcome the presumption of negligence against him as one engaged in the business of common carriage. (Yes)
3. W/N the doctrine of Last Clear Chance is applicable in the case. (No)
4. W/N respondents Pedrano and Condor were negligent. (Yes)
5. W/N respondent PPSII as insurer is liable. (Yes)

RULING:

1. Petitioner Laspiñas' negligence in driving the bus is apparent in the records. By his own admission, he had just passed a bridge and was traversing the highway of Compostela, Cebu at a speed of 40 to 50 kilometers per hour before the collision occurred. The maximum speed allowed by law on a bridge is only **30 kilometers per hour**. And, as correctly pointed out by the trial court, petitioner Laspiñas also violated **Section 35** of the Land Transportation and Traffic Code, Republic Act No. 4136, as amended:

Sec. 35. Restriction as to speed. – (a) Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed, not greater nor less than is reasonable and proper, having due regard for the traffic, the width of the highway, and or any other condition then and there existing; and no person shall drive any motor vehicle upon a highway at such speed as to endanger the life, limb and property of any person, nor at a speed greater than will permit him to bring the vehicle to a stop within the assured clear distance ahead. Under Article 2185 of the Civil Code, a person driving a vehicle is presumed negligent if at the time of the mishap, he was violating any traffic regulation.

2. Evidence may be submitted to overcome such presumption of negligence, it must be shown that the carrier observed the required extraordinary diligence, which means that the carrier must show the utmost diligence of very cautious persons as far as human care and foresight can provide, or that the accident was caused by fortuitous event. As correctly found by the trial court, petitioner Tiu failed to conclusively rebut such presumption. The negligence of petitioner Laspiñas as driver of the passenger bus is, thus, binding against petitioner Tiu, as the owner of the passenger bus engaged as a common carrier.

3. It is inapplicable in the instant case, as it only applies in a suit between the owners and drivers of two colliding vehicles. It does not arise **where a passenger demands responsibility from the carrier to enforce its contractual obligations**, for it would be inequitable to exempt the negligent driver and its owner on the ground that the other driver was likewise guilty of negligence.43 The common law notion of last clear chance permitted courts to grant recovery to a plaintiff who has also been negligent provided that the defendant had the last clear chance to avoid the casualty and failed to do so. Accordingly, it is difficult to see what role, if any, the common law of last clear chance doctrine has to play in a jurisdiction where the common law concept of contributory negligence as an absolute bar to recovery by the plaintiff, has itself been rejected, as it has been in Article 2179 of the Civil Code. Thus, petitioner Tiu cannot escape liability for the death of respondent Arriesgado's wife due to the negligence of petitioner Laspiñas, his employee, on this score.

4. The manner in which the truck was parked clearly endangered oncoming traffic on both sides, considering that the tire blowout which stalled the truck in the first place occurred in the wee hours of the morning. The Court can only now surmise that the unfortunate incident could have been averted had respondent Condor, the owner of the truck, equipped the said vehicle with lights, flares, or, at the very least, an **early warning device**. Hence, we cannot subscribe to respondents Condor and Pedrano's claim that they should be absolved from liability because, as found by the trial and appellate courts, the proximate cause of the collision was the fast speed at which petitioner Laspiñas drove the bus. To accept this proposition would be to come too close to wiping out the fundamental principle of law that **a man must respond for the foreseeable consequences of his own negligent act or omission**. Indeed, our law on quasi-delicts seeks to

reduce the risks and burdens of living in society and to allocate them among its members. To accept this proposition would be to weaken the very bonds of society.

5. The nature of Compulsory Motor Vehicle Liability Insurance is such that it is primarily intended to provide compensation for the death or bodily injuries suffered by innocent third parties or passengers as a result of the negligent operation and use of motor vehicles. The victims and/or their dependents are assured of immediate financial assistance, regardless of the financial capacity of motor vehicle owners.

- Philippine Airlines Inc. vs. Court of Appeals, G.R. No. 123238, September 22, 2008

PHILIPPINE AIRLINES, INCORPORATED, *Petitioner* - versus – COURT OF APPEALS and SPOUSES MANUEL S. BUNCIO and AURORA R. BUNCIO, Minors DEANNA R. BUNCIO and NIKOLAI R. BUNCIO, assisted by their Father, MANUEL S. BUNCIO, and JOSEFA REGALADO, represented by her Attorney-in-Fact, MANUEL S. BUNCIO.
G.R. No. 123238, THIRD DIVISION, September 22, 2008, CHICO-NAZARIO, J.

Evidently, petitioner was fully aware that Deanna and Nikolai would travel as unaccompanied minors and, therefore, should be specially taken care of considering their tender age and delicate situation. Petitioner also knew well that the indemnity bond was required for Deanna and Nikolai to make a connecting flight from San Francisco to Los Angeles, and that it was its duty to produce the indemnity bond to the staff of United Airways 996 so that Deanna and Nikolai could board the connecting flight. Yet, despite knowledge of the foregoing, it did not exercise utmost care in handling the indemnity bond resulting in its loss in Honolulu, Hawaii. This was the proximate cause why Deanna and Nikolai were not allowed to take the connecting flight and were thus stranded overnight in San Francisco.

The foregoing circumstances reflect petitioner's utter lack of care for and inattention to the welfare of Deanna and Nikolai as unaccompanied minor passengers. They also indicate petitioner's failure to exercise even slight care and diligence in handling the indemnity bond. Clearly, the negligence of petitioner was so gross and reckless that it amounted to bad faith.

Facts:

Sometime before 2 May 1980, private respondents spouses Manuel S. Buncio and Aurora R. Buncio purchased from petitioner Philippine Airlines, Incorporated, two plane tickets for their two minor children, Deanna R. Buncio (Deanna), then 9 years of age, and Nikolai R. Buncio (Nikolai), then 8 years old. Since Deanna and Nikolai will travel as unaccompanied minors, petitioner required private respondents to accomplish, sign and submit to it an indemnity bond. Private respondents complied with this requirement. For the purchase of the said two plane tickets, petitioner agreed to transport Deanna and Nikolai on 2 May 1980 from Manila to San Francisco, California, United States of America (USA), through one of its planes, Flight 106. Petitioner also agreed that upon the arrival of Deanna and Nikolai in San Francisco Airport on 3 May 1980, it would again transport the two on that same day through a connecting flight from San Francisco, California, USA, to Los Angeles, California, USA, via another airline, United Airways 996. Deanna and Nikolai then will be met by

their grandmother, Mrs. Josefa Regalado (Mrs. Regalado), at the Los Angeles Airport on their scheduled arrival on 3 May 1980.

On 2 May 1980, Deanna and Nikolai boarded Flight 106 in Manila. On 3 May 1980, Deanna and Nikolai arrived at the San Francisco Airport. However, the staff of United Airways 996 refused to take aboard Deanna and Nikolai for their connecting flight to Los Angeles because petitioner's personnel in San Francisco could not produce the indemnity bond accomplished and submitted by private respondents. The said indemnity bond was lost by petitioner's personnel during the previous stop-over of Flight 106 in Honolulu, Hawaii. Deanna and Nikolai were then left stranded at the San Francisco Airport. Subsequently, Mr. Edwin Strigl (Strigl), then the Lead Traffic Agent of petitioner in San Francisco, California, USA, took Deanna and Nikolai to his residence in San Francisco where they stayed overnight.

Meanwhile, Mrs. Regalado and several relatives waited for the arrival of Deanna and Nikolai at the Los Angeles Airport. When United Airways 996 landed at the Los Angeles Airport and its passengers disembarked, Mrs. Regalado sought Deanna and Nikolai but she failed to find them. Mrs. Regalado asked a stewardess of the United Airways 996 if Deanna and Nikolai were on board but the stewardess told her that they had no minor passengers. Mrs. Regalado called private respondents and informed them that Deanna and Nikolai did not arrive at the Los Angeles Airport. Private respondents inquired about the location of Deanna and Nikolai from petitioner's personnel, but the latter replied that they were still verifying their whereabouts.

On the morning of 4 May 1980, Strigl took Deanna and Nikolai to San Francisco Airport where the two boarded a Western Airlines plane bound for Los Angeles. Later that day, Deanna and Nikolai arrived at the Los Angeles Airport where they were met by Mrs. Regalado. Petitioner's personnel had previously informed Mrs. Regalado of the late arrival of Deanna and Nikolai on 4 May 1980.

On 17 July 1980, private respondents, through their lawyer, sent a letter to petitioner demanding payment of 1 million pesos as damages for the gross negligence and inefficiency of its employees in transporting Deanna and Nikolai. Petitioner did not heed the demand.

On 20 November 1981, private respondents filed a complaint for damages against petitioner before the RTC.

In its answer to the complaint, petitioner admitted that Deanna and Nikolai were not allowed to take their connecting flight to Los Angeles and that they were stranded in San Francisco. Petitioner, however, denied that the loss of the indemnity bond was caused by the gross negligence and malevolent conduct of its personnel. Petitioner averred that it always exercised the diligence of a good father of the family in the selection, supervision and control of its employees. In addition, Deanna and Nikolai were personally escorted by Strigl, and the latter exerted efforts to make the connecting flight of Deanna and Nikolai to Los Angeles possible. Further, Deanna and Nikolai were not left unattended from the time they were stranded in San Francisco until they boarded Western Airlines for a connecting flight to Los Angeles. Petitioner asked the RTC to dismiss the complaint based on the foregoing averments.

After trial, the RTC rendered a Decision holding petitioner liable for damages for breach of contract of carriage. It ruled that petitioner should pay moral damages for its inattention and lack of care for the welfare of Deanna and Nikolai which, in effect, amounted to bad faith, and for the agony brought

by the incident to private respondents and Mrs. Regalado. It also held that petitioner should pay exemplary damages by way of example or correction for the public good under Article 2229 and 2232 of the Civil Code, plus attorney's fees and costs of suit.

ISSUES:

1. W/N the court of appeals erred in sustaining the RTC award of moral damages. (NO)
2. W/N the court of appeals erred in sustaining the RTC award of exemplary damages. (NO)

RULING:

1. In breach of contract of air carriage, moral damages may be recovered where (1) the mishap results in the death of a passenger; or (2) where the carrier is guilty of fraud or bad faith; or (3) where the negligence of the carrier is so gross and reckless as to virtually amount to bad faith.

Gross negligence implies a want or absence of or failure to exercise even slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.

In Singson v. Court of Appeals, we ruled that a carrier's utter lack of care for and sensitivity to the needs of its passengers constitutes gross negligence and is no different from fraud, malice or bad faith. Likewise, in Philippine Airlines, Inc. v. Court of Appeals, we held that a carrier's inattention to, and lack of care for, the interest of its passengers who are entitled to its utmost consideration, particularly as to their convenience, amount to bad faith and entitles the passenger to an award of moral damages.

It was established in the instant case that since Deanna and Nikolai would travel as unaccompanied minors, petitioner required private respondents to accomplish, sign and submit to it an indemnity bond.

Private respondents complied with this requirement. Petitioner gave a copy of the indemnity bond to one of its personnel on Flight 106, since it was required for the San Francisco-Los Angeles connecting flight of Deanna and Nikolai. Petitioner's personnel lost the indemnity bond during the stop-over of Flight 106 in Honolulu, Hawaii. Thus, Deanna and Nikolai were not allowed to take their connecting flight.

Evidently, petitioner was fully aware that Deanna and Nikolai would travel as unaccompanied minors and, therefore, should be specially taken care of considering their tender age and delicate situation. Petitioner also knew well that the indemnity bond was required for Deanna and Nikolai to make a connecting flight from San Francisco to Los Angeles, and that it was its duty to produce the indemnity bond to the staff of United Airways 996 so that Deanna and Nikolai could board the connecting flight. Yet, despite knowledge of the foregoing, it did not exercise utmost care in handling the indemnity bond resulting in its loss in Honolulu, Hawaii. This was the proximate cause why Deanna and Nikolai were not allowed to take the connecting flight and were thus stranded overnight in San Francisco. Further, petitioner discovered that the indemnity bond was lost only when Flight 106 had already landed in San Francisco Airport and when the staff of United Airways 996 demanded the indemnity bond. This only manifests that petitioner did not check or verify if the indemnity bond was in its custody before leaving Honolulu, Hawaii for San Francisco.

The foregoing circumstances reflect petitioner's utter lack of care for and inattention to the welfare of Deanna and Nikolai as unaccompanied minor passengers. They also indicate petitioner's failure to exercise even slight care and diligence in handling the indemnity bond. Clearly, the negligence of petitioner was so gross and reckless that it amounted to bad faith.

It is worth emphasizing that petitioner, as a common carrier, is bound by law to exercise extraordinary diligence and utmost care in ensuring for the safety and welfare of its passengers with due regard for all the circumstances. The negligent acts of petitioner signified more than inadvertence or inattention and thus constituted a radical departure from the extraordinary standard of care required of common carriers.

2. Article 2232 of the Civil Code provides that exemplary damages may be awarded in a breach of contract if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. In addition, Article 2234 thereof states that the plaintiff must show that he is entitled to moral damages before he can be awarded exemplary damages.

As we have earlier found, petitioner breached its contract of carriage with private respondents, and it acted recklessly and malevolently in transporting Deanna and Nikolai as unaccompanied minors and in handling their indemnity bond. We have also ascertained that private respondents are entitled to moral damages because they have sufficiently established petitioner's gross negligence which amounted to bad faith. This being the case, the award of exemplary damages is warranted.

- The Heirs of the late Ruben Reinoso, Sr. vs. Court of Appeals, GR No. 116121, July 18, 2011

THE HEIRS OF THE LATE RUBEN REINOSO, SR., represented by Ruben Reinoso Jr., *Petitioners* –versus- COURT OF APPEALS, PONCIANO TAPALES, JOSE GUBALLA, and FILWRITERS GUARANTY ASSURANCE CORPORATION, *Respondent*.**
G.R. No. 116121, THIRD DIVISION, July 18, 2011, MENDOZA, *J.*

With respect to the supervision of employees, employers must formulate standard operating procedures, monitor their implementation, and impose disciplinary measures for breaches thereof. These facts must be shown by concrete proof, including documentary evidence.

Defendant Jose Guballa, attempted to overthrow this presumption of negligence by showing that he had exercised the due diligence required of him by seeing to it that the driver must check the vital parts of the vehicle he is assigned to before he leaves the compound like the oil, water, brakes, gasoline, horn ; and that Geronimo had been driving for him sometime in 1976 until the collision in litigation came about ; that whenever his trucks gets out of the compound to make deliveries, it is always accompanied with two (2) helpers. This was all which he considered as selection and supervision in compliance with the law to free himself from any responsibility. This Court then cannot consider the foregoing as equivalent to an exercise of all the care of a good father of a family in the selection and supervision of his driver Mariano Geronimo.

FACTS:

The complaint for damages arose from the collision of a passenger *jeepney* and a truck at around 7:00 o'clock in the evening of June 14, 1979 along E. Rodriguez Avenue, Quezon City. As a result, a

passenger of the *jeepney*, Ruben Reinoso, Sr. *(Reinoso)*, was killed. The passenger *jeepney* was owned by Ponciano Tapales *(Tapales)* and driven by Alejandro Santos *(Santos)*, while the truck was owned by Jose Guballa *(Guballa)* and driven by Mariano Geronimo *(Geronimo).*

The heirs of Reinoso *(petitioners)* filed a complaint for damages against Tapales and Guballa. In turn, Guballa filed a third party complaint against Filwriters Guaranty Assurance Corporation (FGAC) under Policy Number OV-09527.

The RTC rendered a decision in favor of the petitioners and against Guballa.

Under the 3rd party complaint against 3rd party defendant Filwriters Guaranty Assurance Corporation, the Court hereby renders judgment in favor of said 3rd party plaintiff by way of 3rd party liability under policy No. OV-09527

On appeal, the CA set aside and reversed the RTC decision and dismissed the complaint on the ground of non-payment of docket fees pursuant to the doctrine laid down in *Manchester v. CA*. In addition, the CA ruled that since prescription had set in, petitioners could no longer pay the required docket fees.

ISSUES:

1. W/N the Court of Appeals MISAPPLIED THE RULING of the Supreme Court in the case of *Manchester Corporation vs. Court of Appeals* to this case. (YES)
2. W/N private respondents are negligent. (YES)

RULING:

1. The rule is that payment in full of the docket fees within the prescribed period is mandatory. In *Manchester v. Court of Appeals*, it was held that a court acquires jurisdiction over any case only upon the payment of the prescribed docket fee. The strict application of this rule was, however, relaxed two (2) years after in the case of *Sun Insurance Office, Ltd. v. Asuncion*, wherein the Court decreed that where the initiatory pleading is not accompanied by the payment of the docket fee, the court may allow payment of the fee within a reasonable period of time, but in no case beyond the applicable prescriptive or reglementary period. This ruling was made on the premise that the plaintiff had demonstrated his willingness to abide by the rules by paying the additional docket fees required.

Notwithstanding the mandatory nature of the requirement of payment of appellate docket fees, we also recognize that its strict application is qualified by the following: *first*, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; *second,* such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances.

While there is a crying need to unclog court dockets on the one hand, there is, on the other, a greater demand for resolving genuine disputes fairly and equitably, for it is far better to dispose of a case on the merit which is a primordial end, rather than on a technicality that may result in injustice.

In this case, it cannot be denied that the case was litigated before the RTC and said trial court had already rendered a decision. While it was at that level, the matter of non-payment of docket fees was never an issue. It was only the CA which *motu propio* dismissed the case for said reason.

Considering the foregoing, there is a need to suspend the strict application of the rules so that the petitioners would be able to fully and finally prosecute their claim on the merits at the appellate level rather than fail to secure justice on a technicality, for, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice.

2. The facts are beyond dispute. Reinoso, the *jeepney* passenger, died as a result of the collision of a *jeepney* and a truck on June 14, 1979 at around 7:00 o'clock in the evening along E. Rodriguez Avenue, Quezon City. It was established that the primary cause of the injury or damage was the negligence of the truck driver who was driving it at a very fast pace. Based on the sketch and spot report of the police authorities and the narration of the *jeepney*driver and his passengers, the collision was brought about because the truck driver suddenly swerved to, and encroached on, the left side portion of the road in an attempt to avoid a wooden barricade, hitting the passenger *jeepney* as a consequence.

The Court likewise sustains the finding of the RTC that the truck owner, Guballa, failed to rebut the presumption of negligence in the hiring and supervision of his employee. Article 2176, in relation to Article 2180 of the Civil Code, provides:

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

xxxx

Art. 2180. The obligation imposed by Art. 2176 is demandable not only for one's own acts or omissions but also for those of persons for whom one is responsible.

xxxx

Employers shall be liable for the damage caused by their employees and household helpers acting within the scope of their assigned tasks even though the former are not engaged in any business or industry.

xxxx

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

Whenever an employee's negligence causes damage or injury to another, there instantly arises a presumption *juris tantum* that the employer failed to exercise *diligentissimi patris families* in the selection or supervision of his employee. Thus, in the selection of prospective employees,

employers are required to examine them as to their qualification, experience and service record. With respect to the supervision of employees, employers must formulate standard operating procedures, monitor their implementation, and impose disciplinary measures for breaches thereof. These facts must be shown by concrete proof, including documentary evidence. Thus, the RTC committed no error in finding that the evidence presented by respondent Guballa was wanting. It ruled:

x x x. As expected, defendant Jose Guballa, attempted to overthrow this presumption of negligence by showing that he had exercised the due diligence required of him by seeing to it that the driver must check the vital parts of the vehicle he is assigned to before he leaves the compound like the oil, water, brakes, gasoline, horn ; and that Geronimo had been driving for him sometime in 1976 until the collision in litigation came about ; that whenever his trucks gets out of the compound to make deliveries, it is always accompanied with two (2) helpers. This was all which he considered as selection and supervision in compliance with the law to free himself from any responsibility. This Court then cannot consider the foregoing as equivalent to an exercise of all the care of a good father of a family in the selection and supervision of his driver Mariano Geronimo."

- Heirs of Jose Marcial Ochoa vs. G&S Transport Corporation, G.R. No. 170071, March 9, 2011 as affirmed in the July 16, 2012 decision

HEIRS OF JOSE MARCIAL K. OCHOA namely: RUBY B. OCHOA, MICAELA B. OCHOA and JOMAR B. OCHOA, *Petitioners –versus-.* G & S TRANSPORT CORPORATION and G & S TRANSPORT CORPORATION –versus- HEIRS OF JOSE MARCIAL K. OCHOA
G.R. No. 170071 and G.R. No. 170125, 09 March 2011, DEL CASTILLO *J*.

Common carriers are required to exercise extraordinary diligence; In order for a fortuitous event to exempt one from liability, it is necessary that the common carrier committed no negligence or misconduct that may have occasioned the loss.

FACTS:

Jose Marcial K. Ochoa (Jose Marcial) was on board an Avis taxicab owned and operated by G & S Transport Corporation (G & S) driven by its employee and authorized driver Bibiano Padilla, Jr. (Padilla) from the Manila Domestic Airport to his home in Teacher‟s Village, Diliman, Quezon City.
While cruising along the Santolan fly-over in Epifanio delos Santos Avenue (EDSA) at high speed, the taxicab overtook another cab and tried to pass a ten-wheeler cargo truck but because of the narrow space between the left side railing of the fly-over and the ten-wheeler truck, the Avis cab was unable to pass and due to its speed, Padilla was unable to control it. Hoping to avoid collision, Padilla turned the wheel to the left causing his taxicab to ram the railing throwing itself off the fly-over and fell on the middle surface of EDSA below. The forceful drop of the vehicle on the floor of the road broke and split it into two parts. Padilla survived while Jose Marcial was declared dead on arrival at the hospital.
Jose Marcial‟s wife, Ruby Bueno Ochoa, and his two minor children, Micaela B. Ochoa and Jomar B. Ochoa (the heirs) sent G & S a letter demanding that the latter indemnify them. As G & S failed to heed the same, the heirs filed a *Complaint* for Damages before the Regional Trial Court of Pasig City (RTC).
The heirs alleged that G & S, as a common carrier, is under legal obligation to observe and exercise extraordinary diligence in transporting its passengers to their destination safely and securely. G & S

failed the same because its employee failed to transport Jose Marcial to his destination safely causing a breached contract of common carriage.

G & S claimed that while passing the fly-over the Avis taxicab was bumped by an on-rushing delivery van at the right portion causing the taxicab to veer to the left, ram through the left side of the railings of the fly-over and fall to the center of the island below. It posited that the proximate cause of Jose Marcial‟s death is a fortuitous event and/or the fault or negligence of the driver of the delivery van that hit the taxicab. It likewise claimed that it exercised the diligence required of a good father of a family in the selection and supervision of its employees including Padilla.

The RTC rendered a Decision finding the vehicular mishap was not caused by a fortuitous event but by the negligence of Padilla. It likewise found the evidence adduced by G & S to show that it exercised the diligence of a good father of a family in the selection and supervision of its employees as insufficient.

Before the Court of Appeals (CA), G & S insists that it exercised the diligence of a good father of the family in the selection and supervision of its employees through carrying out seminars for its drivers even before they were made to work; periodic evaluations for their performance; monthly check-up of its automobiles, and; regular issuance of rules regarding the conduct of its drivers. It claimed that it was able to establish a good name in the industry and maintain a clientele. In an effort to build up Padilla‟s character as an experienced and careful driver, G & S averred that: (1) before G & S employed Padilla, he was a delivery truck driver of Inter Island Gas Service for 11 years; (2) Padilla has been an employee of G & S from 1989 to 1996 and during said period, there was no recorded incident of his being a negligent driver; (3) despite his qualifications, G & S still required Padilla to submit an NBI clearance, driver‟s license and police clearance; (4) Padilla‟s being a good driver-employee was manifest in his years of service with G & S, as in fact, he has received congratulatory messages from the latter as shown by the inter-office memos; and that (5) Padilla attended a seminar at the Pope Pius Center as part of the NAIA Taxi Operation Program.

G & S also argued that the proximate cause of Jose Marcial‟s death is a fortuitous event and/or the fault or negligence of another and not of its employee. According to G & S, the collision was totally unforeseen since Padilla had every right to expect that the delivery van would just overtake him and not hit the right side of the taxicab. There was no negligence on his part but on the part of the driver of the delivery van.

The heirs maintained that Padilla was grossly negligent as shown in the manner by which he drove the taxicab which was without regard to the safety of his passenger. The heirs also averred that in order for a fortuitous event to exempt one from liability, it is necessary that he has committed no negligence or conduct that may have occasioned the loss. G & S must clearly show that the proximate cause of the casualty was entirely independent of human will and that it was impossible to avoid. And since in the case at bar it was Padilla‟s inexcusable poor judgment, utter lack of foresight and extreme negligence which were the immediate and proximate causes of the accident, same cannot be considered to be due to a fortuitous event. At any rate, the heirs contended that regardless of whether G & S observed due diligence in the selection of its employees, it should nonetheless be held liable for the death of Jose Marcial pursuant to Article 1759 of the Civil Code which provides:

ART. 1759 – Common carriers are liable for the death of or injuries to passengers through the negligence or willful acts of the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers.

This liability of the common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees.

The CA ruled in favor of the heirs as it gave weight to their argument and that Padilla failed to employ reasonable foresight, diligence and care needed to exempt G & S from liability for Jose Marcial‟s death. It found insufficient the evidence adduced by G & S to support its claim that it exercised due diligence in the selection and supervision of its employees.

ISSUE:

Whether the G & S exercised the diligence of a good father of a family in the selection and supervision of its employees particularly Mr. Bibiano Padilla. (NO)

HELD:

As a common carrier, G & S "is bound to carry Jose Marcial safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances." However, Jose Marcial was not able to reach his destination safely as he died during the course of the travel. "In a contract of carriage, it is presumed that the common carrier is at fault or is negligent when a passenger dies or is injured. In fact, there is even no need for the court to make an express finding of fault or negligence on the part of the common carrier. This statutory presumption may only be overcome by evidence that the carrier exercised extraordinary diligence." Unfortunately, G & S miserably failed to overcome this presumption. Both the trial court and the CA found that the accident which led to Jose Marcial‟s death was due to the reckless driving and gross negligence of G & S‟ driver, Padilla, thereby holding G & S liable to the heirs of Jose Marcial for breach of contract of carriage.

WHEREFORE, the petition for review on *certiorari* in G.R. No. 170071 is PARTLY GRANTED while the petition in G.R. No. 170125 is DENIED. The assailed Decision and Resolution dated June 29, 2005 and October 12, 2005 of the Court of Appeals in CA-G.R. CV No. 75602 are AFFIRMED with the MODIFICATIONS that G & S is ordered to pay the heirs of Jose Marcial K. Ochoa the sum of ₱6,611,634.59 for loss of earning capacity of the deceased and ₱100,000.00 as moral damages.

- Loadstar Shipping Company, Inc., and Loadstar International Shipping Co., Inc. vs. Malayan Insurance Co., Inc., G.R. No. 185565, November 26, 2014

LOADSTAR SHIPPING COMPANY, INCORPORATED and LOADSTAR INTERNATIONAL SHIPPING COMPANY, INCORPORATED –*versus*- MALAYAN INSURANCE COMPANY, INCORPORATED

G.R. No. 185565, THIRD DIVISION, November 26, 2014, J. Reyes

Under the Code of Commerce, if the goods are delivered but arrived at the destination in damaged condition, the remedies to be pursued by the consignee depend on the extent of damage on the goods.

If the effect of damage on the goods consisted merely of diminution in value, the carrier is bound to pay only the difference between its price on that day and its depreciated value as provided under Article 364. Malayan, as the insurer of PASAR, neither stated nor proved that the goods are rendered useless or unfit for the purpose intended by PASAR due to contamination with seawater. Hence, there is no basis for the goods' rejection under Article 365 of the Code of Commerce. Clearly, it is erroneous for Malayan to reimburse PASAR as though the latter suffered from total loss of goods in the absence of proof that PASAR sustained such kind of loss.

FACTS:

Loadstar International Shipping (Loadstar Shipping) and PASAR entered into a contract of affreightment of the latter's copper concentrates. A shipment of cooper concentrates were loaded in MV Bobcat, the vessel of Loadstar International Shipping Co., Inc. (Loadstar International), with Philex as shipper and PASAR as consignee. The cargo was insured by Malayan Insurance Company, Inc. (Malayan). While out in the sea, the crew of the vessel found a crack on the vessel which caused seawater to enter and wet the copper concentrates.

Immediately after the vessel arrived at port, PASAR and Philex's tested the copper concentrates and found them to be contaminated. PASAR sent a formal notice of claim to Loadstar Shipping, and surveyors recommended the value of the claim at P 32,351,102.32. Malayan paid PASAR said amount.
Meanwhile, Malayan wrote Loadstar Shipping informing the latter of a prospective buyer for the damaged copper concentrates and the opportunity to nominate/refer other salvage buyers to PASAR. Malayan later wrote Loadstar Shipping informing the latter of the acceptance of PASAR's proposal to take the damaged copper concentrates at a residual value of US$90,000.00. Loadstar Shipping wrote Malayan requesting for the reversal of its decision to accept PASAR's proposal and the conduct of a public bidding to allow Loadstar Shipping to match or top PASAR's bid by 10%.

PASAR then signed a subrogation receipt in favor of Malaya. To recover the amount Malaya paid to PASAR, it demanded reimbursement from Loadstar Shipping, which refused to comply, prompting Malaya to file a case of damages with the RTC, against Loadstar Shipping, and later including Loadstar International. Malayan alleged that due to the unseaworthiness of the vessel, PASAR suffered loss of the cargo. Petitioners maintain, among others, that Malayan's claim is excessive, grossly overstated, unreasonable and unsubstantiated; that their liability, if any, should not exceed the *CIF* value of the lost/damaged cargo as set forth in the bill of lading, charter party or customary rules of trade; and that the arbitration clause in the contract of affreightment should be followed.

The RTC dismissed the complaint, finding that although contaminated by seawater, the copper concentrates can still be used. It gave credence to the testimony of Francisco Esguerra, petitioners expert witness, that despite high chlorine content, the copper concentrates remain intact and will not lose their value. The gold and silver remain with the grains/concentrates even if soaked with seawater and does not melt. The RTC observed that the purchase agreement between PASAR and Philex contains a penalty clause and has no rejection clause. Despite this agreement, the parties failed to sit down and assess the penalty.
The CA reversed and set aside the RTC, holding that petitioners must pay Malayan the amount of P33,934,948.74 as actual damages, less $90,000.00-the residual value of the copper concentrates it sold to PASAR in 2000.

ISSUE:

Did PASAR not suffer total loss of the copper concentrates as to warrant rejection of the goods and reimbursement from Malayan? (NO)

RULING:

The petition is granted.

The contract between PASAR and the petitioners is a contract of carriage of goods and not a contract of sale. Therefore, the petitioners and PASAR are bound by the laws on transportation of goods and their contract of affreightment. Since the Contract of Affreightment between the petitioners and PASAR is silent as regards the computation of damages, whereas the bill of lading presented before the trial court is undecipherable, the New Civil Code and the Code of Commerce shall govern the contract between the parties.

Malayan paid PASAR the amount of P32,351,102.32 covering the latter's claim of damage to the cargo. This represents damages for the total loss of that portion of the cargo which were contaminated with seawater and not merely the depreciation in its value. Strangely though, after claiming damages for the total loss of that portion, PASAR bought back the contaminated copper concentrates from Malayan at the price of US$90,000.00. The fact of repurchase is enough to conclude that the contamination of the copper concentrates cannot be considered as total loss on the part of PASAR.
[Under the Code of Commerce], if the goods are delivered but arrived at the destination in damaged condition, the remedies to be pursued by the consignee depend on the extent of damage on the goods.
If the goods are rendered useless for sale, consumption or for the intended purpose, the consignee may reject the goods and demand the payment of such goods at their market price on that day pursuant to Article 365. In case the damaged portion of the goods can be segregated from those delivered in good condition, the consignee may reject those in damaged condition and accept merely those which are in good condition. But if the consignee is able to prove that it is impossible to use those goods which were delivered in good condition without the others, then the entire shipment may be rejected. To reiterate, under Article 365, the nature of damage must be such that the goods are rendered useless for sale, consumption or intended purpose for the consignee to be able to validly reject them.

If the effect of damage on the goods consisted merely of diminution in value, the carrier is bound to pay only the difference between its price on that day and its depreciated value as provided under Article 364.

Malayan, as the insurer of PASAR, neither stated nor proved that the goods are rendered useless or unfit for the purpose intended by PASAR due to contamination with seawater. Hence, there is no basis for the goods' rejection under Article 365 of the Code of Commerce. Clearly, it is erroneous for Malayan to reimburse PASAR as though the latter suffered from total loss of goods in the absence of proof that PASAR sustained such kind of loss. Otherwise, there will be no difference in the indemnification of goods which were not delivered at all; or delivered but rendered useless, compared against those which were delivered albeit, there is diminution in value.

Malayan also failed to establish the legal basis of its decision to sell back the rejected copper concentrates to PASAR. It cannot be ascertained how and when Malayan deemed itself as the owner of the rejected copper concentrates to have these validly disposed of. If the goods were rejected, it only means there was no acceptance on the part of PASAR from the carrier. Furthermore, PASAR and Malayan simply agreed on the purchase price of US$90,000.00 without any allegation or proof that the said price was the depreciated value based on the appraisal of experts as provided under Article 364 of the Code of Commerce.

- Spouses Jesus Fernando and Elizabeth Fernando v. Northwest Airlines, Inc., G.R. No. 212038 and G.R. No. 212043, February 8, 2017

SPOUSES JESUS FERNANDO and ELIZABETH FERNANDO NORTHWEST AIRLINES, INC.
Petitioners –versus-* NORTHWEST AIRLINES, INC., *Respondent.
G.R. No. 212038 and G.R. No. 212043, February 8, 2017, SECOND DIVISION, PERALTA, J.

Passengers are entitled to be protected against personal misconduct, injurious language, indignities and abuses from the carrier's employees. Any rude or discourteous conduct on the part of employees towards a passenger gives the latter an action for damages against the carrier.

FACTS:

There were two incidents in this case.

First, the arrival at Los Angeles Airport on December 20, 2001.

Jesus Fernando was asked by the Immigration Officer to have his return ticket verified and validated since the date reflected thereon is August 2001. So he approached a Linda Puntawongdaycha, a Northwest personnel but the latter merely glanced at his ticket without checking its status with the computer and peremptorily said that the ticket has been used and could not be considered as valid. He gave Linda the number of his Elite Platinum World Perks Card for the latter to access the ticket control record with the airline's computer for her to see that the ticket is still valid. But Linda refused to check the validity of the ticket in the computer. As a result, the Immigration Officer brought Jesus Fernando to the interrogation room of the INS where he was interrogated for more than two (2) hours. When he was finally cleared by the Immigration Officer, he was granted only a twelve (12)-day stay in the United States *(US)*, instead of the usual six (6) months. Since Jesus Fernando was granted only a twelve (12)-day stay in the US, his scheduled plans with his family as well as his business commitments were disrupted.

Second, the departure from the Los Angeles Airport on January 29, 2002.

When Jesus Fernando and his family reached the gate area where boarding passes need to be presented, Northwest supervisor Linda Tang stopped them and demanded for the presentation of their paper tickets *(coupon type)*. They failed to present the same since, according to them, Northwest issued electronic tickets (attached to the boarding passes) which they showed to the supervisor. In the presence of the other passengers, Linda Tang rudely pulled them out of the queue. Elizabeth Fernando explained to Linda Tang that the matter could be sorted out by simply verifying their electronic tickets in her computer and all she had to do was click and punch in their

Elite Platinum World Perks Card number. But Linda Tang arrogantly told them that if they wanted to board the plane, they should produce their credit cards and pay for their new tickets, otherwise Northwest would order their luggage off-loaded from the plane. Exasperated and pressed for time, the Fernandos rushed to the Northwest Airline Ticket counter to clarify the matter. To ensure that the Fernandos would no longer encounter any problem with Linda Tang, Jeanne Meyer printed coupon tickets for them who were then advised to rush back to the boarding gates since the plane was about to depart. But when the Fernandos reached the boarding gate, the plane had already departed. They were able to depart, instead, the day after.

ISSUE:

Whether or not there was breach of contract of carriage and whether it was done in a wanton, malevolent or reckless manner amounting to bad faith. (YES)

RULING:

Northwest committed a breach of contract "in failing to provide the spouses with the proper assistance to avoid any inconvenience" and that the actuations of Northwest in both subject incidents "fall short of the utmost diligence of a very cautious person expected of it." Considering that the Fernandos are not just ordinary passengers but, in fact, frequent flyers of Northwest, the latter should have been more courteous and accommodating to their needs so that the delay and inconveniences they suffered could have been avoided. Northwest was remiss in its duty to provide the proper and adequate assistance to them.

Further, the actuations of Northwest personnel in both subject incidents are constitutive of bad faith. In ignoring Jesus Fernando's pleas to check the validity of the tickets in the computer, the Northwest personnel exhibited an indifferent attitude without due regard for the inconvenience and anxiety Jesus Fernando might have experienced. As to the second incident, there was likewise fraud or bad faith on the part of Northwest when it did not allow the Fernandos to board their flight for Manila on scheduled date, in spite of confirmed tickets in the presence of the other passengers, Northwest personnel Linda Tang pulled the Fernandos out of the queue and asked for paper tickets *(coupon type)*. Even the matter could be sorted out by simply verifying their electronic tickets in her computer and all she had to do was click and punch in their Elite Platinum World Perks Card number, Tang refused to do so; she, instead, told them to pay for new tickets so they could board the plane.

Passengers do not contract merely for transportation. They have a right to be treated by the carrier's employees with kindness, respect, courtesy and due consideration. They are entitled to be protected against personal misconduct, injurious language, indignities and abuses from such employees. So it is, that any rude or discourteous conduct on the part of employees towards a passenger gives the latter an action for damages against the carrier.

Hence, moral damages and attorney's fees amounting to ₱3,000,000.00 and ten percent (10%) of the damages are awarded, respectively. Exemplary damages in the amount of ₱2,000,000.00 is also awarded.

- Jose Sanico and Vicente Castro v. Werherlina P. Colipano, G.R. No. 209969, September 27, 2017

JOSE SANICO and VICENTE CASTRO, *Petitioners –versus-* WERHERLINA P. COLIPANO, *Respondent*
G.R. No. 209969, September 27, 2017, SECOND DIVISION, CAGUIOA, J.

Since the cause of action is based on a breach of a contract of carriage, the liability of the owner is direct as the contract is between him and the passenger. The driver cannot be made liable as he is not a party to the contract of carriage.

FACTS:

On December 25, 1993, Christmas Day, Colipano and her daughter were paying passengers in the jeepney operated by Sanico, which was driven by Castro. Colipano claimed she was made to sit on an empty beer case at the edge of the rear entrance/exit of the jeepney with her sleeping child on her lap. And, at an uphill incline in the road to Carmen, Cebu, the jeepney slid backwards because it did not have the power to reach the top. Colipano pushed both her feet against the step board to prevent herself and her child from being thrown out of the exit, but because the step board was wet, her left foot slipped and got crushed between the step board and a coconut tree which the jeepney bumped, causing the jeepney to stop its backward movement. Colipano's leg was badly injured and was eventually amputated. Sanico claimed however that the event was due to engine failure, that he paid for all the hospital and medical expenses of Colipano, and that Colipano eventually freely and voluntarily executed an Affidavit of Desistance and Release of Claim.

ISSUE:

Whether or not Sanico and Castro breached the contract of carriage with Colipano.

RULING:

Only Sanico breached the contract of carriage. Since the cause of action is based on a breach of a contract of carriage, the liability of Sanico is direct as the contract is between him and Colipano. Castro, being merely the driver of Sanico's jeepney, cannot be made liable as he is not a party to the contract of carriage. Although he was driving the jeepney, he was a mere employee of Sanico, who was the operator and owner of the jeepney. The obligation to carry Colipano safely to her destination was with Sanico. In fact, the elements of a contract of carriage existed between Colipano and Sanico: *consent*, as shown when Castro, as employee of Sanico, accepted Colipano as a passenger when he allowed Colipano to board the jeepney, and as to Colipano, when she boarded the jeepney; *cause or consideration*, when Colipano, for her part, paid her fare; and, *object*, the transportation of Colipano from the place of departure to the place of destination.

Specific to a contract of carriage, the *Civil Code* requires common carriers to observe extraordinary diligence in safely transporting their passengers. Article 1733 of the *Civil Code* states:

> ART. 1733. 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 and for the safety of the passengers transported by them, according to all the circumstances of each case.

Such extraordinary diligence in the vigilance over the goods is further expressed in Articles 1734, 1735 and 1745, Nos. 5, 6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in Articles 1755 and 1756.

This extraordinary diligence, following Article 1755 of the *Civil Code*, means that common carriers have the obligation to carry passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances.

In case of death of or injury to their passengers, Article 1756 of the *Civil Code* provides that common carriers are presumed to have been at fault or negligent, and this presumption can be overcome only by proof of the extraordinary diligence exercised to ensure the safety of the passengers.

Being an operator and owner of a common carrier, Sanico was required to observe extraordinary diligence in safely transporting Colipano. When Colipano's leg was injured while she was a passenger in Sanico's jeepney, the presumption of fault or negligence on Sanico's part arose and he had the burden to prove that he exercised the extraordinary diligence required of him. He failed to do this.

In *Calalas v. Court of Appeals*, the Court found that allowing the respondent in that case to be seated in an extension seat, which was a wooden stool at the rear of the jeepney, "placed [the respondent] in a peril greater than that to which the other passengers were exposed." The Court further ruled that the petitioner in *Calalas* was not only "unable to overcome the presumption of negligence imposed on him for the injury sustained by [the respondent], but also, the evidence shows he was actually negligent in transporting passengers."

Calalas squarely applies here. Sanico failed to rebut the presumption of fault or negligence under the *Civil Code*. More than this, the evidence indubitably established Sanico's negligence when Castro made Colipano sit on an empty beer case at the edge of the rear entrance/exit of the jeepney with her sleeping child on her lap, which put her and her child in greater peril than the other passengers. As the CA correctly held:

> For the driver, Vicente Castro, to allow a seat extension made of an empty case of beer clearly indicates lack of prudence. Permitting Colipano to occupy an improvised seat in the rear portion of the jeepney, with a child on her lap to boot, exposed her and her child in a peril greater than that to which the other passengers were exposed. The use of an improvised seat extension is undeniable, in view of the testimony of plaintiff's witness, which is consistent with Colipano's testimonial assertion.

Further, the defense of engine failure, instead of exonerating Sanico, only aggravated his already precarious position. The engine failure "hinted lack of regular check and maintenance to ensure that the engine is at its best, considering that the jeepney regularly passes through a mountainous area." This failure to ensure that the jeepney can safely transport passengers through its route which required navigation through a mountainous area is proof of fault on Sanico's part.

- SULPICIO LINES, INC. v. NAPOLEON SESANTE, G.R. NO. 172682, July 27, 2016

SULPICIO LINES, INC, *Petitioner* –versus- NAPOLEON SESANTE, NOW SUBSTITUTED BY MARIBEL ATILANO, KRISTEN MARIE, CHRISTIAN IONE, KENNETH KERRN AND KARISNA KATE, ALL SURNAMED SESANTE, *Respondents*
G.R. NO. 172682, July 27, 2016, FIRST DIVISION, BERSAMIN, *J.*

Section 1, Rule 87 of the Rules of Court enumerates the following actions that survive the death of a party, namely: (1) recovery of real or personal property, or an interest from the estate; (2) enforcement of liens on the estate; and (3) recovery of damages for an injury to person or property. Sesante's claim against the petitioner involved his personal injury caused by the breach of the contract of carriage and hence, the complaint survived his death, and could be continued by his heirs following the rule on substitution.

Clearly, the trial court is not required to make an express finding of the common carrier's fault or negligence. The presumption of negligence applies so long as there is evidence showing that: (a) a contract exists between the passenger and the common carrier; and (b) the injury or death took place during the existence of such contract. In such event, the burden shifts to the common carrier to prove its observance of extraordinary diligence, and that an unforeseen event or force majeure had caused the injury. However, for a common carrier to be absolved from liability in case of force majeure, it is not enough that the accident was caused by a fortuitous event. The common carrier must still prove that it did not contribute to the occurrence of the incident due to its own or its employees' negligence.

FACTS:

On September 18, 1998, at around 12:55 p.m., the M/V Princess of the Orient, a passenger vessel owned and operated by the petitioner, sank near Fortune Island in Batangas. Of the 388 recorded passengers, 150 were lost. Napoleon Sesante, then a member of the Philippine National Police (PNP) and a lawyer, was one of the passengers who survived the sinking. He sued the petitioner for breach of contract and damages alleging that Sulpicio Lines committed bad faith in allowing the vessel to sail despite the storm signal. In its defense, the petitioner insisted on the seaworthiness of the M/V Princess of the Orient due to its having been cleared to sail from the Port of Manila by the proper authorities; that the sinking had been due to *force majeure.*

RTC rendered its judgment against defendant Sulpicio Lines ordering it to pay Temperate damages in the amount of P400,000.00 and Moral damages in the amount of P1,000,000.00. CA promulgated its assailed decision. It lowered the temperate damages to P120,000.00, which approximated the cost of Sesante's lost personal belongings; and held that despite the seaworthiness of the vessel, the petitioner remained civilly liable because its officers and crew had been negligent in performing their duties.

During the pendency of the case, herein petitioner died and was substituted by his heirs.

ISSUES:

1. Is the complaint for breach of contract and damages a personal action that does not survive the death of the plaintiff? (NO)
2. Is the petitioner liable for damages under Article 1759 of the *Civil Code?(YES)*
3. Is there sufficient basis for awarding moral, temperate and exemplary damages? (YES)

RULING:

1. An action for breach of contract of carriage survives the death of the plaintiff.

The petitioner urges that Sesante's complaint for damages was purely personal and cannot be transferred to his heirs upon his death. Hence, the complaint should be dismissed because the death of the plaintiff abates a personal action.
Section 1, Rule 87 of the *Rules of Court* enumerates the following actions that survive the death of a party, namely: (1) recovery of real or personal property, or an interest from the estate; (2) enforcement of liens on the estate; and (3) recovery of damages for an injury to person or property. Sesante's claim against the petitioner involved his personal injury caused by the breach of the contract of carriage and hence, the complaint survived his death, and could be continued by his heirs following the rule on substitution.

2. The petitioner is liable for breach of contract of carriage.

Article 1759 of the *Civil Code* does not establish a presumption of negligence because it explicitly makes the common carrier liable in the event of death or injury to passengers due to the negligence or fault of the common carrier's employees.

Clearly, the trial court is not required to make an express finding of the common carrier's fault or negligence. The presumption of negligence applies so long as there is evidence showing that: *(a)* a contract exists between the passenger and the common carrier; and *(b)* the injury or death took place during the existence of such contract. In such event, the burden shifts to the common carrier to prove its observance of extraordinary diligence, and that an unforeseen event or *force majeure* had caused the injury. However, for a common carrier to be absolved from liability in case of *force majeure,* it is not enough that the accident was caused by a fortuitous event. The common carrier must still prove that it did not contribute to the occurrence of the incident due to its own or its employees' negligence.
The petitioner has attributed the sinking of the vessel to the storm notwithstanding its position on the seaworthiness of M/V Princess of the Orient. Yet, the findings of the Board of Marine Inquiry (BMI) directly contradicted the petitioner's attribution. The BMI found that the "erroneous maneuvers" during the ill-fated voyage by the captain of the petitioner's vessel had caused the sinking. After the vessel had cleared Limbones Point while navigating towards the direction of Fortune Island, the captain already noticed the listing of the vessel by three degrees to the portside of the vessel, but, according to the BMI, he did not exercise prudence as required by the situation in which his vessel was suffering the battering on the starboard side by big waves of seven to eight meters high and strong southwesterly winds of 25 knots. The BMI pointed out that he should have considerably reduced the speed of the vessel based on his experience about the vessel - a close-type ship of seven decks, and of a wide and high superstructure - being vulnerable if exposed to strong

winds and high waves. He ought to have also known that maintaining a high speed under such circumstances would have shifted the solid and liquid cargo of the vessel to port, worsening the tilted position of the vessel. It was only after a few minutes thereafter that he finally ordered the speed to go down to 14 knots, and to put ballast water to the starboardheeling tank to arrest the continuous listing at portside. By then, his moves became an exercise in futility because, according to the BMI, the vessel was already listing to her portside between 15 to 20 degrees, which was almost the maximum angle of the vessel's loll. It then became inevitable for the vessel to lose her stability.

As borne out by the aforequoted findings of the BMI, the immediate and proximate cause of the sinking of the vessel had been the gross negligence of its captain in maneuvering the vessel.

3. The award of moral damages and temperate damages is proper.

Moral damages may be recovered in an action upon breach of contract of carriage only when: *(a)* death of a passenger results, or (*b)* it is proved that the carrier was guilty of fraud and bad faith, even if death does not result. The totality of the negligence by the officers and crew of M/V Princess of the Orient warranted the award of moral damages.

With regard to the temperate damages, the petitioner contends that its liability for the loss of Sesante' s personal belongings should conform with Art. 1754. The petitioner denies liability because Sesante' s belongings had remained in his custody all throughout the voyage until the sinking, and he had not notified the petitioner or its employees about such belongings. Hence, absent such notice, liability did not attach to the petitioner.

Accordingly, actual notification was not necessary to render the petitioner as the common carrier liable for the lost personal belongings of Sesante. By allowing him to board the vessel with his belongings without any protest, the petitioner became sufficiently notified of such belongings. So long as the belongings were brought inside the premises of the vessel, the petitioner was thereby effectively notified and consequently duty-bound to observe the required diligence in ensuring the safety of the belongings during the voyage. Applying Article 2000 of the *Civil Code,* the petitioner assumed the liability for loss of the belongings caused by the negligence of its officers or crew. In view of the Court's finding that the negligence of the officers and crew of the petitioner was the immediate and proximate cause of the sinking of the M/V Princess of the Orient, its liability for Sesante's lost personal belongings was beyond question.

The Court also awarded exemplary damages even if the same was not specifically prayed for in the complaint. The Court has the discretion to award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. Accordingly, the Court fix the sum of Pl,000,000.00 in order to serve fully the objective of exemplarity among those engaged in the business of transporting passengers and cargo by sea.

- ALFREDO S. RAMOS v. CHINA SOUTHERN AIRLINES CO. LTD., G.R. No. 213418, September 21, 2016

ALFREDO S. RAMOS, CONCHITA S. RAMOS, BENJAMIN B. RAMOS, NELSON T. RAMOS and ROBINSON T. RAMOS, *Petitioners - versus* – CHINA SOUTHERN AIRLINES CO. LTD., *Respondent.*

G.R. No. 213418, September 21, 2016, THIRD DIVISION, *PEREZ,J.*

When an airline issues a ticket to a passenger confirmed on a particular flight, on a certain date, a contract of carriage arises, and the passenger has every right to expect that he would fly on that flight and on that date. If that does not happen, then the carrier opens itself to a suit for breach of contract of carriage. In an action based on a breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent. All he has to prove is the existence of the contract and the fact of its non-performance by the carrier, through the latter's failure to carry the passenger to its destination.

FACTS:

On 7 August 2003, petitioners purchased five China Southern Airlines roundtrip plane tickets from Active Travel Agency. It is provided in their itineraries that petitioners will be leaving Manila on 8 August 2003 and will be leaving Xiamen on 12 August 2003. On their way back to the Manila, petitioners were prevented from taking their designated flight despite the fact that earlier that day an agent from Active Tours informed them that their bookings for China Southern Airlines 1920H are confirmed. The refusal came after petitioners already checked in all their baggages and were given the corresponding claim stubs and after they had paid the terminal fees. According to the airlines' agent with whom they spoke at the airport, petitioners were merely chance passengers but they may be allowed to join the flight if they are willing to pay an additional 500 Renminbi (RMB) per person. When petitioners refused to defray the additional cost, their baggages were offloaded from the plane and China Southern Airlines 1920H flight then left Xiamen International Airport without them. Because they have business commitments waiting for them in Manila, petitioners were constrained to rent a car that took them to Chuan Chio Station where they boarded the train to Hongkong. Upon reaching Hong Kong, petitioners purchased new plane tickets from Philippine Airlines (PAL) that flew them back to Manila.

Petitioners initiated an action for damages before the RTC of Manila against China Southern Airlines and Active Travel for damages. RTC rendered a Decision in favor of the petitioners awarding them actual, moral and exemplary damages as well as attorney's fees. On appeal, the CA delete award of moral and exemplary damages. According to the appellate court, petitioners failed to prove that China Southern Airlines' breach of contractual obligation was attended with bad faith.

ISSUE:

Whether or not the petitioner is entitled to actual, moral and exemplary damages.

RULING:

The petitioner is entitled to actual, moral and exemplary damages.

When an airline issues a ticket to a passenger confirmed on a particular flight, on a certain date, a contract of carriage arises, and the passenger has every right to expect that he would fly on that flight and on that date. If that does not happen, then the carrier opens itself to a suit for breach of contract of carriage. In an action based on a breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent. All he has to prove is the existence of the contract and the fact of its non-performance by the carrier, through the latter's failure to carry the passenger to its destination.

There is no doubt that petitioners are entitled to actual or compensatory damages. Both the RTC and the CA uniformly held that there was a breach of contract committed by China Southern Airlines when it failed to deliver petitioners to their intended destination, a factual finding that we do not intend to depart from in the absence of showing that it is unsupported by evidence. As the aggrieved parties, petitioners had satisfactorily proven the existence of the contract and the fact of its nonperformance by China Southern Airlines; the concurrence of these elements called for the imposition of actual or compensatory damages.

With respect to moral damages, the same is awarded in cases of breaches of contract where the **defendant acted fraudulently or in bad faith**. The Court finds that the airline company acted in bad faith in insolently bumping petitioners off the flight after they have completed all the pre-departure routine. Bad faith is evident when the ground personnel of the airline company unjustly and unreasonably refused to board petitioners to the plane which compelled them to rent a car and take the train to the nearest airport where they bought new sets of plane tickets from another airline that could fly them home. Petitioners have every reason to expect that they would be transported to their intended destination after they had checked in their luggage and had gone through all the security checks. Instead, China Southern Airlines offered to allow them to join the flight if they are willing to pay additional cost; this amount is on top of the purchase price of the plane tickets. The requirement to pay an additional fare was insult upon injury.

China Southern Airlines is also liable for exemplary damages as it acted in a wantonly oppressive manner as succinctly discussed above against the petitioners. Exemplary damages which are awarded by way of example or correction for the public good, may be recovered in contractual obligations, as in this case, if defendant acted in wanton, fraudulent, reckless, oppressive or malevolent manner.

- CATHAY PACIFIC AIRWAYS, LTD. V. SPOUSES ARNULFO, G. R. No. 188283, July 20, 2016

CATHAY PACIFIC AIRWAYS, LTD., *Petitioner* - versus - SPOUSES ARNULFO and EVELYN FUENTEBELLA, *Respondents.*
G. R. No. 188283, FIRST DIVISION, July 20, 2016, SERENO, *CJ*

In Air France v. Gillego, the Court ruled that in an action based on a breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent; all that he has to prove is the existence of the contract and the fact of its nonperformance by the carrier. In this case, both the trial and appellate courts found that respondents were entitled to First Class accommodations under the contract of carriage, and that petitioner failed to perform its obligation.
*However, the award of P5 million as moral damages is excessive, considering that the highest amount ever awarded by this Court for moral damages in cases involving airlines is P500,000. As said in Air France v. Gillego, **"the mere fact that respondent was a Congressman should not result in an automatic increase in the moral and exemplary damages."** Upon the facts established, the amount of P500,000 as moral damages is reasonable to obviate the moral suffering that respondents have undergone. With regard to exemplary damages, jurisprudence shows that P50,000 is sufficient to deter similar acts of bad faith attributable to airline representatives.*

FACTS:

The case originated from a Complaint for damages filed by respondents Arnulfo and Evelyn Fuentebella against petitioner Cathay Pacific Airways Ltd. Respondents prayed damages for the alleged besmirched reputation and honor, as well as the public embarrassment they had suffered as a result of a series of **involuntary downgrades of their trip** from Manila to Sydney via Hong Kong. The RTC ruled in favor of respondents and awarded moral damages, exemplary damages, and attorney's fees. CA affirmed the decision of RTC.

In 1993, the Speaker of the House authorized Congressmen Arnulfo Fuentebella (respondent Fuentebella), Alberto Lopez (Cong. Lopez) and Leonardo Fugoso (Cong. Fugoso) to travel on official business to Sydney, Australia, to confer with their counterparts in the Australian Parliament. On 22 October 1993, respondents bought Business Class tickets for Manila to Sydney via Hong Kong and back. They changed their minds, however, and decided to upgrade to First Class. From this point, the parties presented divergent versions of facts. **The overarching disagreement was on whether respondents should have been given First Class seat accommodations for all the segments of their itinerary**.

Petitioner admits that First Class tickets were issued to respondents, but clarifies that the tickets were open-dated (waitlisted). There was no showing whether the First Class tickets issued to Lopez and Fugoso were open-dated or otherwise, but it appears that they were able to fly First Class on all the segments of the trip, while respondents were not.

On 25 October 1993, respondents queued in front of the First Class counter in the airport. They were issued boarding passes for **Business Class** seats on board CX 902 bound for Hong Kong from Manila and **Economy Class** seats on board CX 101 bound for Sydney from Hong Kong**. They only discovered that they had not been given First Class seats when they were denied entry into the First Class lounge**. Respondent Fuentebella went back to the check-in counter to demand that they be given First Class seats or at the very least, access to the First Class Lounge. He recalled that he was treated by the ground staff in a discourteous, arrogant and rude manner. He was allegedly told that the plane would leave with or without them. Both the trial court and the CA gave credence to the testimony of respondent Fuentebella.

ISSUE:

Whether or not the respondents are liable for the damages prayed for. (YES)

RULING:

The respondents are entitled to moral damages, exemplary damages and attorney's fees.

In *Air France* v. *Gillego,* the Court ruled that in an action based on a breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent; all that he has to prove is the existence of the contract and the fact of its nonperformance by the carrier. In this case, both the trial and appellate courts found that respondents were entitled to First Class accommodations under the contract of carriage, and that petitioner failed to perform its obligation.
According to the senior reservation supervisor of the petitioner, Nenita Montillana (Montillana), a reservation is deemed confirmed when there is a seat available on the plane. When asked how a passenger was informed of the confirmation, Montillana replied that computer records were

consulted upon inquiry. **By its issuance of First Class tickets on the same day of the flight in place of Business Class tickets that indicated the preferred and confirmed flight, petitioner led respondents to believe that their request for an upgrade had been approved**.

Petitioner tries to downplay the factual finding that no explanation was given to respondents with regard to the types of ticket that were issued to them. It ventured that respondents were seasoned travelers and therefore familiar with the concept of open-dated tickets. Petitioner attempts to draw a parallel with ***Sarreal, Jr. v. JAL,*** in which *it was ruled that the airline could not be faulted for the negligence of the passenger, because the latter was aware of the restrictions carried by his ticket and the usual procedure for travel.* In that case, though, records showed that the plaintiff was a well travelled person who averaged two trips to Europe and two trips to Bangkok every month for 34 years. *In the present case, no evidence was presented to show that respondents were indeed familiar with the concept of open-dated ticket. In fact, the tickets do not even contain the term "open-dated."*
Moral and exemplary damages are not ordinarily awarded in breach of contract cases. This Court has held that damages may be awarded only when the breach is wanton and deliberately injurious, or the one responsible had acted fraudulently or with malice or bad faith. Bad faith is a question of fact that must be proven by clear and convincing evidence. Both the trial and the appellate courts found that petitioner had acted in bad faith.

However, the award of P5 million as moral damages is excessive, considering that the highest amount ever awarded by this Court for moral damages in cases involving airlines is P500,000. As We said in *Air France v. Gillego*, **"the mere fact that respondent was a Congressman should not result in an automatic increase in the moral and exemplary damages."** We find that upon the facts established, the amount of P500,000 as moral damages is reasonable to obviate the moral suffering that respondents have undergone. With regard to exemplary damages, jurisprudence shows that P50,000 is sufficient to deter similar acts of bad faith attributable to airline representatives.

- Sulpicio Lines, Inc. v. Karaan, G.R. No. 208590, [October 3, 2018]

SULPICIO LINES, INC. (NOW KNOWN AS PHILIPPINE SPAN ASIA CARRIER CORPORATION),
Petitioner* –versus- MAJOR VICTORIO KARAAN, SPOUSES NAPOLEON LABRAGUE AND HERMINIA LABRAGUE, AND ELY LIVA, *Respondents.
G.R. No. 208590, FIRST DIVISION, October 03, 2018, TIJAM, J.

Petitioner was extremely remiss before and during the time of the vessel's sinking. Petitioner did not endeavor to dispute the CA's finding that the vessel's Captain erroneously navigated the ship, and failed to reduce its speed considering the ship's size and the weather conditions. The crew members were also negligent when they did not make any stability calculations, and prepare a detailed report of the vessel's cargo stowage plan. The radio officer failed to send an SOS message in the internationally accepted communication network but instead used the Single Side Band informing the company about the emergency situation.

Petitioner failed to prove that it had exercised the degree of extraordinary diligence required of common carriers, it should be presumed to have acted in a reckless manner.

FACTS:

Respondents Major Victorio Karaan (Major Karaan), Napoleon Labrague (Napoleon) and Herminia Labrague (Herminia) (Spouses Labrague), and Ely Liva (Liva) were passengers of M/V Princess of the Orient owned by petitioner Sulpicio Lines, Inc. (now known as Philippine Span Asia Carrier Corporation) when it sank on September 18, 1998 somewhere between Cavite and Batangas, near Fortune Island.

On June 30, 1999, respondents lodged a Complaint based on breach of contract of carriage against petitioner praying for various amounts of damages as passengers/survivors of the sinking of petitioner's vessel,

During trial, the respondents was presented as witnesses. Their testimonies were summarized by the CA as follows:

Major Karaan, a retired soldier, deposed that at about 8:00p.m. on September 18, 1998, he boarded M/V Princess of the Orient bound for Cebu City from Manila. He was at Cabin No. 601 along with another passenger. The travel commenced smoothly although there was a typhoon at that time. However, about two (2) hours after, while he was lying in his cabin, he heard a loud sound which lasted for about 30 minutes. It sounded like something heavy fell somewhere below the cabin. Then, the ship started to tilt, the lights went out and the engine shut down. He went out of his cabin and saw the passengers already panicking. He saw no SLI crew assisting them. He went to the upper level where he grabbed a life jacket. He stayed there until the ship eventually sank. He went with the ship underwater but was able to swim therefrom and hold on to a life raft. He could not see much at that time as it was very dark and the rain poured heavily. He was rescued by a chopper at about 2:30 or 3:00 in the afternoon of the next day after being in the water for about 15 hours. He was brought to the station and then to the hospital where he was discharged the next day.

Apart from losing P5,000.00 cash, shoes, documents and his uniform, [Major Karaan] also lost his Seiko watch and his brother's land title allegedly worth P3,000.00 and about P15,000.00 respectively. Apart from the hospital bill, SLI paid him P2,000.00.

Major Karaan attested he saw life rafts secured to the vessel when he boarded the same.

Napoleon, likewise a retired soldier and passenger of the ill-fated M/V Princess of the Orient, testified that about 10:45 p.m., he heard a loud sound coming from below the deck. It sounded like a container van falling and thereafter, the vessel lifted to its side. He woke his wife Herminia, their eight (8) year old daughter, Karen Hope, and their helper Liva and got them life jackets before moving out to the stairway. They held on to the gangplank near the stairway while water was rushing inside the ship. During those times, no vessel crew could be seen. Oil was dripping from the ship's hull and when the ship was about to sink, they jumped into the sea. He was then holding his daughter but waves struck them apart. He was able to grab a life raft loaded with three (3) other passengers. He heard his wife calling for help and lifted her to the raft but he lost touch of their daughter. They were rescued the next day at about 12:30 noon. They were then brought to the Municipal Hall where they were fed and then to the SLI office at the port area where they were given clothes. Their daughter's lifeless body was recovered in Tanza, Cavite. Consequently, he felt very sad consdering that she was their only child. He also lost P26,000.00 cash and a video camera.

Herminia affirmed Napoleon's recount of events. She recalled that while sleeping, she heard a loud sound and the things inside their cabin started to fall. That was when her husband woke them up. They wore their life jackets and tried to contact the ships's crew through the intercom but to no avail. Since the ship continued to capsize, they decided to go out to the upper deck but could not

make it because of the oil spilling all over them. They instead went down and seeing that the water was already inside the ship, they dived into the sea. They were separated from each other when a big wave hit them. Nobody was there to help them nor was there any order to abandon the ship. She was able to take hold of the raft but they could not use its broken paddle. The raft had medicines but they chose not to use them as they could not read the directions. They were rescued at noon the following day.

On her cross-examination, she maintained that when they went out of their cabin, she only saw passengers but not a single crew from SLI. The spouses are claiming moral damages of P750,000.00 each.

Liva corroborated her bosses' story. She further added that when she was awakened by her boss, she saw bottles and mirrors falling on the floor and blocking the cabin door which delayed their exit therefrom.

The RTC issued an Order ordering petitioner to pay damages.

ISSUES:

1. May temperate damages be awarded when the claim for actual damages was proven? (YES)
2. May exemplary damages be awarded when the conditionality for awarding it under Article 2232 of the Civil Code is absent? (YES)

RULING:

1. The award of temperate damages was proper

At the outset, petitioner's argument that the CA erroneously deleted the award of actual damages, despite the amounts having been duly proven, and imposing temperate damages in its stead, is inaccurate and misleading.

Our reading of the CA Decision reveals that the CA imposed temperate damages because it deemed the amounts put forth by the respondents' insufficiently proven. Verily, the CA stated, "[t]he respondents, except for their own testimonies, were not able to proffer any other evidence of their loss. Sans the receipts and the documents supporting their claims of actual damages, the same cannot be awarded."

Undoubtedly, the law sanctions the award of temperate damages in case of insufficiency of evidence of actual loss suffered. Article 2224 of the Civil Code states:

Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty.

In this case, we find that no egregious error on the part of the CA in imposing temperate damages. The records of the case, which remain uncontroverted, undoubtedly establishes that respondents suffered loss during the unfortunate sinking of M/V Princess of the Orient. However, no independent proof, other than respondents' bare claims, were presented to provide a numerical value to their loss. Absent a contrary proof which would justify decreasing or otherwise modifying the amount pegged by the CA, this Court is constrained to affirm the amounts it imposed as temperate damages.

2. The award of exemplary damages was proper

In this case, we see no error in the award of exemplary damages considering the lower courts' consistent finding that respondents are entitled to moral and temperate damages for the sinking of M/V Princess of the Orient.

Moreover, the CA is correct when it stated that since petitioner failed to prove that it had exercised the degree of extraordinary diligence required of common carriers, it should be presumed to have acted in a reckless manner.

In contracts and quasi-contracts, the Court has the discretion to award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. Indeed, exemplary damages cannot be recovered as a matter of right, and it is left to the court to decide whether or not to award them. In consideration of these legal premises for the exercise of the judicial discretion to grant or deny exemplary damages in contracts and quasi-contracts against a defendant who acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner, the Court hereby awards exemplary damages to Sesante.

First of all, exemplary damages did not have to be specifically pleaded or proved, because the courts had the discretion to award them for as long as the evidence so warranted.

It also bears to emphasize that the records of the case support the conclusion that petitioner was extremely remiss before and during the time of the vessel's sinking. Petitioner did not endeavor to dispute the CA's finding that the vessel's Captain erroneously navigated the ship, and failed to reduce its speed considering the ship's size and the weather conditions. The crew members were also negligent when they did not make any stability calculations, and prepare a detailed report of the vessel's cargo stowage plan. The radio officer failed to send an SOS message in the internationally accepted communication network but instead used the Single Side Band informing the company about the emergency situation.

"Exemplary damages are designed by our civil law to permit the courts to reshape behavior that is socially deleterious in its consequence by creating negative incentives or deterrents against such behavior." Verily, the above-mentioned conduct, from the Captain and Crew of a common carriers should be corrected. They carry not only cargo, but are in charge of the lives of its passengers. In this case, their recklessness cost the loss of 150 lives. Considering the foregoing, this Court finds that the CA properly imposed exemplary damages.

- ASIAN TERMINALS, INC. (ATI) v. PADOSON STAINLESS STEEL CORPORATION, G.R. No. 211876, FIRST DIVISION, June 25, 2018, TIJAM, J.

ASIAN TERMINALS, INC. (ATI), *Petitioner* -versus- PADOSON STAINLESS STEEL CORPORATION, *Respondent*.
G.R. No. 211876, FIRST DIVISION, June 25, 2018, TIJAM, J.

*The Respondent Padoson failed to prove that its shipment sustained damage while in ATI's custody. Although Padoson presented photographs as proofs of failure of ATI to exercise extraordinary diligence, the said **photographs were not pre-marked as evidence**. The RTC had already ruled that the photographs were **inadmissible and were not admitted in evidence**. Additionally, the sheriff's declaration in the Sheriff's Report on Ocular Inspection that the steel coils which were part of the*

shipment, were "already in a deteriorating condition," is a ***mere uncorroborated conclusion for having no evidence to back it up****. There is no showing that Sheriff Diaz had personal knowledge of the original condition of the shipment, for him to arrive at the conclusion that it deteriorated while it was docked at ATI's premises. Mere allegation and speculation is not evidence, and is not equivalent to proof.*

As such, there can be ***no basis for Padoson to claim*** *that its shipments deteriorated while they were in ATI's possession and custody up to the time they were withdrawn from ATI's premises. Thus, Padoson* ***cannot impute negligence*** *upon ATI.*

FACTS:

Respondent Padoson hired the Petitioner ATI to provide **for arrastre, wharfage and storage services** at the Port of Manila in relation to a shipment consisting of 9 stainless steel coils and 72 hot-rolled steel coils, with Padoson as a consignee. The shipment were imported on October 5, 2001 and October 30, 2001, respectively and were stored within ATI's premises until they were discharged on July 29, 2006. Meanwhile, **the shipments became the subject of a Hold-Order issued by the Bureau of Customs** (BOC) on September 7, 2001. This was an offshoot of a Customs case filed by the BOC against Padoson due to the latter's tax liability over its own shipments.

For the storage services it rendered**, ATI made several demands** from Padoson for the payment of arrastre, wharfage and storage services amounting to P540,474.48 for the 9 stainless steel coils and P8,374,060.80 for the 72 hot-rolled steel coils stored at the ATI premises. The demands, however, **went unheeded**. Thus, on August 4, 2006, ATI filed a Complaint for a Sum of Money and Damages with Prayer for the Issuance of Writ of Preliminary Attachment.

In its Answer, **Padoson claimed** among others that; (1) during the time when the shipments were in ATI's custody and possession, they **suffered material and substantial deterioration**; (2) that **ATI failed to exercise the extraordinary diligence required of an arrastre operator**; (3) the **Hold-Order issued by the BOC was merely a leverage** to claim Padoson's alleged unpaid duties; (4) Upon a Motion for Ocular Inspection and in the course of the inspection, Sheriff Diaz discovered that the shipments were found in an open area and **were in a deteriorating state**. During the trial, Padoson presented a certain Mr. Ventura, who allegedly took pictures of the shipments. The pictures, however, were not pre-marked during the pre-trial. Consequently, the RTC issued an Order disallowing the marking of the said pictures and Ventura's testimony thereon.

The RTC dismissed ATI's complaint. The RTC reasoned out that by virtue of the Hold-Order over Padoson's shipments, the BOC has acquired constructive possession over the same. Consequently, the BOC should be the one liable to ATI's money claims. The RTC, however, pointed out that since ATI did not implead the BOC in its complaint, the BOC cannot be held to answer for the payment of the storage fees. The CA affirmed the RTC that Padoson's shipments were under the BOC's constructive possession upon its issuance of the Hold-Order.

ISSUE:

Whether or Not the CA erred in affirming the RTC decision? (YES)

RULING:

In *SBMA v. Rodriguez, et al.* it is the **BOC**, and not the RTC, which **has exclusive original jurisdiction over seizure and forfeiture** of the subject shipment from the moment imported goods are **actually in the possession or control of the Customs authorities**, even if no warrant for seizure or detention had previously been issued by the Collector of Customs for the purpose of enforcing the customs laws, subject to appeal to the Court of Tax Appeals whose decisions are appealable to this Court.

It is clear that once the BOC is **actually in possession** of the subject shipment by virtue of a Hold-Order, it acquires exclusive jurisdiction over the same for the purpose of enforcing the customs laws. Here, the **actual possession over Padoson's shipment remained with ATI** since they were stored at its premises. We emphasize that the BOC's exclusive jurisdiction over the subject shipment is for the purpose of enforcing customs laws, so as to render effective and efficient the collection of import and export duties due the State. It has nothing to do with the collection by a private company, like ATI, of the storage fees for the services it rendered to its client, Padoson. Accordingly, there is no basis for the CA in holding that the RTC did not err in declaring that the subject shipments were deemed placed under BOC's constructive possession by its issuance of a Hold-Order over Padoson's shipment. The alleged constructive possession by virtue of BOC's Hold-Order of Padoson's shipment was not even raised as an issue in this case. In fact, it was the RTC, through its Decision, that brought up the concept of constructive possession by misapplying the SBMA case, as explained earlier.

Furthermore, it was Padoson, and not BOC, is liable to ATI for the payment of storage fees for the services rendered by ATI. The fact remains that it was Padoson, and not BOC, that entered into a contract of service with ATI and consequently was the one who was benefited therefrom. The basic principle of relativity of contracts is that **contracts can only bind the parties who entered into it**, and cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof. Padoson, cannot shift the burden of paying the storage fees to BOC since the latter has never been privy to the contract of service between Padoson and ATI.

Padoson, also **failed to prove that its shipment sustained damage while in ATI's custody**. Although Padoson presented photographs which were allegedly taken by Ventura, as proofs of failure of ATI to **exercise extraordinary diligence,** the said photographs were **not pre-marked as evidence** and that the **pre-trial orders did not contain a reservation** for presentation of additional evidence for Padoson. The RTC had already ruled that the photographs were **inadmissible and were not admitted in evidence.** Additionally, the sheriff's declaration in the Sheriff's Report on Ocular Inspection that the steel coils which were part of the shipment, were "already in a deteriorating condition," is a **mere uncorroborated conclusion** for having no evidence to back it up. There is no showing that Sheriff Diaz had personal knowledge of the original condition of the shipment, for him to arrive at the conclusion that it deteriorated while it was docked at ATI's premises. Mere allegation and speculation is not evidence, and is not equivalent to proof. Sheriff Diaz, was further not presented to testify on the contents thereof. Evidently, ATI was not given a chance to cross-examine him to test the truthfulness of the allegations made in the said Return.

Anent the **photographs** on the shipment allegedly taken, the same **were not properly authenticated and identified**. "Indeed, photographs, when presented in evidence, must be

identified by the photographer as to its production and he must testify as to the circumstances under which they were produced." "The value of this kind of evidence lies in its being a correct representation or reproduction of the original." However, in this case, Padoson's witness, Ms. Lorenzo simply admitted that she did not take the pictures and that the salve do not indicate that they pertain to the shipments.

In addition, we have observed from the records that **Padoson did not present any evidence on the supposed condition of the shipment at the time they were already discharged from the vessels**. As such, there can **be no basis for Padoson to claim** that its shipments deteriorated while they were in ATI's possession and custody up to the time they were withdrawn from ATI's premises. Thus, Padoson **cannot impute negligence** upon ATI.

P. Vigilance over Goods

1. Exempting Causes

- Mauro Ganzon vs. Court of Appeals, G.R. No. L-48757, May 30, 1988

MAURO GANZON, *Petitioner* –versus- COURT OF APPEALS and GELACIO E. TUMAMBING, *Respondents*.
G.R. No. L-48757, SECOND DIVISION, May 30, 1988, SARMIENTO, J.

The shipper will suffer the losses and deterioration arising from the causes enumerated in Art. 1734; and in these instances, the burden of proving that damages were caused by the fault or negligence of the carrier rests upon him. However, the carrier must first establish that the loss or deterioration was occasioned by one of the excepted causes or was due to an unforeseen event or to force majeure.

FACTS:

On November 28, 1956, Gelacio Tumambing contracted the services of Mauro B. Ganzon to haul 305 tons of scrap iron from Mariveles, Bataan, to the port of Manila on board the lighter LCT "Batman". Pursuant to that agreement, Mauro B. Ganzon sent his lighter "Batman" to Mariveles where it docked in three feet of water. On December 1, 1956, Gelacio Tumambing delivered the scrap iron to defendant Filomeno Niza, captain of the lighter, for loading which was actually begun on the same date by the crew of the lighter under the captain's supervision. When about half of the scrap iron was already loaded, Mayor Jose Advincula of Mariveles, Bataan, arrived and demanded P5,000.00 from Gelacio Tumambing. The latter resisted the shakedown and after a heated argument between them, Mayor Jose Advincula drew his gun and fired at Gelacio Tumambing. The gunshot was not fatal but Tumambing had to be taken to a hospital in Balanga, Bataan, for treatment.

After sometime, the loading of the scrap iron was resumed. But on December 4, 1956, Acting Mayor Basilio Rub, accompanied by three policemen, ordered captain Filomeno Niza and his crew to dump the scrap iron where the lighter was docked. The rest was brought to the compound of NASSCO. Later on Acting Mayor Rub issued a receipt stating that the Municipality of Mariveles had taken custody of the scrap iron.

Tumambing instituted in the Court of First Instance of Manila an action against Ganzon for damages based on culpa contractual.

ISSUES:

1. Whether the petitioner is guilty of breach of the contract. (YES)
2. Whether the loss of the scraps which was due mainly to the intervention of the municipal officials of Mariveles constitutes a caso fortuito as defined in Article 1174 of the Civil Code. (NO)

RULING:

1. By the said act of delivery, the scraps were unconditionally placed in the possession and control of the common carrier, and upon their receipt by the carrier for transportation, the contract of carriage was deemed perfected. Consequently, the petitioner-carrier's extraordinary responsibility for the loss, destruction or deterioration of the goods commenced. Pursuant to Art. 1736, such extraordinary responsibility would cease only upon the delivery, actual or constructive, by the carrier to the consignee, or to the person who has a right to receive them. The fact that part of the shipment had not been loaded on board the lighter did not impair the said contract of transportation as the goods remained in the custody and control of the carrier, albeit still unloaded.

The petitioner has failed to show that the loss of the scraps was due to any of the following causes enumerated in Article 1734 of the Civil Code, namely:
(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.

Hence, the petitioner is presumed to have been at fault or to have acted negligently. Still, the petitioner could have been exempted from any liability had he been able to prove that he observed extraordinary diligence in the vigilance over the goods in his custody, according to all the circumstances of the case, or that the loss was due to an unforeseen event or to *force majeure*.

2. In any case, the intervention of the municipal officials was not In any case, of a character that would render impossible the fulfillment by the carrier of its obligation. The petitioner was not duty bound to obey the illegal order to dump into the sea the scrap iron. Moreover, there is absence of sufficient proof that the issuance of the same order was attended with such force or intimidation as to completely overpower the will of the petitioner's employees. The mere difficulty in the fullfilment of the obligation is not considered *force majeure*. We agree with the private respondent that the scraps could have been properly unloaded at the shore or at the NASSCO compound, so that after the dispute with the local officials concerned was settled, the scraps could then be delivered in accordance with the contract of carriage.

WHEREFORE, the petition is DENIED; the assailed decision of the Court of Appeals is hereby AFFIRMED. Costs against the petitioner. This decision is IMMEDIATELY EXECUTORY.

- Central Shipping Company, Inc. vs. Insurance Company of North America, G.R. No. 150751, September 20, 2004

CENTRAL SHIPPING COMPANY, INC., ***Petitioner*** **–versus- INSURANCE COMPANY OF NORTH AMERICA,** ***Respondent.***

G.R. No. 150751, THIRD DIVISION, September 20, 2004, PANGANIBAN, *J.*

A common carrier is presumed to be at fault or negligent. It shall be liable for the loss, destruction or deterioration of its cargo, unless it can prove that the sole and proximate cause of such event is one of the causes enumerated in Article 1734 of the Civil Code, or that it exercised extraordinary diligence to prevent or minimize the loss. In the present case, the weather condition encountered by petitioner's vessel was not a "storm" or a natural disaster comprehended in the law. Given the known weather condition prevailing during the voyage, the manner of stowage employed by the carrier was insufficient to secure the cargo from the rolling action of the sea. The carrier took a calculated risk in improperly securing the cargo. Having lost that risk, it cannot now disclaim any liability for the loss.

FACTS:

On July 25, 1990 at Puerto Princesa, Palawan, the petitioner received on board its vessel, the M/V 'Central Bohol', 376 pieces of Philippine Apitong Round Logs and undertook to transport said shipment to Manila for delivery to Alaska Lumber Co., Inc.

The cargo was insured for ₱3,000,000.00 against total loss under respondent's Marine Cargo Policy.

On July 25, 1990, upon completion of loading of the cargo, the vessel left Palawan and commenced the voyage to Manila.

While enroute to Manila, the vessel listed about 10 degrees starboardside, due to the shifting of logs in the hold.

After the listing of the vessel had increased to 15 degrees, the ship captain ordered his men to abandon ship and at about 0130 hours of the same day the vessel completely sank. Due to the sinking of the vessel, the cargo was totally lost.

Respondent alleged that the total loss of the shipment was caused by the fault and negligence of the petitioner and its captain and as direct consequence thereof the consignee suffered damage in the sum of ₱3,000,000.00.

The consignee, Alaska Lumber Co. Inc., presented a claim for the value of the shipment to the petitioner but the latter failed and refused to settle the claim, hence respondent, being the insurer, paid said claim and now seeks to be subrogated to all the rights and actions of the consignee as against the [petitioner].

Petitioner, while admitting the sinking of the vessel, interposed the defense that the vessel was fully manned, fully equipped and in all respects seaworthy; that all the logs were properly loaded and secured; that the vessel's master exercised due diligence to prevent or minimize the loss before, during and after the occurrence of the storm.

It raised as its main defense that the proximate and only cause of the sinking of its vessel and the loss of its cargo was a natural disaster, a tropical storm which neither petitioner nor the captain of its vessel could have foreseen.

The trial court held petitioner liable for the loss of the cargo.

The CA affirmed the trial court's finding that the southwestern monsoon encountered by the vessel was not unforeseeable. Thus, the carrier was held responsible for the consequent loss of or damage to the cargo, because its own negligence had contributed thereto.

ISSUES:

1. Whether the carrier is liable for the loss of the cargo. (YES)
2. Whether the doctrine of limited liability is applicable. (NO)

RULING:

1. From the nature of their business and for reasons of public policy, common carriers are bound to observe extraordinary diligence over the goods they transport, according to all the circumstances of each case. In the event of loss, destruction or deterioration of the insured goods, common carriers are responsible; that is, unless they can prove that such loss, destruction or deterioration was brought about -- among others -- by "flood, storm, earthquake, lightning or other natural disaster or calamity." In all other cases not specified under Article 1734 of the Civil Code, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence.

In the present case, petitioner disclaims responsibility for the loss of the cargo by claiming the occurrence of a "storm" under Article 1734(1). It attributes the sinking of its vessel solely to the weather condition.

The pieces of evidence with respect to the weather conditions encountered by the vessel showed that there was a southwestern monsoon at the time. Normally expected on sea voyages, however, were such monsoons, during which strong winds were not unusual. Nonetheless, to our mind it would not be sufficient to categorize the weather condition at the time as a "storm" within the absolutory causes enumerated in the law. Significantly, no typhoon was observed within the Philippine area of responsibility during that period.

Even if the weather encountered by the ship is to be deemed a natural disaster under Article 1739 of the Civil Code, petitioner failed to show that such natural disaster or calamity was the proximate and only cause of the loss. Human agency must be entirely excluded from the cause of injury or loss. In other words, the damaging effects blamed on the event or phenomenon must not have been caused, contributed to, or worsened by the presence of human participation.The defense of fortuitous event or natural disaster cannot be successfully made when the injury could have been avoided by human precaution.

Hence, if a common carrier fails to exercise due diligence -- or that ordinary care that the circumstances of the particular case demand -- to prevent or minimize the loss before, during and

after the occurrence of the natural disaster, the carrier shall be deemed to have been negligent. The loss or injury is not, in a legal sense, due to a natural disaster under Article 1734(1).

We also find no reason to disturb the CA's finding that the loss of the vessel was caused not only by the southwestern monsoon, but also by the shifting of the logs in the hold. Such shifting could been due only to improper stowage.

2. The doctrine of limited liability under Article 587 of the Code of Commerce is not applicable to the present case. This rule does not apply to situations in which the loss or the injury is due to the concurrent negligence of the shipowner and the captain. It has already been established that the sinking of M/V Central Bohol had been caused by the fault or negligence of the ship captain and the crew, as shown by the improper stowage of the cargo of logs. "Closer supervision on the part of the shipowner could have prevented this fatal miscalculation." As such, the shipowner was equally negligent. It cannot escape liability by virtue of the limited liability rule.

- Western Shipping Agency, Inc., vs. National Labor Relations Commission, 253 SCRA 405 (1996)

WESTERN SHIPPING AGENCY, INC., YEH SHIPPING CO. LTD. and PHIL. BRITISH ASSURANCE CO., INC., *Petitioners* –versus- NATIONAL LABOR RELATIONS COMMISSION and ALEXANDER S. BAO, *Respondents*.
G.R. No. 109717, SECOND DIVISION, February 9, 1996, MENDOZA, J.

Loss of confidence is a valid ground for the dismissal of managerial employees like petitioner herein, who was the master of a vessel. But even managerial employees enjoy security of tenure, fair standards of employment and protection of labor laws and, as such, they can only be dismissed after cause is shown in an appropriate proceeding. The loss of confidence must be substantiated by evidence. The burden of proof is on the employer to show grounds justifying the loss of confidence. Petitioners failed to discharge this burden, as the POEA and the NLRC found. As private respondent was illegally dismissed, he is entitled to the payment of salary corresponding to the unexpired portion of his contract of employment.

FACTS:

Petitioner Western Shipping Agency, Inc. is the manning agent of petitioner Yeh Shipping Co., Ltd., the owner of the vessel M/V Sea Wealth, while petitioner Philippine British Assurance Company is the surety of Western Shipping Agency, Inc.

Private respondent was master of the M/V Sea Wealth, having been hired by Western Shipping in 1988 at a monthly salary of US$1,323.00 with a fixed monthly overtime pay of US$287.00. His contract was for one year, starting April 21, 1988.

On January 14, 1989, private respondent was notified of his discharge. In the disembarkation order given to him on January 17, 1989, Western Shipping justified the discharge of private respondent on the following ground:

At this juncture, our Offices would like to let you feel and understand that they were unhappy about the way you conducted and executed your official duties and responsibilities as Master of the vessel, particularly when it was at the port of Davao and when it arrived at the Port of Manila. As

you have admitted thru the telephone, you failed to notify or gave advice to our offices about your actual arrival in Manila because you were busy coordinating matters including your intention to take the Pilot Examinations in Batangas. Had it not for our initiative when we tried to go to South Harbor on Monday — January 9th — and verified, we would have not known that you were already in Manila.

Indeed, we understand your failure to communicate with us upon your arrival in Manila, when we went on board the ship and discovered that you allowed the accommodation and transport of people who should not be on board during the vessel's navigation from Davao to Manila, without even trying to secure the necessary approval from our offices, aware of the risks and knowing the limited safety equipment and accommodation on board.

On March 1, 1989, private respondent filed a complaint with the POEA alleging illegal dismissal, underpayment of salary and fixed overtime pay and non-payment of wages and other emoluments corresponding to the unexpired portion of his employment contract.

Petitioners denied private respondent's allegations. They averred that the private respondent was dismissed because of loss of trust and confidence for having allowed fifteen (15) persons to sail with him from Davao to Manila without authority and without regard to the safety of the passengers and the cargo.

In their position paper petitioners claimed that, in violation of company rules, private respondent failed to notify them of the vessel's arrival in Manila on January 8, 1989 and to provide life-saving equipment for the passengers he had allowed to board, as required by Sec. 1019 of the Philippine Merchant Marine Rules and Regulation.

Petitioners submitted the affidavit of Noimi Zabala, president of Western Shipping, stating as further ground for the employer's loss of trust and confidence in private respondent, the fact that the latter allegedly collected US$7,000.00 in foreign currency from Western Shipping in violation of a Central Bank regulation prohibiting manning agencies from withdrawing foreign remittances in dollars and falsely accused Western Shipping of underpayment.

Private respondent did not deny that he had taken passengers on board the vessel on its trip from Davao to Manila. He claimed, however, that Mr. Zabala had been notified of this fact in a telephone conversation but he did not object and that the additional passengers were wives and children of the complement of the vessel. Private respondent alleged that the shipowner's agent in Davao, the World Mariner Philippines, Inc., did not object to the taking of additional passengers but on the contrary secured permit from the Collector of Customs for them to board the vessel. Lastly, it was alleged, the Coast Guard, after inspecting the vessel with the additional passengers on board, issued a clearance for the vessel to sail.

Private respondent denied that he did not notify Western Shipping of the vessel's arrival. He claimed he had sent a telex message on January 5, 1989, informing Western Shipping of the expected time of arrival of the vessel on January 8, 1989, at 0600 Hrs, and that Western Shipping sent a message, also by telex, welcoming the arrival of the vessel. He alleged that the vessel was equipped with two life boats and rafts which could accommodate all persons aboard in case of emergency.

After hearing, the POEA rendered a decision, finding private respondent to have been illegally dismissed and accordingly ordering petitioners to pay private respondent's monetary claims

ISSUE:

1. W/N Private respondent is illegally dismissed. (YES)

RULING:

In this case, both the Labor Arbiter and the POEA found that private respondent had taken on board the vessel the fifteen passengers with the knowledge of Noimi Zabala, the president of Western Shipping. Zabala had been told so by telephone by private respondent but Zabala did not object and only said, "Mabuti ka pa pare, pinahihintulutan mo ang mga iyan na makasama sa biyahe."

As both the NLRC and the POEA also found, the shipowner's agent, World Mariner Phils. Inc., knew of the presence on board the vessel of the passengers who were actually the crew's relatives. World Mariner in fact secured a permit for them from the Collector of Customs and the Coast Guard as part of its duty to represent the vessel in that port.

Noimi Zabala denied in his affidavit that World Mariner was the ship agent in Davao. His denial, however, cannot prevail over the positive assertion by World Mariner that it was the shipowner's (Yeh Shipping Co.'s) agent for the duration of the M/V Sea Wealth's call at Davao from December 23, 1988 to January 20, 1989. Indeed, the shipowner, Yeh Shipping Co., never denied the claim of the World Mariner. Western Shipping's authority, as manning agent, was only to hire seafarers for the ship.

Nor is there any basis for petitioners' allegation that the vessel did not have life-saving equipment for the additional passengers. It had two life boats and two inflatable life rafts on board which could accommodate 50 persons and 25 persons, respectively. With only 36 persons on board (21 are the vessel's complement and 15 passengers), the vessel had adequate life-saving equipment. Petitioners contend that the life boats and rafts were for the crew and passengers under emergency, but there were none for the additional passengers. But there were no passengers under emergency during the vessel's run from Davao to Manila, so that the lifebuoys intended for the passengers under emergency could have been used by the crews' relatives on board if needed. The clearance to sail issued by the Coast Guard is proof of compliance with the requirements of §1019 of the Philippine Merchant Marine Rules and Regulation.

Private respondent may be presumed to be as much concerned with the safety of those on board as were petitioners. After all the additional passengers were not ordinary passengers but the wives and children of the vessel's complement, including private respondent's own wife. If the presence of these relatives endangered the safety of the vessel as a whole, private respondent, who had 15 years of maritime experience behind him, would in all likelihood have been the first one to disallow them.

Petitioners further contend that private respondent did not notify Western Shipping of the actual arrival of the vessel in Manila despite the fact that the vessel was equipped with communication facilities which made it possible for private respondent to contact any telephone on shore. It appears that private respondent did inform petitioners of the vessel's Expected Time of Arrival (ETA) in Manila. If he failed to confirm its arrival later, it was because the vessel arrived in Manila on January 8, 1989, which was a Sunday, when offices were closed. Petitioners claim that it is engaged in maritime business and that it operates on a 24-hour a day basis. Petitioners might be in operation 24 hours a day plying their vessels. But there is no evidence to show that its offices were

open 24 hours a day, seven days a week, so that even if the vessel arrived on a Sunday, there were employees of Western Shipping who could have attended to the vessel upon its arrival.

Furthermore, the vessel arrived only an hour behind its ETA as given to petitioners, but petitioners' agents were not on hand to meet it when the vessel arrived. Private respondent had reason to believe that the Western Shipping knew that vessel was arriving on January 8, 1989 because the latter had in fact issued a telex message welcoming the arrival of the vessel

Indeed, had it been private respondent's intention to hide the presence of the 15 passengers on board the vessel, as petitioners claim, private respondent could have asked the passengers to disembark from the vessel immediately after its arrival on January 8, 1989 instead of allowing them to stay until the next morning when officers of Western Shipping came

Loss of confidence is a valid ground for the dismissal of managerial employees like petitioner herein, who was the master of a vessel. But even managerial employees enjoy security of tenure, fair standards of employment and protection of labor laws and, as such, they can only be dismissed after cause is shown in an appropriate proceeding. The loss of confidence must be substantiated by evidence. The burden of proof is on the employer to show grounds justifying the loss of confidence. Petitioners failed to discharge this burden, as the POEA and the NLRC found.

As private respondent was illegally dismissed, he is entitled to the payment of salary corresponding to the unexpired portion of his contract of employment.

- Virgines Calvo doing business under the name and style Transorient Container Terminal Services, Inc. vs. UCPB General Insurance Co., Inc., G.R. No. 148496, March 19, 2002

VIRGINES CALVO doing business under the name and style TRANSORIENT CONTAINER TERMINAL SERVICES, INC., *Petitioner* –versus- UCPB GENERAL INSURANCE CO., INC. (formerly Allied Guarantee Ins. Co., Inc.) *Respondent*.
G.R. No. 148496, SECOND DIVISION, March 19, 2002, MENDOZA, *J.*

The rule is that if the improper packing or, in this case, the defect/s in the container, is/are known to the carrier or his employees or apparent upon ordinary observation, but he nevertheless accepts the same without protest or exception notwithstanding such condition, he is not relieved of liability for damage resulting therefrom. In this case, petitioner accepted the cargo without exception despite the apparent defects in some of the container vans. Hence, for failure of petitioner to prove that she exercised extraordinary diligence in the carriage of goods in this case or that she is exempt from liability, the presumption of negligence as provided under Art. 1735 holds.

FACTS:

Petitioner Virgines Calvo is the owner of Transorient Container Terminal Services, Inc. (TCTSI), a sole proprietorship customs broker. At the time material to this case, petitioner entered into a contract with San Miguel Corporation (SMC) for the transfer of 114 reels of semi-chemical fluting paper and 124 reels of kraft liner board from the Port Area in Manila to SMC's warehouse. The cargo was insured by respondent UCPB General Insurance Co., Inc.

The shipment in question, contained in 30 metal vans, arrived in Manila on board "M/V Hayakawa Maru". Petitioner, pursuant to her contract with SMC, withdrew the cargo from the arrastre operator and delivered it to SMC's warehouse in Ermita, Manila. The goods were inspected by Marine Cargo Surveyors, who found that 15 reels of the semi-chemical fluting paper were "wet/stained/torn" and 3 reels of kraft liner board were likewise torn. The damage was placed at ₱93,112.00.

SMC collected payment from respondent UCPB under its insurance contract for the aforementioned amount. In turn, respondent, as subrogee of SMC, brought suit against petitioner in the Regional Trial Court, Branch 148, Makati City, which rendered judgment finding petitioner liable to respondent for the damage to the shipment.

The decision was affirmed by the Court of Appeals.

Petitioner contends that she is not a common carrier but a private carrier because, as a customs broker and warehouseman, she does not indiscriminately hold her services out to the public but only offers the same to select parties with whom she may contract in the conduct of her business.

ISSUE:

W/N THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN CLASSIFYING THE PETITIONER AS A COMMON CARRIER AND NOT AS PRIVATE OR SPECIAL CARRIER WHO DID NOT HOLD ITS SERVICES TO THE PUBLIC. (NO)

RULING:

It is a common carrier because the transportation of goods is an integral part of her business. To uphold petitioner's contention would be to deprive those with whom she contracts the protection which the law affords them notwithstanding the fact that the obligation to carry goods for her customers, as already noted, is part and parcel of petitioner's business.

Now, as to petitioner's liability, Art. 1733 of the Civil Code provides:

> 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 and for the safety of the passengers transported by them, according to all the circumstances of each case. . . .

The extraordinary diligence in the vigilance over the goods tendered for shipment requires the common carrier to know and to follow the required precaution for avoiding damage to, or destruction of the goods entrusted to it for sale, carriage and delivery. It requires common carriers to render service with the greatest skill and foresight and "to use all reasonable means to ascertain the nature and characteristic of goods tendered for shipment, and to exercise due care in the handling and stowage, including such methods as their nature requires."

Petitioner's insist that the cargo could not have been damaged while in her custody as she immediately delivered the containers to SMC's compound, suffice it to say that to prove the exercise of extraordinary diligence, petitioner must do more than merely show the possibility that some

other party could be responsible for the damage. It must prove that it used "all reasonable means to ascertain the nature and characteristic of goods tendered for transport and that it exercised due care in the handling thereof." Petitioner failed to do this.

Nor is there basis to exempt petitioner from liability under Art. 1734(4), which provides --

> 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:
>
> . . . .
>
> (4) The character of the goods or defects in the packing or in the containers.
>
> . . . .

For this provision to apply, the rule is that if the improper packing or, in this case, the defect/s in the container, is/are known to the carrier or his employees or apparent upon ordinary observation, but he nevertheless accepts the same without protest or exception notwithstanding such condition, he is not relieved of liability for damage resulting therefrom. In this case, petitioner accepted the cargo without exception despite the apparent defects in some of the container vans. Hence, for failure of petitioner to prove that she exercised extraordinary diligence in the carriage of goods in this case or that she is exempt from liability, the presumption of negligence as provided under Art. 1735 holds.

- TORRES-MADRID BROKERAGE, INC. v. FEB MITSUI MARINE INSURANCE CO., INC.. G.R. No. 194121, July 11, 2016

TORRES-MADRID BROKERAGE, INC., *Petitioner* –versus- FEB MITSUI MARINE INSURANCE CO., INC. and BENJAMIN P. MANALAST AS, doing business under the name of BMT TRUCKING SERVICES, *Respondents.*

G.R. No. 194121, July 11, 2016, SECOND DIVISION, BRION, *J.*

A brokerage may be considered a common carrier if it also undertakes to deliver the goods for its customers. The law does not distinguish between one whose principal business activity is the carrying of goods and one who undertakes this task only as an ancillary activity.

Theft or the robbery of the goods is not considered a fortuitous event or a force majeure. Nevertheless, a common carrier may absolve itself of liability for a resulting loss: (1) if it proves that it exercised extraordinary diligence in transporting and safekeeping the goods; or (2) if it stipulated with the shipper/owner of the goods to limit its liability for the loss, destruction, or deterioration of the goods to a degree less than extraordinary diligence.

FACTS:

A shipment of various electronic goods arrived at the Port of Manila for Sony Philippines, Inc. *(Sony).* Previous to the arrival, Sony had engaged the services of TMBI to *facilitate, process, withdraw, and deliver* the shipment from the port to its warehouse in Biñan, Laguna. TMBI – who

did not own any delivery trucks – subcontracted the services of Benjamin Manalastas' company, BMT Trucking Services *(BMT)*, to transport the shipment from the port to the Biñan warehouse.

Four BMT trucks picked up the shipment from the port. However, only three trucks arrived at Sony's Biñan warehouse. The fourth truck driven by Rufo Reynaldo Lapesura was found abandoned.
Sony filed an insurance claim with the Mitsui, the insurer of the goods. After evaluating the merits of the claim, Mitsui paid Sony the value of the lost goods. After being subrogated to Sony's rights, Mitsui sent TMBI a demand letter for payment of the lost goods. TMBI refused to pay Mitsui's claim. As a result, Mitsui filed a complaint against TMBI. TMBI, in turn, impleaded Benjamin Manalastas, the proprietor of BMT, as a third-party defendant. TMBI prayed that in the event it is held liable to Mitsui for the loss, it should be reimbursed by BMT.

RTC found TMBI and Benjamin Manalastas jointly and solidarily liable to pay Mitsui. CA affirmed the RTC's decision.
TMBI denies being a common carrier because it does not own a single truck to transport its shipment and it does not offer transport services to the public for compensation and hence, it is not bound to observe extra-ordinary diligence. Furthermore, TMBI insists that the *hijacking* of the truck was a fortuitous event which should exonerate its liability.

ISSUES:

1. Whether TMBI is a common carrier. (YES)
2. Whether TMBI should be held liable for the hijacking of the truck. (YES)
3. Whether BMT should be held liable with TMBI. (NO)

RULING:

1. TMBI is a common carrier. A brokerage may be considered a common carrier if it also undertakes to deliver the goods for its customers.

Common carriers are persons, corporations, firms or associations engaged in the business of transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.

In *A.F. Sanchez Brokerage Inc. v. Court of Appeals,* we held that a customs broker – whose principal business is the preparation of the correct customs declaration and the proper shipping documents – is still considered a common carrier if it also undertakes to deliver the goods for its customers. The law does not distinguish between one whose principal business activity is the carrying of goods and one who undertakes this task only as an ancillary activity.
Despite TMBI's present denials, we find that the delivery of the goods is an integral, albeit ancillary, part of its brokerage services. TMBI admitted that it was contracted to facilitate, process, and clear the shipments from the customs authorities, withdraw them from the pier, then transport and deliver them to Sony's warehouse in Laguna.

That TMBI does not own trucks and has to subcontract the delivery of its clients' goods, is immaterial. As long as an entity holds itself to the public for the transport of goods as a business, it

is considered a common carrier regardless of whether it owns the vehicle used or has to actually hire one.
Lastly, TMBI's customs brokerage services – including the transport/delivery of the cargo – are available to anyone willing to pay its fees. Given these circumstances, we find it undeniable that TMBI is a common carrier.

2. TMBI is liable for the hijacking of the truck.

Theft or the robbery of the goods is not considered a fortuitous event or a *force majeure*. Nevertheless, a common carrier may absolve itself of liability for a resulting loss: (1) if it proves that it exercised *extraordinary* diligence in transporting and safekeeping the goods; or (2) if it stipulated with the shipper/owner of the goods to limit its liability for the loss, destruction, or deterioration of the goods to a degree less than extraordinary diligence.

Instead of showing that it had acted with *extraordinary diligence,* TMBI simply argued that it was not a common carrier bound to observe extraordinary diligence. Its failure to successfully establish this premise carries with it the presumption of fault or negligence, thus rendering it liable to Sony/Mitsui for breach of contract.

3. TMBI and BMT are not solidarily liable to Mitsui.

TMBI's liability to Mitsui does not stem from a quasi-delict (*culpa aquiliana*) but from its breach of contract (*culpa contractual*). The tie that binds TMBI with Mitsui is contractual, albeit one that passed on to Mitsui as a result of TMBI's contract of carriage with Sony to which Mitsui had been subrogated as an insurer who had paid Sony's insurance claim. The legal reality that results from this contractual tie precludes the application of Article 2194 on solidary liability of the parties based on quasi-delict.

The Court likewise disagree with the finding that BMT is directly liable to Sony/Mitsui for the loss of the cargo. While it is undisputed that the cargo was lost under the actual custody of BMT (whose employee is the primary suspect in the hijacking or robbery of the shipment), no direct contractual relationship existed between Sony/Mitsui and BMT. If at all, Sony/Mitsui's cause of action against BMT could only arise from quasi-delict, as a third party suffering damage from the action of another due to the latter's fault or negligence, pursuant to Article 2176 of the Civil Code. In the present case, Mitsui's action is solely premised on TMBI's breach of contract. Mitsui did not even sue BMT, *much less prove any negligence on its part*. If BMT has entered the picture at all, it is because TMBI sued it for reimbursement for the liability that TMBI might incur from its contract of carriage with Sony/Mitsui. Accordingly, there is no basis to directly hold BMT liable to Mitsui for quasi-delict.

The Court, however, do not say that TMBI must absorb the loss. By subcontracting the cargo delivery to BMT, TMBI entered into its own contract of carriage with a fellow common carrier. Since BMT failed to prove that it observed *extraordinary diligence* in the performance of its obligation to TMBI, it is liable to TMBI for breach of their contract of carriage.

- TRANSIMEX CO. v. MAFRE ASIAN INSURANCE CORP., G.R. No. 190271, September 14, 2016

TRANSIMEX CO., *Petitioner* –versus- MAFRE ASIAN INSURANCE CORP., *Respondent*
G.R. No. 190271, September 14, 2016, FIRST DIVISION, SERENO, *CJ.*

According to the New Civil Code, the law of the country to which the goods are to be transported shall govern the liability of the common carrier for their loss, destruction or deterioration. The Code takes precedence as the primary law over the rights and obligations of common carriers with the Code of Commerce and COGSA applying suppletorily.

*The strong winds accompanying the southwestern monsoon could not be classified as a "**storm**." Such winds are the ordinary vicissitudes of a sea voyage.*

*Strong winds and waves are not automatically deemed **perils of the sea**, if these conditions are not unusual for that particular sea area at that specific time, or if they could have been reasonably anticipated or foreseen.*

*Even assuming that the inclement weather encountered by the vessel amounted to a "storm" under Article 1734(1) of the Civil Code, there are two other reasons why this Court cannot absolve petitioner from liability for loss or damage to the cargo under the Civil Code. First, there is no proof that the bad weather encountered by M/V Meryem Ana was the **proximate and only cause** of damage to the shipment. Second, petitioner failed to establish that it had exercised the **diligence required from common carriers** to prevent loss or damage to the cargo.*

FACTS:
This case involves a money claim filed by an respondent insurance company against the petitioner ship agent of a common carrier. The dispute stemmed from an alleged shortage in a shipment of fertilizer delivered by the carrier to a consignee. Before this Court, the ship agent insists that the *shortage was caused by bad weather, which must be considered either a storm under Article 1734 of the Civil Code or a peril of the sea under the Carriage of Goods by Sea Act (COGSA).* Petitioner is the local ship agent of the vessel, while respondent is the subrogee of Fertiphil Corporation (Fertiphil), the consignee of a shipment of Prilled Urea Fertilizer transported by *M/V Meryem Ana.*

M/V Meryem Ana received a shipment of Prilled Urea Fertilizer from Ukraine. The ship sailed on to Tabaco, Albay, to unload the cargo. The fertilizer unloaded at Albay appeared to have a gross weight of 7,700 metric tons. As soon as the vessel docked at the Tabaco port, the fertilizer was bagged and stored inside a warehouse by employees of the consignee. When the cargo was subsequently weighed, it was discovered that only 7,350.35 metric tons of fertilizer had been delivered. Because of the alleged shortage of 349.65 metric tons, Fertiphil filed a claim with respondent for Pl,617,527.37, which was found compensable.

After paying the claim of Fertiphil, respondent demanded reimbursement from petitioner on the basis of the right of subrogation. The claim was denied, prompting respondent to file a Complaint with the RTC for recovery of sum of money. In support of its claim, respondent presented a Report of Survey and a Certification from David Cargo Survey Services to prove the shortage. In the report, the adjuster also stated that the shortage was attributable to the melting of the fertilizer while inside the hatches, when the vessel took on water because of the bad weather experienced at sea.

The RTC ruled in favor of respondent and ordered petitioner to pay the claim of Pl,617,527.37. The CA affirmed the ruling of the RTC.

ISSUES:

1. Whether the transaction is governed by the provisions of the Civil Code on common carriers or by the provisions of COGSA.
2. Whether petitioner is liable for the loss or damage sustained by the cargo because of bad weather. (YES)

RULING:

1. *The provisions of the Civil Code on common carriers are applicable.*

As expressly provided in Article 1753 of the Civil Code, "the law of the country to which the goods are to be transported shall govern the liability of the common carrier for their loss, destruction or deterioration." Since the cargo in this case was transported from Odessa, Ukraine, to Tabaco, Albay, the liability of petitioner for the alleged shortage must be determined in accordance with the provisions of the Civil Code on common carriers. In *Eastern Shipping Lines, Inc. v. BPI/MS Insurance Corp.,* the Court declared:

According to the New Civil Code, the law of the country to which the goods are to be transported shall govern the liability of the common carrier for their loss, destruction or deterioration. The Code takes precedence as the primary law over the rights and obligations of common carriers with the Code of Commerce and COGSA applying suppletorily.

2. *Petitioner is liable for the shortage incurred by the shipment.*

Petitioner asserts that the *shortage was caused by bad weather, which must be considered either a storm under Article 1734 of the Civil Code or a peril of the sea under the Carriage of Goods by Sea Act (COGSA).* The Court, however, found that petitioner failed to prove the existence of a storm or a peril of the sea within the context of Article 1734(1) of the Civil Code or Section 4(2)(c) of COGSA.

It must be emphasized that not all instances of bad weather may be categorized as "storms" or "perils of the sea" within the meaning of the provisions of the Civil Code and COGSA on common carriers.
With respect to storms, this Court has explained the difference between a storm and ordinary weather conditions in *Central Shipping Co. Inc. v. Insurance Company of North America:*

According to PAGASA, **a storm has a wind force of 48 to 55 knots, equivalent to 55 to 63 miles per hour or 10 to 11 in the Beaufort Scale.** The second mate of the vessel stated that the wind was blowing around force 7 to 8 on the Beaufort Scale. **Consequently, the strong winds accompanying the southwestern monsoon could not be classified as a "storm." Such winds are the ordinary vicissitudes of a sea voyage.**

The phrase "perils of the sea" carries the same connotation. Although the term has not been definitively defined in Philippine jurisprudence, courts in the United States of America generally limit the application of the phrase to weather that is "so unusual, unexpected and catastrophic as to be beyond reasonable expectation." **Accordingly, strong winds and waves are not automatically**

deemed perils of the sea, if these conditions are not unusual for that particular sea area at that specific time, or if they could have been reasonably anticipated or foreseen.

In this case, the documentary and testimonial evidence cited by petitioner indicate that *M/V Meryem Ana* faced winds of only up to 40 knots while at sea. This wind force clearly fell short of the 48 to 55 knots required for "storms" under Article 1734(1) of the Civil Code based on the threshold established by PAG ASA. Petitioner also failed to prove that the inclement weather encountered by the vessel was unusual, unexpected, or catastrophic. In particular, the strong winds and waves, which allegedly assaulted the ship, were not shown to be worse than what should have been expected in that particular location during that time of the year. Consequently, this Court cannot consider these weather conditions as "perils of the sea" that would absolve the carrier from liability.

Even assuming that the inclement weather encountered by the vessel amounted to a "storm" under Article 1734(1) of the Civil Code, there are two other reasons why this Court cannot absolve petitioner from liability for loss or damage to the cargo under the Civil Code. First, there is no proof that the bad weather encountered by *M/V Meryem Ana* was the **proximate and only cause** of damage to the shipment. Second, petitioner failed to establish that it had exercised the **diligence required from common carriers** to prevent loss or damage to the cargo.

a. **Requirement of Absence of Negligence**

- Bachelor Express, Incorporated vs. The Honorable Court of Appeals (Sixth Division), G.R. No. 85691, July 31, 1990

BACHELOR EXPRESS, INCORPORATED, and CRESENCIO RIVERA, *Petitioners* –versus- THE HONORABLE COURT OF APPEALS (Sixth Division), RICARDO BETER, SERGIA BETER, TEOFILO RAUTRAUT and ZOETERA RAUTRAUT, *Respondents.*
G.R. No. 8569, THIRD DIVISION, July 31, 1990, GUTIERREZ, JR., *J.*

However, in order that a common carrier may be absolved from liability in case of force majeure, it is not enough that the accident was caused by force majeure. The common carrier must still prove that it was not negligent in causing the injuries resulting from such accident.

The bus driver did not immediately stop the bus at the height of the commotion; the bus was speeding from a full stop; the victims fell from the bus door when it was opened or gave way while the bus was still running; the conductor panicked and blew his whistle after people had already fallen off the bus; and the bus was not properly equipped with doors in accordance with law-it is clear that the petitioners have failed to overcome the presumption of fault and negligence found in the law governing common carriers

FACTS:

On August 1, 1980, Bus No. 800 owned by Bachelor Express, Inc. and driven by Cresencio Rivera was the situs of a stampede which resulted in the death of passengers Ornominio Beter and Narcisa Rautraut.

The evidence shows that the bus came from Davao City on its way to Cagayan de Oro City passing Butuan City; that while at Tabon-Tabon, Butuan City, the bus picked up a passenger; that about fifteen (15) minutes later, a passenger at the rear portion suddenly stabbed a PC soldier which caused commotion and panic among the passengers; that when the bus stopped, passengers Ornominio Beter and Narcisa Rautraut were found lying down the road, the former already dead as a result of head injuries and the latter also suffering from severe injuries which caused her death later. The passenger assailant alighted from the bus and ran toward the bushes but was killed by the police. Thereafter, the heirs of Ornominio Beter and Narcisa Rautraut, private respondents herein (Ricardo Beter and Sergia Beter are the parents of Ornominio while Teofilo Rautraut and Zoetera [should be Zotera] Rautraut are the parents of Narcisa) filed a complaint for "sum of money" against Bachelor Express, Inc. its alleged owner Samson Yasay and the driver Rivera.

In their answer, the petitioners denied liability for the death of Ornominio Beter and Narcisa Rautraut. They alleged that ... the driver was able to transport his passengers safely to their respective places of destination except Ornominio Beter and Narcisa Rautraut who jumped off the bus without the knowledge and consent, much less, the fault of the driver and conductor and the defendants in this case; the defendant corporation had exercised due diligence in the choice of its employees to avoid as much as possible accidents; the incident on August 1, 1980 was not a traffic accident or vehicular accident; it was an incident or event very much beyond the control of the defendants; defendants were not parties to the incident complained of as it was an act of a third party who is not in any way connected with the defendants and of which the latter have no control and supervision; ..."

After due trial, the trial court issued an order dismissing the complaint. Upon appeal however, the trial court's decision was reversed and set aside. the Court of Appeals found the appellees jointly and solidarily liable to pay the plaintiffs.

Bachelor Express, Inc. denies liability for the death of Beter and Rautraut on its posture that the death of the said passengers was caused by a third person who was beyond its control and supervision. In effect, the petitioner, in order to overcome the presumption of fault or negligence under the law, states that the vehicular incident resulting in the death of passengers Beter and Rautraut was caused by force majeure or *caso fortuito* over which the common carrier did not have any control

ISSUE:

Whether or not the petitioner's common carrier observed extraordinary diligence to safeguard the lives of its passengers. (NO)

RULING:

Article 1174 of the present Civil Code states:

Except in cases expressly specified by law, or when it is otherwise declared by stipulations, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which though foreseen, were inevitable.

The sudden act of the passenger who stabbed another passenger in the bus is within the context of *force majeure.*

However, in order that a common carrier may be absolved from liability in case of *force majeure*, it is not enough that the accident was caused by *force majeure*. The common carrier must still prove that it was not negligent in causing the injuries resulting from such accident. Thus, as early as 1912, we ruled:

From all the foregoing, it is concluded that the defendant is not liable for the loss and damage of the goods shipped on the lorcha Pilar by the Chinaman, Ong Bien Sip, inasmuch as such loss and damage were the result of a fortuitous event or force majeure, *and there was no negligence or lack of care and diligence on the part of the defendant company or its agents*.

This principle was reiterated in a more recent case, *Batangas Laguna Tayabas Co. v. Intermediate Appellate Court*(167 SCRA 379 [1988]), wherein we ruled:

> ... [F]or their defense of force majeure or act of God to prosper the accident must be due to natural causes and *exclusively without human intervention*. (Emphasis supplied)

Considering the factual findings of the Court of Appeals-the bus driver did not immediately stop the bus at the height of the commotion; the bus was speeding from a full stop; the victims fell from the bus door when it was opened or gave way while the bus was still running; the conductor panicked and blew his whistle after people had already fallen off the bus; and the bus was not properly equipped with doors in accordance with law-it is clear that the petitioners have failed to overcome the presumption of fault and negligence found in the law governing common carriers.

The petitioners' argument that the petitioners "are not insurers of their passengers" deserves no merit in view of the failure of the petitioners to prove that the deaths of the two passengers were exclusively due to *force majeure* and not to the failure of the petitioners to observe extraordinary diligence in transporting safely the passengers to their destinations as warranted by law.

- Loadstar Shipping Co., Inc., vs. Court of Appeals, G.R. No. 131621, September 28, 1999

LOADSTAR SHIPPING CO., INC., *Petitioner* –versus- COURT OF APPEALS and THE MANILA INSURANCE CO., INC., *Respondents*.

G.R. No. 131621, FIRST DIVISION, September 28, 1999, DAVIDE, JR., *C.J*

For a vessel to be seaworthy, it must be adequately equipped for the voyage and manned with a sufficient number of competent officers and crew. The failure of a common carrier to maintain in seaworthy condition its vessel involved in a contract of carriage is a clear breach of its duty prescribed in Article 1755 of the Civil Code.

LOADSTAR was at fault or negligent in not maintaining a seaworthy vessel and in having allowed its vessel to sail despite knowledge of an approaching typhoon. The doctrine of limited liability does not apply where there was negligence on the part of the vessel owner or agent.

FACTS:

On 19 November 1984, LOADSTAR received on board its M/V "Cherokee" (hereafter, the vessel) the goods for shipment:

The goods, amounting to P6,067,178, were insured for the same amount with MIC against various risks including "TOTAL LOSS BY TOTAL OF THE LOSS THE VESSEL." The vessel, in turn, was insured by Prudential Guarantee & Assurance, Inc. (hereafter PGAI) for P4 million. on its way to Manila from the port of Nasipit, Agusan del Norte, the vessel, along with its cargo, sank off Limasawa Island. As a result of the total loss of its shipment, the consignee made a claim with LOADSTAR which, however, ignored the same. As the insurer, MIC paid P6,075,000 to the insured in full settlement of its claim, and the latter executed a subrogation receipt therefor.

MIC filed a complaint against LOADSTAR and PGAI, alleging that the sinking of the vessel was due to the fault and negligence of LOADSTAR and its employees. It also prayed that PGAI be ordered to pay the insurance proceeds from the loss the vessel directly to MIC, said amount to be deducted from MIC's claim from LOADSTAR.

In its answer, LOADSTAR denied any liability for the loss of the shipper's goods and claimed that sinking of its vessel was due to *force majeure*. PGAI, on the other hand, averred that MIC had no cause of action against it, LOADSTAR being the party insured. In any event, PGAI was later dropped as a party defendant after it paid the insurance proceeds to LOADSTAR.

As stated at the outset, the court *a quo* rendered judgment in favor of MIC, prompting LOADSTAR to elevate the matter to the court of Appeals, which, however, agreed with the trial court and affirmed its decision *in toto*.

LOADSTAR submits that the vessel was a private carrier because it was not issued certificate of public convenience, it did not have a regular trip or schedule nor a fixed route, and there was only "one shipper, one consignee for a special cargo." LOADSTAR argues that as a private carrier, it cannot be presumed to have been negligent, and the burden of proving otherwise devolved upon MIC.

In refutation, MIC argues that While it is true that the vessel had on board only the cargo of wood products for delivery to one consignee, it was also carrying passengers as part of its regular business. Moreover, the bills of lading in this case made no mention of any charter party but only a statement that the vessel was a "general cargo carrier." Neither was there any "special arrangement" between LOADSTAR and the shipper regarding the shipment of the cargo. The singular fact that the vessel was carrying a particular type of cargo for one shipper is not sufficient to convert the vessel into a private carrier.

ISSUES:

1. W/N M/V "Cherokee" is a common carrier? (YES)
2. Did LOADSTAR observe due and/or ordinary diligence in these premises. (YES)

RULING:

1. We hold that LOADSTAR is a common carrier. It is not necessary that the carrier be issued a certificate of public convenience, and this public character is not altered by the fact that the carriage of the goods in question was periodic, occasional, episodic or unscheduled.

In support of its position, LOADSTAR relied on the 1968 case of *Home Insurance Co. v. American Steamship Agencies, Inc*., where this Court held that a common carrier transporting special cargo or chartering the vessel to a special person becomes a private carrier that is not subject to the provisions of the Civil Code. Any stipulation in the charter party absolving the owner from liability for loss due to the negligence of its agent is void only if the strict policy governing common carriers is upheld. Such policy has no force where the public at is not involved, as in the case of a ship totally chartered for the use of a single party. LOADSTAR also cited *Valenzuela Hardwood* and *Industrial Supply, Inc. v. Court of Appeals* and *National Steel Corp. v. Court of Appeals*, both of which upheld the Home Insurance doctrine.

These cases invoked by LOADSTAR are not applicable in the case at bar for the simple reason that the factual settings are different. The records do not disclose that the M/V "Cherokee," on the date in question, undertook to carry a special cargo or was chartered to a special person only. There was no charter party. The bills of lading failed to show any special arrangement, but only a general provision to the effect that the M/V"Cherokee" was a "*general cargo carrier*." Further, the bare fact that the vessel was carrying a particular type of cargo for one shipper, which appears to be purely coincidental, is not reason enough to convert the vessel from a common to a private carrier, especially where, as in this case, it was shown that the vessel was also carrying passengers.

Under the facts and circumstances obtaining in this case, LOADSTAR fits the definition of a common carrier under Article 1732 of the Civil Code. In the case of *De Guzman v. Court of Appeals*, the Court juxtaposed the statutory definition of "common carriers" with the peculiar circumstances of that case, *viz*.:

The Civil Code defines "common carriers" in the following terms:

Art. 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air for compensation, offering their services to the public.

The above article makes no distinction between one whose *principal* business activity is the carrying of persons or goods or both, and one who does such carrying only as *ancillary* activity (in local idiom, as "a sideline". Article 1732 also carefully avoids making any distinction between a person or enterprise offering transportation service on a *regular or scheduled basis* and one offering such service on an *occasional, episodic or unscheduled basis*. Neither does Article 1732 distinguish between a carrier offering its services to the "general public," *i.e*., the general community or population, and one who offers services or solicits business only from a narrow *segment* of the general population. We think that Article 1733 deliberately refrained from making such distinctions.

> xxx xxx xxx
>
> It appears to the Court that private respondent is properly characterized as a common carrier even though he merely "back-hauled" goods for other merchants

from Manila to Pangasinan, although such backhauling was done on a periodic or occasional rather than regular or scheduled manner, and eventhough private respondent's *principal* occupation was not the carriage of goods for others. There is no dispute that private respondent charged his customers a fee for hauling their goods; that fee frequently fell below commercial freight rates is not relevant here.

The Court of Appeals referred to the fact that private respondent held no certificate of public convenience, and concluded he was not a common carrier. This is palpable error. A certificate of public convenience is not a requisite for the incurring of liability under the Civil Code provisions governing common carriers. That liability arises the moment a person or firm acts as a common carrier, without regard to whether or not such carrier has also complied with the requirements of the applicable regulatory statute and implementing regulations and has been granted a certificate of public convenience or other franchise. To exempt private respondent from the liabilities of a common carrier because he has not secured the necessary certificate of public convenience, would be offensive to sound public policy; that would be to reward private respondent precisely for failing to comply with applicable statutory requirements The business of a common carrier impinges directly and intimately upon the safety and well being and property of those members of the general community who happen to deal with such carrier. The law imposes duties and liabilities upon common carriers for the safety and protection of those who utilize their services and the law cannot allow a common carrier to render such duties and liabilities merely facultative by simply failing to obtain the necessary permits and authorizations.

2. We find that the M/V "Cherokee" was not seaworthy when it embarked on its voyage on 19 November 1984. The vessel was not even sufficiently manned at the time. "For a vessel to be seaworthy, it must be adequately equipped for the voyage and manned with a sufficient number of competent officers and crew. The failure of a common carrier to maintain in seaworthy condition its vessel involved in a contract of carriage is a clear breach of its duty prescribed in Article 1755 of the Civil Code.

Neither do we agree with LOADSTAR's argument that the "limited liability" theory should be applied in this case. The doctrine of limited liability does not apply where there was negligence on the part of the vessel owner or agent. LOADSTAR was at fault or negligent in not maintaining a seaworthy vessel and in having allowed its vessel to sail despite knowledge of an approaching typhoon. In any event, it did not sink because of any storm that may be deemed as *force majeure*, inasmuch as the wind condition in the performance of its duties, LOADSTAR cannot hide behind the "limited liability" doctrine to escape responsibility for the loss of the vessel and its cargo.

- Smith Bell Dodwell Shipping Agency Corporation vs. Catalino Borja, G.R. No. 143008, June 10, 2002

SMITH BELL DODWELL SHIPPING AGENCY CORPORATION, *Petitioner* –versus- CATALINO BORJA and INTERNATIONAL TO WAGE AND TRANSPORT CORPORATION, *Respondents.*
G.R. No. 143008, THIRD DIVISION, June 10, 2002, PANGANIBAN, *J.*

The owner or the person in possession and control of a vessel is liable for all natural and proximate damages caused to persons and property by reason of negligence in its management or navigation. The liability for the loss of the earning capacity of the deceased is fixed by taking into account the net income of the victim at the time of death -- of the incident in this case -- and that person's probable life expectancy.1âwphi1.nêt

FACTS:

It appears that on September 23, 1987, Smith Bell [herein petitioner] filed a written request with the Bureau of Customs for the attendance of the latter's inspection team on vessel M/T King Family which was due to arrive at the port of Manila on September 24, 1987.

Said vessel contained 750 metric tons of alkyl benzene and methyl methacrylate monomer.

On the same day, Supervising Customs Inspector Manuel Ma. D. Nalgan instructed [Respondent Catalino Borja] to board said vessel and perform his duties as inspector upon the vessel's arrival until its departure. At that time, [Borja] was a customs inspector of the Bureau of Customs receiving a salary of P31,188.25 per annum.

At about 11 o'clock in the morning on September 24, 1987, while M/T King Family was unloading chemicals unto two (2) barges [--] ITTC 101 and CLC-1002 [--] owned by [Respondent] ITTC, a sudden explosion occurred setting the vessels afire. Upon hearing the explosion, [Borja], who was at that time inside the cabin preparing reports, ran outside to check what happened. Again, another explosion was heard.

Seeing the fire and fearing for his life, [Borja] hurriedly jumped over board to save himself. However, the [water] [was] likewise on fire due mainly to the spilled chemicals. Despite the tremendous heat, [Borja] swam his way for one (1) hour until he was rescued by the people living in the squatters' area and sent to San Juan De Dios Hospital.

After weeks of intensive care at the hospital, his attending physician diagnosed [Borja] to be permanently disabled due to the incident. [Borja] made demands against Smith Bell and ITTC for the damages caused by the explosion. However, both denied liabilities and attributed to each other negligence.

The trial court (RTC) ruled in favor of Respondent Borja and held petitioner liable for damages and loss of income. Affirming the trial court, the CA rejected the plea of petitioner that it be exonerated from liability for Respondent Borja's injuries.

Issues

1. Who, if any, is liable for Borja's injuries?

Ruling

1. Both the RTC and the CA ruled that the fire and the explosion had originated from petitioner's vessel.

Nothing is more settled in jurisprudence than that this Court is bound by the factual findings of the Court of Appeals when these are supported by substantial evidence and are not under any of the exceptions in *Fuentes v. Court of Appeals;* more so, when such findings affirm those of the trial court. Verily, this Court reviews only issues of law.

Negligence is conduct that creates undue risk of harm to another. It is the failure to observe that degree of care, precaution and vigilance that the circumstances justly demand, whereby that other person suffers injury.Petitioner's vessel was carrying chemical cargo -- alkyl benzene and methyl methacrylate monomer. While knowing that their vessel was carrying dangerous inflammable chemicals, its officers and crew failed to take all the necessary precautions to prevent an accident. Petitioner was, therefore, negligent.

The three elements of *quasi delict* are: (a) damages suffered by the plaintiff, (b) fault or negligence of the defendant, and (c) the connection of cause and effect between the fault or negligence of the defendant and the damages inflicted on the plaintiff. All these elements were established in this case. Knowing fully well that it was carrying dangerous chemicals, petitioner was negligent in not taking all the necessary precautions in transporting the cargo.

As a result of the fire and the explosion during the unloading of the chemicals from petitioner's vessel, Respondent Borja suffered the following damage: and injuries: "(1) chemical burns of the face and arms; (2) inhalation of fumes from burning chemicals; (3) exposure to the elements [while] floating in sea water for about three (3) hours; (4) homonymous *hemianopsia* or blurring of the right eye [which was of] possible toxic origin; and (5) [c]erebral infract with neo-vascularization, left occipital region with right sided headache and the blurring of vision of right eye."

Hence, the owner or the person in possession and control of a vessel and the vessel are liable for all natural and proximate damage caused to persons and property by reason of negligent management or navigation.

d. Absence of Delay

- Aniceto Saludo, Jr. vs. Hon. Court of Appeals, G.R. No. 95536, March 23, 1992

ANICETO G. SALUDO, JR., MARIA SALVACION SALUDO, LEOPOLDO G. SALUDO and SATURNINO G. SALUDO, *Petitioners* –versus- HON. COURT OF APPEALS, TRANS WORLD AIRLINES, INC., and PHILIPPINE AIRLINES, INC., *Respondents.*
G.R. No. 95536, March 23, 1992, Second Division, REGALADO, *J.*

The carrier has the right to accept shipper's marks as to the contents of the package offered for transportation and is not bound to inquire particularly about them in order to take advantage of a false classification and where a shipper expressly represents the contents of a package to be of a designated character, it is not the duty of the carrier to ask for a repetition of the statement nor disbelieve it and open the box and see for itself.

FACTS:

Petitioners herein together with Pomierski and Son Funeral Home of Chicago brought the remains of petitioners' mother to Continental Mortuary Air Services (CMAS) which booked the shipment of the remains from Chicago to San Francisco by Trans World Airways (TWA) and from San Francisco to Manila with Philippine Airlines (PAL).

The remains were taken to the Chicago Airport, but it turned out that there were two (2) bodies in the said airport. Somehow the two (2) bodies were switched, and the remains of petitioners' mother was shipped to Mexico instead.

The shipment was immediately loaded on another PAL flight and it arrived the day after the expected arrival. Petitioners filed a claim for damages in court. Petitioners consider TWA's statement that "it had to rely on the information furnished by the shipper" a lame excuse and that its failure to prove that its personnel verified and identified the contents of the casket before loading the same constituted negligence on the part of TWA.

The lower court absolved both airlines and upon appeal it was affirmed by the court.

ISSUE:

Whether or not private respondents is liable for damages for the switching of the two caskets. (NO)

RULING:

No. The Supreme Court concluded that the switching occurred or, more accurately, was discovered on October 27, 1976; and based on the above findings of the Court of appeals, it happened while the cargo was still with CMAS, well before the same was place in the custody of private respondents. Verily, no amount of inspection by respondent airline companies could have guarded against the switching that had already taken place. Or, granting that they could have opened the casket to inspect its contents, private respondents had no means of ascertaining whether the body therein contained was indeed that of Crispina Saludo except, possibly, if the body was that of a male person and such fact was visually apparent upon opening the casket. However, to repeat, private respondents had no authority to unseal and open the same nor did they have any reason or justification to resort thereto.

It is the right of the carrier to require good faith on the part of those persons who deliver goods to be carried, or enter into contracts with it, and inasmuch as the freight may depend on the value of the article to be carried, the carrier ordinarily has the right to inquire as to its value. Ordinarily, too, it is the duty of the carrier to make inquiry as to the general nature of the articles shipped and of their value before it consents to carry them; and its failure to do so cannot defeat the shipper's right to recovery of the full value of the package if lost, in the absence of showing of fraud or deceit on the part of the shipper. In the absence of more definite information, the carrier has a the right to accept shipper's marks as to the contents of the package offered for transportation and is not bound to inquire particularly about them in order to take advantage of a false classification and where a shipper expressly represents the contents of a package to be of a designated character, it is not the duty of the carrier to ask for a repetition of the statement nor disbelieve it and open the box and see for itself. However, where a common carrier has reasonable ground to suspect that the offered

goods are of a dangerous or illegal character, the carrier has the right to know the character of such goods and to insist on an inspection, if reasonable and practical under the circumstances, as a condition of receiving and transporting such goods.

It can safely be said then that a common carrier is entitled to fair representation of the nature and value of the goods to be carried, with the concomitant right to rely thereon, and further noting at this juncture that a carrier has no obligation to inquire into the correctness or sufficiency of such information. The consequent duty to conduct an inspection thereof arises in the event that there should be reason to doubt the veracity of such representations. Therefore, to be subjected to unusual search, other than the routinary inspection procedure customarily undertaken, there must exist proof that would justify cause for apprehension that the baggage is dangerous as to warrant exhaustive inspection, or even refusal to accept carriage of the same; and it is the failure of the carrier to act accordingly in the face of such proof that constitutes the basis of the common carrier's liability.

In the case at bar, private respondents had no reason whatsoever to doubt the truth of the shipper's representations. The airway bill expressly providing that "carrier certifies goods received below were received for carriage," and that the cargo contained "casketed human remains of Crispina Saludo," was issued on the basis of such representations. The reliance thereon by private respondents was reasonable and, for so doing, they cannot be said to have acted negligently. Likewise, no evidence was adduced to suggest even an iota of suspicion that the cargo presented for transportation was anything other than what it was declared to be, as would require more than routine inspection or call for the carrier to insist that the same be opened for scrutiny of its contents per declaration.

Nonetheless, the facts show that petitioners' right to be treated with due courtesy in accordance with the degree of diligence required by law to be exercised by every common carrier was violated by TWA and this entitles them, at least, to nominal damages from TWA alone. Articles 2221 and 2222 of the Civil Code make it clear that nominal damages are not intended for indemnification of loss suffered but for the vindication or recognition of a right violated of invaded.

WHEREFORE, with the modification that an award of P40,000.00 as and by way of nominal damages is hereby granted in favor of petitioners to be paid by respondent Trans World Airlines, the appealed decision is AFFIRMED in all other respects.

- Philippine Air Lines vs. Florante Miano, G.R. No. 106664, March 8, 1995

PHILIPPINE AIR LINES, *Petitioner* -versus- FLORANTE A. MIANO, *Respondent.*
G.R. No. 106664, SECOND DIVISION, March 8, 1995, PUNO, *J.*

In breach of contract of carriage by air, moral damages are awarded only if the defendant acted fraudulently or in bad faith. The established facts evince that petitioner's late delivery of the baggage for eleven (11) days was not motivated by ill will or bad faith. In fact, it immediately coordinated with its Central Baggage Services to trace private respondent's suitcase and succeeded in finding it

FACTS:

On August 31, 1988, private respondent took petitioner's flight PR 722, Mabuhay Class, bound for Frankfurt, Germany. He had an immediate onward connecting flight via Lufthansa flight LH 1452 to Vienna, Austria. At the Ninoy Aquino International Airport, he checked-in one brown suitcase weighing twenty (20) kilograms but did not declare a higher valuation. He claimed that his suitcase contained money, documents, one Nikkon camera with zoom lens, suits, sweaters, shirts, pants, shoes, and other accessories.

Upon private respondent's arrival at Vienna via Lufthansa flight LH 1452, his checked-in baggage was missing. He reported the matter to the Lufthansa authorities. After three (3) hours of waiting in vain, he proceeded to Piestany, Czechoslovakia. Eleven (11) days after or on September 11, 1988, his suitcase was delivered to him in his hotel in Piestany, Czechoslovakia. He claimed that because of the delay in the delivery of his suitcase, he was forced to borrow money to buy some clothes, to pay $200.00 for the transportation of his baggage from Vienna to Piestany, and lost his Nikkon camera.[4]

In November 1988, private respondent wrote to petitioner a letter demanding: (1) P10,000.00 cost of allegedly lost Nikkon camera; (2) $200.00 for alleged cost of transporting luggage from Vienna to Piestany; and (3) P100,000.00 as damages. In its reply, petitioner informed private respondent that his letter was forwarded to its legal department for investigation.

Private respondent felt his demand letter was left unheeded. He instituted an action for Damages

Petitioner contested the complaint. It disclaimed any liability on the ground that there was neither a report of mishandled baggage on flight PR 722 nor a tracer telex received from its Vienna Station. It, however, contended that if at all liable its obligation is limited by the Warsaw Convention rate.

Petitioner filed a Third-Party Complaint against Lufthansa German Airlines imputing the mishandling of private respondent's baggage, but was dismissed for its failure to prosecute.

In its decision, the trial court observed that petitioner's actuation was not attended by bad faith. Nevertheless, it awarded private respondent damages and attorney's fees, the dispositive portion of

ISSUE:

W/N petitioner is liable for damages. (NO)

RULING:

In breach of contract of carriage by air, moral damages are awarded only if the defendant acted fraudulently or in bad faith. *Bad faith* means a breach of a known duty through same motive of interest or ill will.

The trial court erred in awarding moral damages to private respondent. The established facts evince that petitioner's late delivery of the baggage for eleven (11) days was not motivated by ill will or bad faith. In fact, it immediately coordinated with its Central Baggage Services to trace private respondent's suitcase and succeeded in finding it. At the hearing, petitioner's Manager for Administration of Airport Services Department Miguel Ebio testified that their records disclosed that Manila, the originating station, did *not* receive any *tracer telex*. A *tracer telex* is an action of any station that the airlines operate from whom a passenger may complain or have not received his baggage upon his arrival. It was reasonable to presume that the handling of the baggage was normal and regular. Upon inquiry from their Frankfurt Station, it was however discovered that the interline tag of private respondent's baggage was accidentally taken off. According to Mr. Ebio, it was customary for destination stations to hold a tagless baggage until properly identified. The *tracer telex*, which contained information on the baggage, is matched with the tagless luggage for identification. Without the *tracer telex*, the color and the type of baggage are used as basis for the matching. Thus, the delay.

Bad faith must be substantiated by evidence.

We can neither sustain the award of exemplary damages. The prerequisite for the award of exemplary damages in cases of contract or quasi-contract is that the defendant acted in wanton, fraudulent, reckless, oppressive, or malevolent manner. The undisputed facts do not so warrant the characterization of the action of petitioner.

The award of attorney's fees must also be disallowed for lack of legal leg to stand on. The fact that private respondent was compelled to litigate and incur expenses to protect and enforce his claim did not justify the award of attorney's fees. The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. Petitioner is willing to pay the just claim of $200.00 as a result of the delay in the transportation of the luggage in accord with the Warsaw Convention. Needless to say, the award of attorney's fees must be deleted where the award of moral and exemplary damages are eliminated.

e. Due Diligence to Prevent or Lessen the Loss

- Central Shipping Company, Inc. vs. Insurance Company of North America, G.R. No. 150751, September 20, 2004

CENTRAL SHIPPING COMPANY, INC., *Petitioner,* -versus - INSURANCE COMPANY OF NORTH AMERICA, *Respondent.*

G.R. No. 150751, THIRD DIVISION, September 20, 2004, PANGANIBAN, *J.*

The weather encountered by the vessel was not a storm as contemplated by Article 1734(1). Established is the fact that between 10:00 p.m. on July 25, 1990 and 1:25 a.m. on July 26, 1990, M/V Central Bohol encountered a southwestern monsoon in the course of its voyage. Even if the weather encountered by the ship is to be deemed a natural disaster under Article 1739 of the Civil Code, petitioner failed to show that such natural disaster or calamity was the proximate and only cause of the loss. Human agency must be entirely excluded from the cause of injury or loss in order for a carrier to be exempted from liability. The damaging effects blamed on the phenomenon must not have been caused, contributed to, or worsened by the presence of human participation. The defense of fortuitous event cannot be successfully made when the injury could have been avoided by human precaution. Hence, if a common carrier fails to exercise due diligence or that ordinary care that the circumstances of the particular case demand to prevent or minimize the loss before, during and after the occurrence of the natural disaster, the carrier shall be deemed to have been negligent. The loss or injury is not, in a legal sense, due to a natural disaster under Article 1734(1).

FACTS:

At Puerto Princesa, Palawan, the Central Shipping Company received on board its vessel, M/V Central Bohol, 376 pieces of round logs. They are to be shipped to Manila for delivery to Alaska Lumber Co., Inc. The cargo is insured for P3, 000, 000.00 against total lost under the respondents.

After the logs were loaded, the vessel eventually started its voyage. After few hours, the ship tilted 10 degrees to its side due to the shifting of the logs in the hold. It continued to tilt causing the captain and the crew to abandon the ship. The ship then sank.

Respondent alleged that the loss is due to the negligence and fault of the captain. The petitioner, on the other hand, contends that the happening was due to a storm which was unforeseen. In any case, the vessel was fully manned, fully equipped and in all respects seaworthy. All the logs were properly loaded and secured. The vessel's master exercised due diligence to prevent or minimize the loss before, during and after the occurrence of the storm.

ISSUE:

Whether the petitioner is liable for the loss of cargo. (YES)

RULING:

From the nature of their business and for reasons of public policy, common carriers are bound to observe extraordinary diligence over the goods they transport according to all the circumstances of each case. In the event of loss, destruction or deterioration of the goods, common carriers are responsible unless they can prove that the loss, destruction or deterioration was brought about among others by flood, storm, earthquake, lightning or other natural disaster or calamity. In all other cases not specified under Article 1734 of the Civil Code, common carriers are presumed to have been at fault or to have acted negligently unless they prove that they observed extraordinary diligence.

In the present case, the weather encountered by the vessel was not a storm as contemplated by Article 1734(1). Established is the fact that between 10:00 p.m. on July 25, 1990 and 1:25 a.m. on July 26, 1990, M/V Central Bohol encountered a southwestern monsoon in the course of its voyage.

Even if the weather encountered by the ship is to be deemed a natural disaster under Article 1739 of the Civil Code, petitioner failed to show that such natural disaster or calamity was the proximate and only cause of the loss. Human agency must be entirely excluded from the cause of injury or loss in order for a carrier to be exempted from liability. The damaging effects blamed on the phenomenon must not have been caused, contributed to, or worsened by the presence of human participation. The defense of fortuitous event cannot be successfully made when the injury could have been avoided by human precaution. Hence, if a common carrier fails to exercise due diligence or that ordinary care that the circumstances of the particular case demand to prevent or minimize the loss before, during and after the occurrence of the natural disaster, the carrier shall be deemed to have been negligent. The loss or injury is not, in a legal sense, due to a natural disaster under Article 1734(1).

The evidence further indicated that the strong southwest monsoons were common occurrences during the month of July. Thus, the officers and crew of M/V Central Bohol should have reasonably anticipated heavy rains, strong winds and rough seas. They should then have taken extra precaution in stowing the logs in the hold. It must be noted that the Court found that the loss was also caused by the shifting of the logs in the hold due to improper stowage.

2. **Contributory Negligence**

3. **Duration of Liability**

a. Delivery of Goods to Common Carrier

- Mauro Ganzon vs. Court of Appeals, G.R. No. L-48757, May 30, 1988

MAURO GANZON, *Petitioner*, -versus - COURT OF APPEALS and GELACIO E. TUMAMBING, *Respondents.*
G.R. No. L-48757, SECOND DIVISION, May 30, 1988, SARMIENTO, *J.*

When the scraps were delivered, they were unconditionally placed in the possession and control of the common carrier, and upon their receipt for transportation, the contract of carriage was deemed perfected. Consequently, the common carrier's extraordinary responsibility for the loss, destruction or deterioration of the goods commenced. Pursuant to Article 1736, such extraordinary responsibility would cease only upon the delivery, actual or constructive, by the carrier to the consignee or to the person who has a right to receive them.

In the case at bar, upon the delivery of the scraps, the contract of carriage was perfected since the same were unconditionally placed in the possession and control of Ganzon. Accordingly, Ganzon became extraordinarily responsible for their lost. The fact that part of the shipment had not been loaded on board did not impair the said contract of transportation. It must be noted that the goods remained in his custody and control, albeit still unloaded. Since he was not able to prove that he observed extraordinary diligence in the vigilance over the goods in his custody, according to all the circumstances of the case, or that the loss was due to an unforeseen event or to force majeure, he is presumed to have been at fault or to have acted negligently. He failed to show that the loss of the scraps was due to any of the following causes enumerated in Article 1734 of the Civil Code. It must be noted that the intervention of the municipal officials was not of a character that would render impossible the fulfillment of his obligation. He was not duty bound to obey the illegal order. There is

also absence of sufficient proof that the issuance of the same order was attended with such force or intimidation as to completely overpower the will of his employees.

FACTS:

Gelacio Tumambing contracted the services of Mauro B. Ganzon to haul 305 tons of scrap iron from Mariveles, Bataan to the port of Manila on board the lighter LCT "Batman". As such, Ganzon sent the lighter to Mariveles while Tumambing delivered the scrap iron to Filomeno Niza, the captain of the lighter, for loading under the latter's supervision. Actual loading began on the same day the scraps were delivered.

When about half was already loaded, Mayor Jose Advincula of Mariveles arrived and demanded P5,000.00 from Tumambing. When the latter resisted, he was shot by Mayor Advincula and was, consequently, brought to the hospital.

The loading eventually resumed. However, Acting Mayor Basilio Rub, accompanied by 3 policemen, ordered Captain Niza and his crew to dump the scrap iron where the lighter was docked while the others were brought to the compound of NASSCO. A receipt stating that the Municipality of Mariveles had taken custody of the scrap iron was issued.

Considering the foregoing, Tumambing instituted an action against Ganzon for damages based on culpa contractual.

ISSUES:

A. Whether Ganzon is guilty of breach of the contract of carriage. (YES)
B. Whether the loss of the scraps which was due mainly to the intervention of the municipal officials of Mariveles constitutes a caso fortuito. (NO)

RULING:

(A) When the scraps were delivered, they were unconditionally placed in the possession and control of the common carrier, and upon their receipt for transportation, the contract of carriage was deemed perfected. Consequently, the common carrier's extraordinary responsibility for the loss, destruction or deterioration of the goods commenced. Pursuant to Article 1736, such extraordinary responsibility would cease only upon the delivery, actual or constructive, by the carrier to the consignee or to the person who has a right to receive them.

In the case at bar, upon the delivery of the scraps, the contract of carriage was perfected since the same were unconditionally placed in the possession and control of Ganzon. Accordingly, Ganzon became extraordinarily responsible for their lost. The fact that part of the shipment had not been loaded on board did not impair the said contract of transportation. It must be noted that the goods remained in his custody and control, albeit still unloaded. Since he was not able to prove that he observed extraordinary diligence in the vigilance over the goods in his custody, according to all the circumstances of the case, or that the loss was due to an unforeseen event or to force majeure, he is presumed to have been at fault or to have acted negligently. He failed to show that the loss of the scraps was due to any of the following causes enumerated in Article 1734 of the Civil Code, namely: (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; and (5) order or act of competent public authority.

(B) The intervention of the municipal officials was not of a character that would render impossible the fulfillment by Ganzon of its obligation. He was not duty bound to obey the illegal order to dump into the sea the scrap iron. There is also absence of sufficient proof that the issuance of the same order was attended with such force or intimidation as to completely overpower the will of Ganzon's employees. The mere difficulty in the fullfilment of the obligation is not considered force majeure. The scraps could have been properly unloaded at the shore or at the NASSCO compound instead.

- Oriental Assurance Corporation v. Manuel Ong, doing business under the business name of Western Pacific Transport Services and/or Asian Terminals, Inc., G.R. No. 189524, October 11, 2017

ORIENTAL ASSURANCE CORPORATION, *Petitioner*, -versus - MANUEL ONG, DOING BUSINESS UNDER THE BUSINESS NAME OF WESTERN PACIFIC TRANSPORT SERVICES AND/OR ASIAN TERMINALS, INC., *Respondents.*
G.R. No. 189524, THIRD DIVISION, October 11, 2017, LEONEN, *J.*

The consignee's claim letter is regarded as substantial compliance with the condition precedent set forth in the Management Contract. The Court adopts a reasonable interpretation of the stipulations in the said contract. It must be noted that whether JEA Steel files a claim letter or requests for a certificate of loss or bad order examination, the effect would be the same. Either would afford the arrastre contractor knowledge that the shipment has been damaged and an opportunity to examine the nature and extent of the injury.

FACTS:

JEA Steel imported from South Korea 72 aluminum zinc alloy-coated steel sheets in coils. These steel sheets were transported to Manila on board the vessel M/V Dooyang Glory. Upon arrival of the vessel in Manila, the 72 coils were discharged and stored under the custody of the arrastre contractor, Asian Terminals, Inc. (ATI). The coils were then loaded on the trucks of Ong for delivery to JEA Steel's plant. 11 of these coils were found to be in damaged condition, dented or deformed.

JEA Steel filed a claim with Oriental for the value of the 11 damaged coils. The consignee's claim letter dated July 2, 2002 was received 17 days from the last delivery of the coils. Oriental paid JEA Steel. As such, Oriental demanded indemnity from Ong and ATI but they refused to pay.

ATI, for its part, argues that Oriental's claim was barred for the latter's failure to file a notice of claim within the 15-day period provided in the Gate Pass and in Article VII, Section 7.01 of the Contract for Cargo Handling Services (Management Contract) between the Philippine Ports Authority and ATI. ATI added that its liability, if any, should not exceed ₱5,000.00, pursuant to said Section 7.01.

ISSUES:

A. Whether Oriental's claim should be barred for the latter's failure to file a notice of claim within the 15-day period provided in the Management Contract. (NO)
B. Whether Ong should be held liable. (NO)

RULING:

(A) Under the express terms of the Management Contract, the consignee had 30 days from receipt of the cargo to request for a certificate of loss from the arrastre operator. Upon receipt of such request, the arrastre operator would have 15 days to issue a certificate of loss, either actually or constructively. From the date of issuance of the certificate of loss or where no certificate was issued, from the expiration of the 15-day period, the consignee has 15 days within which to file a formal claim with the arrastre operator. In other words, the consignee had 45 to 60 days from the date of last delivery of the goods within which to submit a formal claim to the arrastre operator. Specifically in this case, JEA Steel's claim letter was received by ATI 17 days from the last delivery of the goods. This is within the prescribed 30-day period to request a certificate of loss, damage, or injury from the ATI.

In the case at bar, the consignee's claim letter is regarded as substantial compliance with the condition precedent set forth in the Management Contract. The Court adopts a reasonable interpretation of the stipulations in the said contract. It must be noted that whether JEA Steel files a claim letter or requests for a certificate of loss or bad order examination, the effect would be the same. Either would afford the arrastre contractor knowledge that the shipment has been damaged and an opportunity to examine the nature and extent of the injury. Under the Management Contract, the 30-day period is considered reasonable for the contractor to make an investigation of a claim.

(B) Both the CA and the RTC found that the 11 coils were already damaged before the coils were loaded on Ong's truck. Hence, Ong could not be responsible for the damaged shipment. The assertion of Oriental that Ong should be held solidarily liable with ATI for acting in bad faith when it did not apprise JEA Steel or ATI about the damaged is untenable. This issue was never raised in the lower courts. In fact, Ong and ATI were sued in the alternative because it uncertain against whom it was entitled for relief. There was also no proof of Ong's bad faith. Ong's assertion that the loading of the cargo on the trucks was undertaken by ATI and the unloading of the same cargo was undertaken by JEA Steel at its warehouse remains unrebutted. ATI even caused the inspection of the shipment before they were loaded on Ong's trucks. At the consignee's warehouse, the inspection was done in the presence of JEA Steel's authorized representative. Thus, Ong is not obliged to inform the consignee or ATI about the damaged coils as they would have presumably known about them.

b. Actual or Constructive Delivery

- Lu Do & Lu YM Corporation vs. I.V. Binamira, G.R. No. L-9840, April 22, 1957

LU DO & LU YM CORPORATION, *Petitioner,* -versus - I. V. BINAMIRA, *Respondent.*
G.R. No. L-9840, EN BANC, April 22, 1957, BAUTISTA ANGELO, *J.*

While the Court agrees with the CA that delivery to the customs authorities is not the delivery contemplated by Article 1736 because the owner cannot exercise dominion over them, it believes that the parties may agree to limit the liability of the carrier in connection therewith considering that the goods have still to go through the inspection of the customs authorities. The carrier losses control of the goods because of a custom regulation and it is unfair that it be made responsible for what may happen during the interregnum.

In the case at bar, this is precisely what was done by the parties. In the corresponding bill of lading, both the carrier and the consignee have stipulated to limit the responsibility of the former for the loss or damage that may occur to the goods before they are actually delivered. It appears that the carrier does not assume liability for any loss or damage once they have been taken into the custody of customs or other authorities or when they have been delivered at ship's tackle. These stipulations have been adopted precisely to mitigate the responsibility of the carrier considering the present law on the matter and the Court finds nothing therein that is contrary to morals or public policy that may justify their nullification.

FACTS:

Delta Photo Supply Company of New York shipped on board the M/S FERNSIDE at New York, U.S.A. 6 cases of films and/or photographic supplies consigned to the order of I. V. Binamira. Bill of Lading was, accordingly, issued. The ship arrived at the port of Cebu and 3 days after the goods were unloaded from the ship, I. V. Binamira took delivery of the goods from Visayan Cebu Terminal Company Inc., the arrastre operator. He then discovered that the cases showed signs of pilferage.

It was found out from the investigation that the goods shipped were discharged from the ship by the stevedoring company hired by Lu Do & Lu Ym Corp. as agent of the carrier. The shipment was then received by the arrastre operator appointed by the Bureau of Customs. During the discharge, the cargo was checked both by the stevedoring company and the arrastre operator and was found to be in good order and condition. However, after it was delivered to I.V. BInamira 3 days later, the same was examined by a marine surveyor who found that some films and supplies were missing.

ISSUE:

Whether the carrier is completely responsible for the loss considering that the same occurred after the shipment was discharged from the ship and placed in the possession and custody of the customs authorities. (NO)

RULING:

It is true that, as a rule, a common carrier is responsible for the loss, destruction or deterioration of the goods it assumes to carry from one place to another unless the same is due to any to any of the causes mentioned in Article 1734 of the New Civil Code. If the goods are lost, destroyed or deteriorated for causes other that those mentioned, the common carrier is presumed to have been at fault or to have acted negligently unless it proves that it has observed extraordinary diligence in their care from the time the goods are placed in its possession to the time the same are delivered to the consignee or to the person who has the right to receive them. These provisions only apply when the loss, destruction or deterioration takes place while the goods are in the possession of the carrier and not after it has lost control of them. The reason is obvious. While the goods are in its

possession, it is but fair to expect it to exercise extraordinary diligence in protecting them from damage. If loss occurs, the law presumes that it was due to its fault or negligence. This is necessary to protect the interest of the owner who is at its mercy.

While the Court agrees with the CA that delivery to the customs authorities is not the delivery contemplated by Article 1736 because the goods are still in the hands of the Government and the owner cannot exercise dominion over them, it believes that the parties may agree to limit the liability of the carrier in connection therewith considering that the goods have still to go through the inspection of the customs authorities before they are actually turned over to the consignee. The carrier losses control of the goods because of a custom regulation and it is unfair that it be made responsible for what may happen during the interregnum.

In the case at bar, this is precisely what was done by the parties. In the corresponding bill of lading, both the carrier and the consignee have stipulated to limit the responsibility of the former for the loss or damage that may occur to the goods before they are actually delivered. It appears that the carrier does not assume liability for any loss or damage once they have been taken into the custody of customs or other authorities or when they have been delivered at ship's tackle. These stipulations have been adopted precisely to mitigate the responsibility of the carrier considering the present law on the matter and the Court finds nothing therein that is contrary to morals or public policy that may justify their nullification.

- Compañia Maritima vs. Insurance Company of North America, G.R. No. L-18965, October 30, 1964

COMPAÑIA MARITIMA, *Petitioner,* -versus - INSURANCE COMPANY OF NORTH AMERICA, *Respondent.*

G.R. No. L-18965, EN BANC, October 30, 1964, BAUTISTA ANGELO, *J.*

The test as to whether the relation of shipper and carrier had been established is: Had the control and possession of the goods been completely surrendered by the shipper to the carrier? As such, the carrier's liability as a common carrier begins with the actual delivery of the goods for transportation and not with the mere formal execution of a receipt or bill of lading because the issuance of such is not necessary to complete delivery and acceptance. Even where it is provided by statute that liability commences with the issuance of the bill of lading, actual delivery and acceptance are sufficient to bind the carrier.

In the case at bar, the fact that the carrier sent its lighters free of charge to take the hemp from Macleod's wharf preparatory to its loading onto Bowline Knot does not in any way impair the contract of carriage already entered into between the carrier and the shipper because that preparatory step is but part and parcel of said contract of carriage. In fact, the consummation of the said contract has already begun: Macleod delivering the cargo to the carrier and the latter taking possession thereof by placing it on a lighter manned by its authorized employees.

FACTS:

Macleod and Company of the Philippines contracted by telephone the services of the Compañia Maritima for the shipment of 2,645 bales of hemp from the former's private pier at Davao City to Manila and for their subsequent transhipment to Boston, Massachusetts, U.S.A. on board the S.S. Steel Navigator. After the oral contract was confirmed by a formal and written booking, Compañia Maritima sent LCT Nos. 1023 and 1025. Carrier's receipts where the issued upon loading of the hemp.
The two loaded barges subsequently left Macleod's wharf and waited in the marginal wharf for the arrival of S.S. Bowline Knot on which the hemp was to be loaded. During the night, however, LCT No. 1025 sank resulting in the damage or loss of 1,162 bales of hemp loaded therein. Macleod also incurred expenses for the checking, grading, rebating, washing, cleaning and redrying of any salvaged hemp.

Macleod filed a claim for the loss it suffered against Insurance Company of North America. After the latter paid the former, it filed a claim against Compañia Maritima. Having failed to recover from the carrier, the insurance company instituted the present action.

ISSUES:

A. Whether there was a contract of carriage between the carrier and the shipper even if the loss occurred when the hemp was loaded on a barge owned by the carrier, free of charge and no bill of lading was issued therefore. (YES)
B. Whether the insurance company can sue the carrier as assignee of Macleod in spite of the fact that the liability of the carrier as insurer is not recognized in this jurisdiction. (YES)

RULING:

(A) The test as to whether the relation of shipper and carrier had been established is: Had the control and possession of the goods been completely surrendered by the shipper to the carrier? Whenever the control and possession of goods passes to the carrier and nothing remains to be done by the shipper, it can be said with certainty that the relation of shipper and carrier has been established. As such, the carrier's liability as a common carrier begins with the actual delivery of the goods for transportation and not with the mere formal execution of a receipt or bill of lading because the issuance of such is not necessary to complete delivery and acceptance. Even where it is provided by statute that liability commences with the issuance of the bill of lading, actual delivery and acceptance are sufficient to bind the carrier.

In the case at bar, the fact that the carrier sent its lighters free of charge to take the hemp from Macleod's wharf preparatory to its loading onto Bowline Knot does not in any way impair the contract of carriage already entered into between the carrier and the shipper because that preparatory step is but part and parcel of said contract of carriage. In fact, the consummation of the said contract has already begun: Macleod delivering the cargo to the carrier and the latter taking possession thereof by placing it on a lighter manned by its authorized employees.

(B) The insurance company can recover the amount it paid to Macleod under the insurance contract since the cargo that was damaged was insured and the former paid the amount represented by the loss to the latter. It is but fair that it be given the right to recover from the party responsible for the loss.

The instant case is not one between the insured and the insurer but one between the shipper and the carrier because the insurance company merely stepped into the shoes of the shipper. Since the shipper has a direct cause of action against the carrier, no valid reason is seen why such action cannot be asserted or availed of by the insurance company as a subrogee of the shipper. In any case, the carrier set up as a defense any defect in the insurance policy not only because it is not a privy to it but also because it cannot avoid its liability to the shipper under the contract of carriage which binds it to pay any loss that may be caused to the cargo involved therein.

- Westwind Shipping Corporation vs. UCPB General Insurance Co., G.R. No. 200289, November 25, 2013

WESTWIND SHIPPING CORPORATION, *Petitioner*, -versus - UCPB GENERAL INSURANCE CO., INC. and ASIAN TERMINALS INC., *Respondents.*
G.R. No. 200289, THIRD DIVISION, November 25, 2013, PERALTA, *J.*

ORIENT FREIGHT INTERNATIONAL INC., *Petitioner*, -versus - UCPB GENERAL INSURANCE CO., INC. and ASIAN TERMINALS INC., *Respondents.*
G.R. No. 200314, THIRD DIVISION, November 25, 2013, PERALTA, *J.*

What Westwind failed to realize is that its extraordinary responsibility as a common carrier lasts until the time the goods are actually or constructively delivered carrier to the consignee or to the person who has a right to receive them. There is actual delivery in contracts for the transport of goods when possession has been turned over to the consignee or to his duly authorized agent and a reasonable time is given for him to remove the goods. As such, since the discharging of the containers/skids had not yet been completed at the time the damage occurred, there is no reason to imply that there was already delivery, actual or constructive, of the cargoes to ATI.

FACTS:

Kinsho-Mataichi Corporation shipped from the port of Kobe, Japan 197 metal containers/skids of tin-free steel to the consignee, San Miguel Corporation (SMC). The shipment was loaded and received clean on board M/V Golden Harvest Voyage, a vessel owned and operated by Westwind Shipping Corporation (Westwind). The goods are insured with UCPB General Insurance Co., Inc. (UCPB).

When the shipment arrived in Manila, it was discharged in the custody of the arrastre operator, Asian Terminals, Inc. (ATI). During the unloading operation, 6 containers/skids sustained dents and punctures from the forklift used by the stevedores of Ocean Terminal Services, Inc. (OTSI). Subsequently, Orient Freight International Inc. (OFII), the customs broker of SMC, withdrew from ATI the 197 containers/skits, including the 6 in damaged condition and delivered the same at SMC's warehouse. Upon discharged, it was discovered that 9 additional containers/skids were damaged.

Almost a year after, SMC filed a claim against UCPB, Westwind, ATI and OFII to recover the amount corresponding to the 15 damaged containers/skids. UCPB then paid SMC. In the exercise of its right of subrogation, UCPB instituted a complaint for damages against Westwind, ATI and OFII. Westwind argues that it no longer had actual or constructive custody of the containers/skids at the time they were damaged by ATI's forklift operator. Its responsibility ceased from the moment the cargoes were delivered to ATI. OFII, on the other hand, maintains that it is not a common carrier but a customs broker.

ISSUES:

A. Whether the liability of a common carrier ceased from the time the cargoes were discharged to the custody of the arrastre operator. (NO)
B. Whether a customs carrier may be regarded as a common carrier. (YES)

RULING:

(A) It was previously ruled in a case decided by a U.S. Circuit Court that like the duty of seaworthiness, the duty to care for the cargo is non-delegable and the carrier is accordingly responsible for the acts of the master, the crew, the stevedore, and his other agents. It is ordinarily the duty of the master of a vessel to unload the cargo and place it in readiness for delivery to the consignee and there is an implied obligation that this shall be accomplished with sound machinery and competent hands in such manner that no unnecessary injury shall be done thereto. The fact that a consignee is required to furnish persons to assist in unloading a shipment may not relieve the carrier of its duty as to such unloading. It is settled in maritime law jurisprudence that cargoes while being unloaded generally remain under the custody of the carrier.

In the case at bar, what Westwind failed to realize is that its extraordinary responsibility as a common carrier lasts until the time the goods are actually or constructively delivered carrier to the consignee or to the person who has a right to receive them. There is actual delivery in contracts for the transport of goods when possession has been turned over to the consignee or to his duly authorized agent and a reasonable time is given for him to remove the goods. As such, since the discharging of the containers/skids had not yet been completed at the time the damage occurred, there is no reason to imply that there was already delivery, actual or constructive, of the cargoes to ATI.

It must be noted that common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in vigilance over the goods and over the safety of the passengers transported by them according to all the circumstances of each case. The mere proof of delivery of goods in good order to the carrier and their arrival in the place of destination in bad order make out a prima facie case against it so that if no explanation is given as to how the injury occurred, it must be held responsible.

(B) A customs broker has been regarded as a common carrier because transportation of goods is an integral part of its business. Article 1732 does not distinguish between one whose principal business activity is the carrying of goods and one who does such carrying only as an ancillary activity. The idea that one is not a common carrier but a customs broker whose principal function is to prepare the correct customs declaration and proper shipping documents is bereft of merit.

As a common carrier, OFII is mandated to observe extraordinary diligence in the vigilance over the goods it transports according to the peculiar circumstances of each case. In the event that the goods are lost, destroyed or deteriorated, it is presumed to have been at fault or to have acted negligently unless it proves that it observed extraordinary diligence. As such, considering that additional 9 containers/skids were found to be in bad order after it got hold of the shipment, instead of merely excusing itself from liability, it is incumbent upon OFII to prove that it actively took care of the

goods by exercising extraordinary diligence in the carriage thereof. It failed to do so. Hence, its presumed negligent.

4. Stipulation for Limitation of Liability

a. Void Stipulations

- Sweet Lines, Inc. vs. Hon. Bernardo Teves, Presiding Judge, CFI of Misamis Oriental, Branch VII, G.R. No. L-37750, May 19, 1978

SWEET LINES, INC., ***Petitioner*****, -versus - HON. BERNARDO TEVES, PRESIDING JUDGE, CFI OF MISAMIS ORIENTAL BRANCH VII, LEOVIGILDO TANDOG, JR., and ROGELIO TIRO,** ***Respondents.***
G.R. No. L-37750, SECOND DIVISION, May 19, 1978, SANTOS, *J.*

With respect, however, to Condition No. 14 printed at the back of the tickets, the Court declared that this is what is commonly known as contracts of adhesion, the validity and/or enforceability of which will have to be determined by the peculiar circumstances obtaining in each case and the nature of the conditions or terms sought to be enforced.

In the case at bar, the Court found Condition No. 14 as void and unenforceable for 2 reasons: first, it is not just and fair to bind passengers to the conditions printed in fine letter at the back of the tickets and second, it subverts the public policy on transfer of venue of proceedings since the same will prejudice the rights and interests of innumerable passengers.

FACTS:

Atty. Leovigildo Tandog and Rogelio Tiro bought tickets for Voyage 90 at the branch office of Sweet Lines, Inc., a shipping company transporting inter-island passengers and cargoes. They were to board vessel M/S "Sweet Hope" bound for Tagbilaran City via the port of Cebu.

It was later on learned that the vessel was not proceeding to Bohol since many passengers were bound for Surigao. As such, Tandog and Tiro went to the same branch office for proper relocation to M/S "Sweet Town". However, because the said vessel was already filled to capacity, they were forced to agree to hide at the cargo section to avoid inspection of the officers of the Philippine Coastguard.

Tandog and Tiro later on filed a case against Sweet Lines for damages and for breach of contract of carriage before the Court of First Instance of Misamis Oriental. They alleged that during the trip, they were exposed to the scorching heat of the sun and the dust coming from the ship's cargo of corn grits. Moreover, the tickets they initially bought were not honored and were constrained to pay for other. Sweet Lines, on the other hand, moved to dismiss the complaint on the ground of improper venue. This is premised on Condition No. 14 printed at the back of the tickets which provides that any and all actions arising out of the ticket, irrespective of where it is issued, shall be filed before the courts of Cebu City.

Sweet Lines contends that Condition No. 14 is valid and enforceable since Tandog and Tiro acceded to it when they purchased the tickets and took its vessel for passage. It is an accepted principle that

venue may be validly waived. As such, since Condition No. 14 is printed in bold and capital letters and not in fine print, this is an effective waiver of venue. On the other hand, Tandog and Tiro claim that Condition No. 14 is not valid. They had no say in the tickets' preparation and had no capacity to refuse the condition. Sweet Lines has been exacting too much from the public by inserting impositions in the tickets that are too burdensome to bear.

ISSUE:
Whether Condition No. 14 is valid and enforceable. (NO)

RULING:

There is no question that there was a valid contract of carriage and that the tickets are the best evidence thereof. Such ticket has all the elements of a written contract, namely: (1) the consent of the contracting parties which is manifested by the boarding of the passenger and the consequent acceptance of him by the carrier; (2) cause or consideration which is the fare paid by the passenger; and (3) object which is the transportation of the passenger.

With respect, however, to Condition No. 14 printed at the back of the tickets, the Court declared that this is what is commonly known as contracts of adhesion, the validity and/or enforceability of which will have to be determined by the peculiar circumstances obtaining in each case and the nature of the conditions or terms sought to be enforced. Such contract is drafted only by one party, usually a corporation. The signing of signature is the only participation of the other party who cannot change the same and who are thus made to adhere thereto on a "take it or leave it" basis. As such, greater strictness and vigilance on the part of the courts of justice is encouraged with a view of protecting the weaker party from abuses and imposition and preventing such contracts from becoming traps for the unwary.

In the case at bar, the Court found Condition No. 14 as void and unenforceable for 2 reasons:

First, it is not just and fair to bind passengers to the conditions printed in fine letter at the back of the tickets. It is hardly proper to expect the passengers to examine their tickets after they received them from crowded counters. No reasonable opportunity is given to them in order to carefully examine the said condition prior to the purchase of the tickets. Moreover, it must be noted that the shipping companies are franchise holders of certificates of public convenience and therefore possess a virtual monopoly of the business of transporting passengers. As such, they may dictate the terms of passage, leaving the passengers with no choice but to buy tickets and avail of their vessels and facilities.

Second, Condition No. 14 subverts the public policy on transfer of venue of proceedings since the same will prejudice the rights and interests of innumerable passengers. Although venue may be changed by agreement, such an agreement will not be held valid where it practically negates the action of the claimants. Considering the expense and trouble a passenger residing outside of Cebu City would incur to prosecute a claim in the said city, he would most probably decide not to file the action at all. On the other hand, Sweet Lines has offices in the respective ports of call of its vessels and can afford to litigate in any of these places.

d. Limitation of Liability to Fixed Amount

e. Limitation of Liability in Absence of Declaration of Greater Value

- St. Paul Fire & Marine Insurance Co. vs. Macondray & Co, Inc., et al., G.R. No. L-27796, March 25, 1976

ST. PAUL FIRE & MARINE INSURANCE CO., ***Petitioner,*** **-versus - MACONDRAY & CO., INC., BARBER STEAMSHIP LINES, INC., WILHELM WILHELMSEN, MANILA PORT SERVICE and/or MANILA RAILROAD COMPANY,** ***Respondents.***
G.R. No. L-27796, SECOND DIVISION, March 25, 1976, ANTONIO, *J.*

The purpose of the bill of lading is to provide for the rights and liabilities of the parties in reference to the contract to carry. The stipulation in the bill of lading limiting the common carrier's liability to the value of the goods appearing in the bill, unless the shipper or owner declares a greater value, is valid and binding provided it (a) is reasonable and just under the circumstances, and (b) has been fairly and freely agreed upon.

In the case at bar, the liabilities of the respondents with respect to lost or damaged shipments are expressly limited to the C.I.F. value of the goods as per the contract of sea carriage embodied in the bill of lading. It is not pretended that those conditions therein are unreasonable or were not freely and fairly agreed upon. As such, the shipper and consignee are bound by such limitation. As to the insurance company, it must be noted that after paying the claim of the insured, the former is merely subrogated to the rights of the latter. As subrogee, it can recover only the amount that is recoverable by the insured. Since the right of the insured, in case of loss or damage to the goods, is restricted by the provisions in the bill of lading, a suit by the insurer necessarily is subject to like limitations.

FACTS:

Winthrop Products, Inc. of New York shipped aboard the SS "Tai Ping", owned and operated by Wilhelm Wilhelmsen, 218 cartons and drums of drugs and medicine which were consigned to Winthrop-Stearns Inc., Manila, Philippines. Barber Steamship Lines, Inc., agent of Wilhelm Wilhelmsen issued the Bill of Lading. The shipment was insured with St. Paul Fire & Marine Insurance Company.

When SS "Tai Ping" arrived at the Port of Manila, the shipment was discharged into the custody of Manila Port Service, the arrastre contractor. 1 drum and several cartons were found to be in bad order condition. As such, the consignee filed its claim with the insurer who paid to the former the insured value of the damaged goods, including other expenses in connection therewith, in the total amount of $1,134.46. Accordingly, as subrogee of the rights of the consignee, St. Paul Fire & Marine Insurance Co. instituted the present action for the recovery of said amount.

The lower court ordered the respondents to pay P1,109.67 to the petitioner. The latter, however, assailed the same contending that it should recover the amount of $1,134.46 which is the amount it actually paid or its equivalent in pesos using the exchange rate at the time of judgment and not at the time when the shipment was discharged. On the other hand, the respondents claimed that their liability is limited to the C.I.F. value of the goods which is P1,109.67 pursuant to the contract of sea carriage embodied in the bill of lading. They further claim that they are not insurers of the goods and, as such, they should not be made to pay the insured value therefor. Moreover, since their

obligation was established as of the date of discharge, the rate of exchange should be based on the rate existing on that date.

ISSUES:

A. Whether the liability of the respondents is limited to the C.I.F. value of the goods lost or damaged. (YES)
B. Whether the insurer who has paid the claim in dollars to the consignee should be reimbursed in its peso equivalent on the date of discharge of the cargo. (YES)

RULING:

(A) The purpose of the bill of lading is to provide for the rights and liabilities of the parties in reference to the contract to carry. The stipulation in the bill of lading limiting the common carrier's liability to the value of the goods appearing in the bill, unless the shipper or owner declares a greater value, is valid and binding provided it (a) is reasonable and just under the circumstances, and (b) has been fairly and freely agreed upon. Such limitation of the carrier's liability is sanctioned by the freedom of the contracting parties to establish stipulations, clauses, terms, or conditions as they may deem convenient, provided they are not contrary to law, morals, good customs and public policy.

In the case at bar, the liabilities of the respondents with respect to lost or damaged shipments are expressly limited to the C.I.F. value of the goods as per the contract of sea carriage embodied in the bill of lading. It is not pretended that those conditions therein are unreasonable or were not freely and fairly agreed upon. As such, the shipper and consignee are bound by such limitation. As to the insurance company, it must be noted that after paying the claim of the insured, the former is merely subrogated to the rights of the latter. As subrogee, it can recover only the amount that is recoverable by the insured. Since the right of the insured, in case of loss or damage to the goods, is restricted by the provisions in the bill of lading, a suit by the insurer necessarily is subject to like limitations.

(B) The obligation of the carrier to pay for the damage commenced on the date it failed to deliver the shipment in good condition to the consignee. As such, the contention of the insurer that it should be reimbursed for its dollar payments at the rate of exchange on the date of the judgment because of extraordinary inflation is equally untenable.

- Eastern and Australian Steamship Co., Ltd. vs. Great American Insurance Co., G.R. No. L-37604 October 23, 1981

EASTERN AND AUSTRALIAN STEAMSHIP CO., LTD. and F. E. ZUELLIG, INC., *Petitioners,* -versus - GREAT AMERICAN INSURANCE CO. and COURT OF FIRST INSTANCE OF MANILA, BRANCH XIII, *Respondents.*

G.R. No. L-37604, FIRST DIVISION, October 23, 1981, DE CASTRO, *J.*

There is no inconsistency between Section 4 (5) of the Carriage of Goods by Sea Act and Clause 17 of the Bill of Lading. The first part of the provision of Section 4 (5) of the Carriage of Goods by Sea Act limits the amount that may be recovered by the shipper in the absence of an agreement as to the nature and value of goods shipped. Said provision does not prescribe the minimum. Hence, it could be any amount which is below $500.00. In the case at bar, Clause 17 of the Bill of Lading provides that the carrier may only be held liable for an amount not more than L100 Sterling which is below the limit required in the Carriage of Goods by Sea Act.

The second paragraph of Section 4 (5) of the Carriage of Goods by Sea Act prescribing an amount of not less than $500.00, on the other hand, refers to a situation where there is an agreement other than that set forth in the Bill of Lading. In the case at bar, it is apparent that there had been no such agreement between the parties. It should be noted that both the Carriage of Goods by Sea Act and Clause 17 of the Bill of Lading allow the payment beyond the respective limit imposed therein provided that the value of the goods have been declared in the Bill of Lading.

FACTS:

Jackson and Spring (Sydney) Pty. Ltd. shipped from Sydney 1 case of impellers for warman pump on board SS "Chitral", a vessel owned and operated by Eastern & Australian Steamship Co., Ltd. through its agent F.E. Zuellig, Inc. The shipment is to be delivered to Manila in favor of consignee Benguet Consolidated, Inc. and was insured with Great American Insurance, Co.

When SS "Chitral" arrived in Manila, the shipment or any part thereof was not discharged. Demand was thus made on the petitioners for the delivery of the same. For having failed comply with the demand, a claim was presented against it for the value of the shipment. Since the petitioners failed to make good the claim also, Great American Insurance Co. was compelled to pay the consignee P 35,921,81. As subrogee, the insurer filed a complaint against the petitioners for the recovery of the said amount. In their answer, petitioners alleged that their liability is only limited to L100 Sterling or its peso equivalent of P1,544.40 as per Clause 17 of the Bill of Lading.

The trial court found that under Section 4 (5) of the Carriage of Goods by Sea Act, the carrier and the shipper may, in the absence of a declaration in the Bill of Lading of the value of the goods shipped, fix a maximum liability of the shipper for the cargo lost or damaged but such maximum shall not be less than $500.00 per package. Consequently, the agreement for a maximum liability of only L100 Sterling contained in Clause 17 of the Bill of Lading was declared void for being contrary to law.

ISSUE:

Whether Clause 17 of the Bill of Lading is contrary to law and, therefore, void. (NO)

RULING:

There is no inconsistency between Section 4 (5) of the Carriage of Goods by Sea Act and Clause 17 of the Bill of Lading. The first part of the provision of Section 4 (5) of the Carriage of Goods by Sea Act limits the amount that may be recovered by the shipper in the absence of an agreement as to the nature and value of goods shipped. Said provision does not prescribe the minimum. Hence, it

could be any amount which is below $500.00. In the case at bar, Clause 17 of the Bill of Lading provides that the carrier may only be held liable for an amount not more than L100 Sterling which is below the limit required in the Carriage of Goods by Sea Act.

The second paragraph of Section 4 (5) of the Carriage of Goods by Sea Act prescribing an amount of not less than $500.00, on the other hand, refers to a situation where there is an agreement other than that set forth in the Bill of Lading. In the case at bar, it is apparent that there had been no such agreement between the parties. It should be noted that both the Carriage of Goods by Sea Act and Clause 17 of the Bill of Lading allow the payment beyond the respective limit imposed therein provided that the value of the goods have been declared in the Bill of Lading.

Significantly, Article 1749 of the New Civil Code expressly allow the limitation of the carrier's liability. It provides:

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

Pursuant to such provision, where the shipper is silent as to the value of his goods, the carrier's liability for loss or damage thereto is limited to the amount specified in the contract of carriage. Where the shipper states the value of his goods, the carrier's liability for loss or damage thereto is limited to that amount. Under a stipulation such as this, it is the duty of the shipper to disclose, rather than the carrier's, to demand the true value of the goods.

3. Liability for Baggage of Passengers

a. Checked-In Baggage

b. Baggage in Possession of Passengers

Q. Safety of Passengers

- Victory Liner, Inc. vs. Rosalito Gammad, G.R. No. 159636, November 25, 2004

VICTORY LINER, INC., *Petitioner*, -versus - ROSALITO GAMMAD, APRIL ROSSAN P. GAMMAD, ROI ROZANO P. GAMMAD and DIANA FRANCES P. GAMMAD, *Respondents.*
G.R. No. 159636, FIRST DIVISION, November 25, 2004, YNARES- SANTIAGO, *J.*

A common carrier is bound to carry its passengers safely as far as human care and foresight can provide using the utmost diligence of very cautious persons with due regard to all the circumstances. In a contract of carriage, it is presumed that the common carrier was at fault or was negligent when a passenger dies or is injured. Unless the presumption is rebutted through evidence that the carrier exercised extraordinary diligence, the court need not even make an express finding of fault or negligence on the part of the common carrier.

In the instant case, there is no evidence to rebut the statutory presumption that the proximate cause of Marie Grace's death was the negligence of petitioner. Petitioner was indeed guilty of breach of contract of carriage.

FACTS:

Marie Grace Pagulayan-Gammad was on board an air-conditioned Victory Liner bus bound for Tuguegarao, Cagayan from Manila. At about 3:00 a.m., the bus while running at a high speed fell on a ravine which resulted in the death of Marie Grace and physical injuries to other passengers. As such, the respondents who are heirs of Marie Grace filed a complaint for damages arising from culpa contractual against the petitioner. The latter claimed that the incident was purely accidental and that it has always exercised extraordinary diligence in its 50 years of operation.

Trial court ruled in favor of respondents. This was affirmed by the CA and granted P88,270 as actual damages, P1,135,536.10 as compensatory damages, P400,000 as moral and exemplary damages and attorney's fees.

ISSUES:

A. Whether petitioner should be held liable for breach of contract of carriage. (YES)
B. Whether the award of damages was proper. (NO)

RULING:

(A) A common carrier is bound to carry its passengers safely as far as human care and foresight can provide using the utmost diligence of very cautious persons with due regard to all the circumstances. In a contract of carriage, it is presumed that the common carrier was at fault or was negligent when a passenger dies or is injured. Unless the presumption is rebutted through evidence that the carrier exercised extraordinary diligence, the court need not even make an express finding of fault or negligence on the part of the common carrier.

In the instant case, there is no evidence to rebut the statutory presumption that the proximate cause of Marie Grace's death was the negligence of petitioner. Petitioner was indeed guilty of breach of contract of carriage.

(B) A common carrier who is in breach of its contract of carriage that results in the death of a passenger is liable to pay the following: (1) indemnity for death, (2) indemnity for loss of earning capacity, and (3) moral damages. Although documentary evidence should generally be presented to substantiate the claim for damages for loss of earning capacity, such damages may be awarded despite the absence of the said documentary evidence when (1) the deceased is self-employed earning less than the minimum wage and judicial notice may be taken of the fact that in the decease's line of work, no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage. In the present case, respondent heirs are entitled to indemnity for the death of Marie Grace which under current jurisprudence is fixed at P50,000.00.

As to moral damages in breach of contract, the same may be recovered when the defendant acted in bad faith or was guilty of gross negligence amounting to bad faith or was in wanton disregard of contractual obligations and when the act of breach of contract itself constitutes the tort that results in physical injuries. In the case at bar, respondent heirs should be awarded moral damages to compensate for the grief caused by the death of the deceased resulting from the petitioner's breach of contract of carriage.

Exemplary damages, on the other hand, may be recovered in contractual obligations if the defendant acted in wanton, fraudulent, reckless, oppressive, or malevolent manner. Considering that the petitioner failed to prove that it exercised the extraordinary diligence, it is presumed that it acted recklessly. Thus, the award of exemplary damages is proper.

As to the actual damages awarded, however, the same must be reduced. Only substantiated and proven expenses incurred in connection with the death, wake or burial of the victim shall be recognized. The list of expenses and the contract/receipt for the construction of the tomb submitted in the present case cannot be considered competent proof and cannot replace the official receipts necessary to justify the award. Actual damages must be reduced to such amount supported by official receipts.

- Philippine National Railways vs. The Honorable Court of Appeals, G.R. No. L-55347, October 4, 1985

PHILIPPINE NATIONAL RAILWAYS, *Petitioner,* -versus - THE HONORABLE COURT OF APPEALS and ROSARIO TUPANG, *Respondents.*
G.R. No. L-55347, SECOND DIVISION, October 4, 1985, ESCOLIN, *J.*

A common carrier has the obligation to transport its passengers to their destinations and to observe extraordinary diligence in doing so. Death or any injury suffered by any of its passengers gives rise to the presumption that it was negligent in the performance of the said obligations. In the case at bar, PNR failed to overthrow such presumption with clear and convincing evidence. It was found out that the train boarded by Winifredo was so over-crowded that he and many other passengers had no choice but to sit on the open platforms between the coaches of the train. Moreover, the train did not slow down when it approached the Iyam Bridge which was under repair at the time. The train also did not stop despite the alarm raised by other passengers that a person had fallen off the train.

FACTS:

At about 9:00 o'clock in the evening, Winifredo Tupang, husband of the respondent, boarded Train No. 516 of Philippine National Railways (PNR) at Libmanan, Camarines Sur as a paying passenger bound for Manila. Due to some mechanical defect, the train stopped at Sipocot, Camarines Sur for repairs. Unfortunately, upon passing Iyam Bridge at Lucena, Quezon, Winifredo fell off the train resulting in his death.

The train did not stop despite the alarm raised by the other passengers that somebody fell from the train. Instead, Perfecto Abrazado, the train conductor, called the station agent at Candelaria, Quezon and requested for verification of the information. The lifeless body of Winifredo was eventually found in Iyam Bridge.

ISSUE:

Whether PNR observed extraordinary diligence in transporting their passengers. (NO)

RULING:

A common carrier has the obligation to transport its passengers to their destinations and to observe extraordinary diligence in doing so. Death or any injury suffered by any of its passengers

gives rise to the presumption that it was negligent in the performance of the said obligations. In the case at bar, PNR failed to overthrow such presumption with clear and convincing evidence. It was found out that the train boarded by Winifredo was so over-crowded that he and many other passengers had no choice but to sit on the open platforms between the coaches of the train. Moreover, the train did not slow down when it approached the Iyam Bridge which was under repair at the time. It also did not stop despite the alarm raised by other passengers that a person had fallen off the train.

However, while PNR failed to exercise extraordinary diligence as required by law, it appears that Winifredo was chargeable with contributory negligence. Since he opted to sit on the open platform between the coaches, he should have held tightly on the upright metal bar found at the side of the said platform to avoid falling off from the speeding train. Such contributory negligence, while not exempting the PNR, nevertheless, meant that moral damages and exemplary damages are not available.

1. **Duration of Liability**

   a. **Waiting for Carrier or Boarding of Carrier**

      - Dangwa Transportation Co., Inc. vs. Court of Appeals, G.R. No. 95582, October 7, 1991

DANGWA TRANSPORTATION CO., INC. and THEODORE LARDIZABAL y MALECDAN, *Petitioners,* -versus - COURT OF APPEALS, INOCENCIA CUDIAMAT, EMILIA CUDIAMAT BANDOY, FERNANDO CUDLAMAT, MARRIETA CUDIAMAT, NORMA CUDIAMAT, DANTE CUDIAMAT, SAMUEL CUDIAMAT and LIGAYA CUDIAMAT, ALL HEIRS OF THE LATE PEDRITO CUDIAMAT REPRESENTED BY INOCENCIA CUDIAMAT, *Respondents.*

G.R. No. 95582, SECOND DIVISION, October 7, 1991, REGALADO, *J.*

Pedrito, by stepping and standing on the platform of the bus, is already considered a passenger and is thus entitled all the rights and protection pertaining to their contractual relation. The duty which the carrier owes to its patrons extends to persons boarding cars as well as to those alighting therefrom.

The contention of Dangwa Transportation that the driver and the conductor had no knowledge that Pedrito would ride on the bus since the latter had not manifested his intention to board the same does not merit consideration. When the bus is not in motion, there is no necessity for a person who wants to ride the same to signal his intention to board. A public utility bus, once it stops, is in effect making a continuous offer to bus riders. Hence, it is the duty of the driver and the conductor, every time the bus stops, to do no act that would have the effect of increasing the peril to a passenger while he was attempting to board the same.

FACTS:

For the death of Pedrito Cudiamat, his heirs filed a complaint for damages against Dangwa Transportation. It was alleged that Pedrito fell from the platform of the petitioner's bus when it suddenly accelerated forward. He was then run over by the rear right tires of the vehicle. Instead of bringing him immediately to the nearest hospital, Theodore Lardizabal, the driver of the bus, first

brought the other passengers and the cargo to their respective destinations. He expired in the hospital.

Dangwa Transportation, on the other hand, alleged that it had observed the extraordinary diligence required in the operation of the company and in the supervision of its employees although they are not absolute insurers of the safety of the public at large. Further, it was alleged that it was Pedrito's own carelessness and negligence which gave rise to the incident.

The trial court rendered a decision in favor of Dangwa Transportation. This was reversed by the CA.

ISSUE:

Whether the petitioners are negligent and are liable for the damages claimed. (YES)

RULING:

Common carriers, from the nature of their business and reasons of public policy, are bound to observe extraordinary diligence for the safety of their passengers according to all the circumstances of each case. As such, in an action based on a contract of carriage, the court need not make an express finding of fault or negligence on the part of the carrier in order to hold it responsible for any damages. Any injury that might be suffered by a passenger is right away attributable to its fault or negligence. It is incumbent upon the carrier to prove that it has exercised extraordinary diligence. This is an exception to the general rule that negligence must be proved.

In the case at bar, Pedrito, by stepping and standing on the platform of the bus, is already considered a passenger and is thus entitled all the rights and protection pertaining to their contractual relation. The duty which the carrier owes to its patrons extends to persons boarding cars as well as to those alighting therefrom.

The testimonies of the witnesses show that the bus was at full stop when Pedrito boarded the same. They further confirm the conclusion that the he fell from the platform of the bus when it suddenly accelerated forward and was run over by the rear right tires of the vehicle. Under such circumstances, it cannot be said that the he was guilty of negligence. The contention of Dangwa Transportation that the driver and the conductor had no knowledge that he would ride on the bus since the latter had not manifested his intention to board the same does not merit consideration. When the bus is not in motion, there is no necessity for a person who wants to ride the same to signal his intention to board. A public utility bus, once it stops, is in effect making a continuous offer to bus riders. Hence, it is the duty of the driver and the conductor, every time the bus stops, to do no act that would have the effect of increasing the peril to a passenger while he was attempting to board the same.

c. Arrival at Destination

- La Mallorca vs. Honorable Court of Appeals, G.R. No. L-20761, July 27, 1966

LA MALLORCA, *Petitioner,* -versus - HONORABLE COURT OF APPEALS, MARIANO BELTRAN, ET AL., *Respondents.*

G.R. No. L-20761, EN BANC, July 27, 1966, BARRERA, *J.*

The relation of a carrier and a passenger does not cease at the moment the passenger alights from the vehicle at a place selected by the former at the point of destination. It continues until the passenger had a reasonable time or opportunity to leave the carrier's premises. What is a reasonable time is to be determined from all the circumstances of the case.

In the present case, it cannot be concluded that the carrier exercised the utmost diligence of a very cautious person required by Article 1755 of the Civil Code. The driver, although stopping the bus, did not put off the engine. He also started to run the bus even before the conductor gave him the signal to go and while the latter was still unloading some of the baggages of the passengers. It must be noted that the presence of Mariano and Raquel near the bus was not unreasonable and they are, therefore, to be considered still as passengers who entitled to the protection under their contract of carriage. Considering the foregoing, La Mallorca should be held liable for breach of contract of carriage.

FACTS:

About noontime, Mariano Beltran together with his family boarded the Pambusco Bus owned and operated by La Mallorca in order to go to Mexico, Pampanga. With them were 4 pieces of baggages containing their personal belongings. 3 tickets were issued covering the full fares of Mariano, his wife and their eldest child, Milagros. No fare was charged on the 2 other children since both were below the height requirement. The bus eventually reached Mexico, Pampanga.

The Beltran Family, then carrying some of the baggages, got down the bus and went to a shaded spot on the left pedestrians' side of the road about 4 or 5 meters away from the bus. Mariano then returned to the bus to get his other bayong. Unnoticed, one of his daughters, Raquel, followed him. While he was on the running board of the bus waiting for the conductor to hand him his bayong, the bus, whose motor was not shut off while unloading, suddenly started moving forward, evidently to resume its trip, notwithstanding the fact that the conductor has not given the driver the customary signal to start. As such, the bus moved for about 10 meters before it stopped completely again. Sensing that the bus was again in motion, he immediately jumped from the running board without getting his bayong. He then saw that the bus ran over Raquel. Consequently, he filed the present suit against La Mallorca seeking for damages.

La Mallorca claimed that there could not be a breach of contract in the case because the child was no longer a passenger when she died. The contract of carriage was already terminated.

ISSUE:

Whether La Mallorca is liable for breach of contract of carriage. (YES)

RULING:

The relation of a carrier and a passenger does not cease at the moment the passenger alights from the vehicle at a place selected by the former at the point of destination. It continues until the passenger had a reasonable time or opportunity to leave the carrier's premises. What is a reasonable time is to be determined from all the circumstances of the case.

In the present case, it cannot be concluded that the carrier exercised the utmost diligence of a very cautious person required by Article 1755 of the Civil Code. The driver, although stopping the bus, did not put off the engine. He also started to run the bus even before the conductor gave him the signal to go and while the latter was still unloading some of the baggages of the passengers. It must be noted that the presence of Mariano and Raquel near the bus was not unreasonable and they are, therefore, to be considered still as passengers who entitled to the protection under their contract of carriage. Considering the foregoing, La Mallorca should be held liable for breach of contract of carriage.

Even assuming arguendo that the contract of carriage has already terminated, La Mallorca can be held liable for the negligence of its driver pursuant to Article 2180 of the Civil Code. The inclusion of this averment for quasi-delict while incompatible with the other claim under the contract of carriage is permissible under Section 2 of Rule 8 of the Rules of Court.

- Aboitiz Shipping Corporation vs. Hon. Court of Appeals, Eleventh Division, G.R. No. 884458, November 6, 1989

ABOITIZ SHIPPING CORPORATION, *Petitioner,* -versus - HON. COURT OF APPEALS, ELEVENTH DIVISION, LUCILA C. VIANA, SPS. ANTONIO VIANA and GORGONIA VIANA, and PIONEER STEVEDORING CORPORATION, *Respondents.*

G.R. No. 84458, SECOND DIVISION, November 6, 1989, REGALADO, *J.*

It is of common knowledge that, by the very nature of the business of a shipper, the passengers of vessels are allotted a longer period of time to disembark from the ship than the passengers of other common carriers considering the bulk of cargoes and the number of passengers it can load. Consequently, such passenger will need at least an hour to disembark from the vessel and claim his baggage. In the case at bar, when the accident occurred, the victim was in the act of unloading his cargoes which he had every right to do. As such, even if he had already disembarked an hour earlier, his presence in the carrier's premises was not without cause. The victim had to claim his baggage which was possible only 1 hour after the vessel arrived. It was admitted that it is Aboitiz's standard procedure that the unloading operations shall start only at such time. Consequently, Anacleto is still deemed a passenger of said carrier at the time of his tragic death. It must further be noted that a carrier is duty bound not only to bring its passengers safely to their destination but also to afford them a reasonable time to claim their baggage.

FACTS:

Anacleto Viana boarded the vessel M/V Antonia which is owned by Aboitiz Shipping Corporation and is bound for Manila. When it arrived at Pier 4, North Harbor, Manila, Pioneer Stevedoring Corporation took over the exclusive control of the cargoes loaded on the said vessel.

An hour after the passengers had disembarked, the crane owned by Pioneer and operated by Alejo Figueroa, its crane operator, started unloading the cargoes. During the said operation, Anacleto who had already disembarked went back to the vessel when remembered that some of his cargoes were still loaded in the vessel. It was while he was pointing to the place where his cargoes were loaded to the crew that the crane hit him, pinning him between the side of the vessel and the crane. He was

thereafter brought to the hospital where he expired 3 days after due to hypostatic pneumonia secondary to traumatic fracture of the pubic bone lacerating the urinary bladder. As such, the Vianas filed a complaint for damages against Aboitiz for breach of contract of carriage. Aboitiz, on the other hand, filed a third-party complaint against Pioneer.

Aboitiz denied responsibility contending that at the time of the accident, the vessel was completely under the control of Pioneer as its exclusive stevedoring contractor. Since the crane operator was not an employee of Aboitiz, the latter cannot be held liable under the fellow-servant rule. It also contends that since 1 hour had already elapsed from the time Anacleto disembarked from the vessel and that he was given more than ample opportunity to unload his cargoes prior to the operation of the crane, his presence on the vessel was no longer reasonable and he consequently ceased to be a passenger. Accordingly, it claims that the doctrine found in La Mallorca vs CA is inapplicable in this case.

Pioneer, on the other hand, raised the defense that Aboitiz had no cause of action against it considering that the former is being sued for breach of contract of carriage to which it is not a party. It also observed the diligence of a good father of a family both in the selection and supervision of its employees as well as in the prevention of damage. In any case, Anacleto's gross negligence was the direct and proximate cause of his death.

ISSUE:

Whether Aboitiz should be held solely liable for the death of Anacleto Viana. (YES)

RULING:

The doctrine found in La Mallorca vs. CA states that the relation of carrier and passenger does not cease at the moment the passenger alights from the carrier's vehicle at a place selected by the former at the point of destination but continues until the passenger has had a reasonable opportunity to leave the carrier's premises. What is a reasonable time is to be determined from all the circumstances such as the kind of common carrier, the nature of its business and the customs of the place such that a consideration of the time element per se without taking into account such other factors is precluded. It is thus of no moment whether there was no appreciable interregnum for the passenger to leave the carrier's premises or whether an interval of 1 hour had elapsed before the victim met the accident as in the case at bar. The primary factor to be considered is the existence of a reasonable cause as will justify the presence of the victim on or near the vessel. The Court believes there exists such a justifiable cause in the present case.

It is of common knowledge that, by the very nature of the business of a shipper, the passengers of vessels are allotted a longer period of time to disembark from the ship than the passengers of other common carriers considering the bulk of cargoes and the number of passengers it can load. Consequently, such passenger will need at least an hour to disembark from the vessel and claim his baggage. In the case at bar, when the accident occurred, the victim was in the act of unloading his cargoes which he had every right to do. As such, even if he had already disembarked an hour earlier, his presence in the carrier's premises was not without cause. The victim had to claim his baggage which was possible only 1 hour after the vessel arrived. It was admitted that it is Aboitiz's standard procedure that the unloading operations shall start only at such time. Consequently, Anacleto is still deemed a passenger of said carrier at the time of his tragic death. It must further be noted that a

carrier is duty bound not only to bring its passengers safely to their destination but also to afford them a reasonable time to claim their baggage.

In an action for breach of contract of carriage, all that is required of plaintiff is to prove the existence of the contract of carriage and its non-performance by the carrier, that is, the failure of the carrier to carry the passenger safely to his destination which necessarily includes its failure to safeguard its passenger with extraordinary diligence while such relation subsists. The law presumes that the common carrier is at fault or has acted negligently when a passenger dies or is injured. In the case at bar, Aboitiz failed to rebut such presumption. The evidence does not show that there was a cordon of drums around the perimeter of the crane as claimed by petitioner. The presence of visible warning signs in the vicinity was also disputable. Definitely, even assuming the existence of the supposed cordon of drums loosely placed around the unloading area and the guard's admonitions against entry therein, these were at most insufficient precautions which pale into insignificance if considered vis-a-vis the gravity of the danger to which the deceased was exposed. There is also no showing that the petitioner was extraordinarily diligent in seeing to it that said precautionary measures were strictly and actually enforced.

As for Pioneer, the Court found it not negligent both on grounds of estoppel and of lack of evidence. In its answer, Aboitiz readily alleged that Pioneer had taken the necessary safeguards insofar as its unloading operations were concerned. In fact, it filed its third-party complaint only after 10 months. In any case, Pioneer is not within the ambit of the rule on extraordinary diligence and the corresponding presumption of negligence foisted on common carriers like Aboitiz.

1. **Liability for Acts of Others**

   a. **Employees**

      - Antonia Maranan vs. Pascual Perez, et al, G.R. No. L-22272, June 26, 1967

ANTONIA MARANAN, *Petitioner,* -versus - PASCUAL PEREZ, ET AL., *Respondents.*
G.R. No. L-22272, EN BANC, June 26, 1967, BENGZON, J.P., *J.*

Unlike in the Old Civil Code, Article 1759 of the New Civil Code expressly makes a common carrier liable for intentional assaults committed by its employees upon its passengers. To be liable, it is enough that the assault happens within the course of the employee's duty. It is not a defense for the carrier that the act was done in excess of authority or in disobedience of its orders.

In the case at bar, the killing was perpetrated by the driver of the very cab transporting the passenger, in whose hands the carrier had entrusted the duty of executing the contract of carriage. The incident took place in the course of the duty of the guilty employee. As such, Perez is liable under Article 1759 of the Civil Code. The dismissal of the claim against Valenzuela is correct as well. Maranan's action was

predicated on breach of contract of carriage and the cab driver was not a party thereto. His civil liability is covered in the criminal case.

FACTS:

Rogelio Corachea was stabbed and killed by driver Simeon Valenzuela while the former was riding as a passenger in a taxicab owned and operated by Pascual Perez.

Valenzuela was prosecuted for homicide and was found guilty. While the appeal was pending, Antonia Maranan, Corachea's mother, filed an action to recover damages from Perez and Valenzuela for the death of her son. In response, Perez and Valenzuela asserted that the deceased was killed in self-defense since he first assaulted the driver by stabbing the latter from behind. Perez further claimed that the death was a caso fortuito for which the carrier like him was not liable. The trial court ruled against Perez and dismissed the claim against Valenzuela.

ISSUE:

Whether Perez is liable for the crime committed by Valenzuela while the latter is in the performance of his duty as driver of the taxicab. (YES)

RULING:

Unlike in the Old Civil Code, Article 1759 of the New Civil Code expressly makes a common carrier liable for intentional assaults committed by its employees upon its passengers. It provides that:

> *Common carriers are liable for the death of or injuries to passengers through the negligence or willful acts of the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers.*

To be liable, it is enough that the assault happens within the course of the employee's duty. It is not a defense for the carrier that the act was done in excess of authority or in disobedience of its orders. Such liability is absolute in the sense that it practically secures the passengers from all assaults committed by its own employees. It is the carrier's implied duty to transport the passenger safely that is the principle behind this.

At least three reasons underlie the above rule. First, the special undertaking of the carrier requires that it furnish its passenger that full measure of protection afforded by the exercise of the high degree of care prescribed by the law from violence and insults at the hands of strangers and other passengers, but above all, from the acts of the carrier's own servants charged with the passenger's safety. Second, the result of the carrier confiding in the servant's hands the performance of his contract to safely transport the passenger, delegating therewith the duty of protecting the passenger with the utmost care prescribed by law. Third, as between the carrier and the passenger, the former must bear the risk of wrongful acts or negligence of its employees against the passengers since it, and not the passengers, has power to select and remove them. Accordingly, it is the carrier's strict obligation to select its drivers and other employees with due regard not only to their technical competence and physical ability but also to their total personality, including their patterns of behavior, moral fibers, and social attitude.

In the case at bar, the killing was perpetrated by the driver of the very cab transporting the passenger, in whose hands the carrier had entrusted the duty of executing the contract of carriage. The incident took place in the course of the duty of the guilty employee. As such, Perez is liable under Article 1759 of the Civil Code. The dismissal of the claim against Valenzuela is correct as well. Maranan's action was predicated on breach of contract of carriage and the cab driver was not a party thereto. His civil liability is covered in the criminal case.

- Leopoldo Poblete vs. Donato Fabros, G.R. No. L-29803, September 14, 1979

LEOPOLDO POBLETE, *Petitioner*, -versus - DONATO FABROS and GODOFREDO DE LA CRUZ, *Respondents.*
G.R. No. L-29803, FIRST DIVISION, September 14, 1979, DE CASTRO, *J.*

Article 2180 of the Civil Code partly provides that the owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions. What needs only to be alleged is that the employee or driver has, by his negligence, caused damage to make the employer likewise responsible. In such a case, the latter's liability is primary and solidary.

In relation thereto, it is an established principle that the negligence of the employee gives rise to the presumption of negligence on the part of the employer. This is in connection with the latter's presumed negligence on the selection and supervision of its employees. As such, if an employer was able prove that they observed all the diligence of a good father of a family to prevent damages, the liability under Article 2180 ceases.

In the case at bar, with the finding that the negligence against the driver and the existence of an employer-employee relation between the respondents are sufficiently alleged, the complaint clearly and unmistakably makes out a case based on quasi-delict.

FACTS:

An action for damages, arising from a vehicular accident, was filed by Leopoldo Poblete, the owner of the damaged taxicab, against the owner and driver of the allegedly offending vehicle, Donato Fabros and Godofredo de la Cruz, respectively.

The trial court dismissed the case. Based on the allegations in the complaint, the action was filed to hold Fabros subsidiarily liable under Article 103 of the Revised Penal Code for the damage caused to Poblete . It is, therefore, premature since there is no criminal action filed yet against de la Cruz who had died during the pendency of this case.

ISSUE:

Whether the action filed is based on quasi-delict which may proceed independently of the criminal action. (YES)

RULING:

It is crystal clear that the trial court itself found that an employer-employee relation between Fabros and de la Cruz has been sufficiently alleged. Otherwise, it would have no basis for saying that the complaint is against Fabros in his capacity as employer of de la Cruz. Fabros himself perceived the basis of the complaint against him as one based on quasi-delict since he interposed in his answer the defense of a "due diligence of a good father of a family in the selection, employment and supervision of his driver." Moreover, the court found that negligence as the basis for the action is sufficiently alleged. As such, with the allegation of negligence against the driver and of the existence of an employer-employee relation betweeb the respondents, the complaint clearly and unmistakably makes out a case based on quasi-delict.

Article 2180 of the Civil Code partly provides that the owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions. What needs only to be alleged is that the employee or driver has, by his negligence, caused damage to make the employer likewise responsible for his tortious acts. In such a case, the latter's liability is primary and solidary.

In relation thereto, it is an established principle that the negligence of the employee gives rise to the presumption of negligence on the part of the employer. This is in connection with the latter's presumed negligence on the selection and supervision of its employees. As such, if an employer was able prove that they observed all the diligence of a good father of a family to prevent damages, the liability under Article 2180 ceases.

- Sabena Belgian World Airlines vs. Honorable Court of Appeals G.R. No. 82068. March 31, 1989

SABENA BELGIAN WORLD AIRLINES, *Petitioner,* -versus - HONORABLE COURT OF APPEALS (SEVENTH DIVISION) CONCEPCION, OCTAVIO, ESTRELLA and GEMMA, ALL SURNAMED FULE, *Respondents.*

G.R. No. 82068, THIRD DIVISION, March 31, 1989, GUTIERREZ, JR., *J.*

The examination of the provisions of the document in question revealed that while it may have been a quitclaim, Mrs. Fule did not know that she was made to sign a quitclaim. This was considered by the Court as a misconduct on the part of the carrier's employees toward a passenger giving the latter an action for damages against the carrier.

As to moral damages awarded to the Fule Family, it is settled that the same is recoverable in a damage suit predicated upon a breach of contract of carriage only where (1) the mishap results in the death a of passenger and (2) it is proved that the carrier was guilty of fraud and bad faith, even if death does not result. In the case at bar, the petitioner is guilty of bad faith in letting Mrs. Fule sign a quitclaim without her knowledge or understanding and contrary to what she was planning to do.

FACTS:

Concepcion F. Fule purchased 3 round trip tickets for herself and two children, Estrella and Gemma, from Sabena Belgian World Airlines for the Manila-Brussels-Barcelona-Madrid flight.

Just before the plane arrived in Brussels, it was announced that the city would be cloudy and rainy. With a slight drizzle, the Fule Family put on their sweaters without covering their heads before disembarking, Contrary to Mrs. Fule's expectation that there would be someone with umbrella tasked to bring them to the terminal building, no one assisted them. As a result, they got wet. They then waited for about 5 hours in the airport terminal for their connecting flight to Barcelona. When their flight was announced, they had to walk again in the rain without head covers. In Barcelona, Mrs. Fule's luggage went missing. After 40 minutes of waiting, a Sabena personnel advised her to wait for the next flight from Brussels because her luggage might be in it. However, not among the baggages carried were hers. She was then asked to prepare a reclaimation letter. Because of the foregoing, Mrs. Fule purchased a dress and a nightgown, made an overseas call in Manila to find out whether her luggage was not left there, incurred round trip taxi fare to retrieve her lost baggage and paid for the services of a doctor as well as for the cost of medicines used because they felt sick.

Upon reaching Madrid, Mrs. Fule made a letter-complaint to Sabena in its Madrid office. Said letter was given to Angel Yancha who informed her that the Madrid office would pay only the half of what she was asking. The balance would be paid in Manila. Accepting the arrangement, Mrs. Fule received a check and signed a document written in French, a language she did not understand. Yancha did not explain the contents of the document and it was only upon her return to Manila that she learned that the document was a quitclaim. She then made a demand to Sabena in its Manila office.

On the basis of these facts, the lower court found Sabena Belgian World Airlines liable. The latter, however, insists that the quitclaim is binding. Mrs. Yule understood French because she received her schooling in Spain where French is taught. Moreover, moral and exemplary damages should not be awarded because of the express declaration of the lower court that it did not act in bad faith.

ISSUE:

Whether the Fule Family can claim damages against Sabena Belgian World Airlines for the latter's breach of contract of carriage. (YES)

RULING:

The examination of the provisions of the document in question revealed that while it may have been a quitclaim since it settles upon receipt of the mentioned sum of money all claims whether legally founded or not, Mrs. Fule did not know that she was made to sign a quitclaim. This was considered by the Court as a misconduct on the part of the carrier's employees toward a passenger giving the latter an action for damages against the carrier.

As to the petitioner's claim regarding the award of moral and exemplary damages, the Court ruled that the allegation is misleading because the lower court did not declare the petitioner entirely faultless. It is settled that with respect to moral damages, the rule is that the same are recoverable in a damage suit predicated upon a breach of contract of carriage only where (1) the mishap results in the death a of passenger and (2) it is proved that the carrier was guilty of fraud and bad faith, even if death does not result. In the case at bar, the petitioner is guilty of bad faith in letting Mrs. Fule sign a quitclaim without her knowledge or understanding and contrary to what she was planning to do.

b. Other Passengers and Strangers

- Jose Pilapil vs. Hon. Court of Appeals, G.R. No. 52159, December 22, 1989

JOSE PILAPIL, *Petitioner,* -versus - HON. COURT OF APPEALS and ALATCO TRANSPORTATION COMPANY, INC., *Respondents.*

G.R. No. 52159, SECOND DIVISION, December 22, 1989, PADILLA, *J.*

Common carriers are required to observe extraordinary diligence for the safety of the passengers transported by them according to all the circumstances of each case. In case of death of or injuries to passengers, the law presumes them to be at fault or to have acted negligently. Such being the case, however, they are not insurers of the absolute safety of their passengers against any and all risks. They merely undertake to perform certain duties to the public as the law imposes and hold themselves liable for any breach thereof.

While as a general rule, common carriers are bound to exercise extraordinary diligence, it would seem that this is not the standard by which its liability is to be determined when intervening acts of strangers is the direct cause of the injury. Article 1763 governs. Under the said provision, a tort committed by a stranger which causes injury to a passenger does not accord the latter a cause of action against the carrier. The negligence for which a common carrier is held responsible is the negligent omission by the carrier's employees to prevent the tort from being committed when the same could have been foreseen and prevented by them. Furthermore, it must be noted that, the degree of care essential to be exercised by the common carrier in cases like this is only that of a good father of a family.

FACTS:

Jose Pilapil, a paying passenger, boarded Alatco Transporation's bus in Iriga City at about 6:00 P.M. While the said bus was traversing the distance between Iriga City and Naga City, upon reaching the vicinity of the cemetery of Baao, Camarines Sur, an unidentified bystander along the national highway hurled a stone at the left side of the bus. Pilapil was hit above his left eye. Alatco Transportation's personnel lost no time in bringing the victim to the hospital where he was treated.

Pilapil instituted an action for recovery of damages sustained as a result of the stone-throwing incident. He argues that the nature of the business of a transportation company requires the assumption of certain risks. The stoning of the bus by a stranger is one such risk from which a common carrier may not exempt itself from liability.

ISSUE:

Whether the respondent should be liable for the acts of a stranger. (NO)

RULING:

Common carriers are required to observe extraordinary diligence for the safety of the passengers transported by them according to all the circumstances of each case. In case of death of or injuries to passengers, the law presumes them to be at fault or to have acted negligently. Such being the

case, however, they are not insurers of the absolute safety of their passengers against any and all risks. They merely undertake to perform certain duties to the public as the law imposes and hold themselves liable for any breach thereof. It must be noted that Article 1755 of the Civil Code qualifies the duty of extraordinary care to only such as human care and foresight can provide. Moreover, Article 1756 of the Civil Code, in creating a presumption of fault or negligence on the part of the common carrier, merely relieves the victim, for the time being, from introducing evidence to fasten the negligence on the carrier. The latter may rebut the same by presenting proof that it had exercised extraordinary diligence as required by law or that the injury suffered by the passenger was solely due to a fortuitous event.

In the case at bar, Pilapil contends that the respondent failed to rebut the presumption of negligence against it. The Court does not agree. First, the injury sustained by Pilapil was in no way due to any defect in the means of transport or to the negligent or willful acts of the respondent's employees since it arose wholly from causes created by strangers over which the respondent had no control or even knowledge. As such, the presumption is rebutted and the carrier is not to be held liable. To rule otherwise would make a common carrier the insurer of the absolute safety of its passengers which is not the intention of the lawmakers. Second, while as a general rule, common carriers are bound to exercise extraordinary diligence, it would seem that this is not the standard by which its liability is to be determined when intervening acts of strangers is the direct cause of the injury. Article 1763 governs. It provides:

> *Article 1763. A common carrier is responsible for injuries suffered by a passenger on account of the wilful acts or negligence of other passengers or of strangers, if the common carrier's employees through the exercise of the diligence of a good father of a family could have prevented or stopped the act or omission.*

Under the above provision, a tort committed by a stranger which causes injury to a passenger does not accord the latter a cause of action against the carrier. The negligence for which a common carrier is held responsible is the negligent omission by the carrier's employees to prevent the tort from being committed when the same could have been foreseen and prevented by them. Furthermore, it must be noted that, the degree of care essential to be exercised by the common carrier in cases like this is only that of a good father of a family.

As to Pilapil's argument that respondent could have prevented the injury if something like mesh-work grills had covered the windows of its bus, the Court finds the same untenable.Although the suggested precaution could have prevented the injury, the rule of ordinary care and prudence is not so exacting as to require one charged with its exercise to take doubtful or unreasonable precautions to guard against unlawful acts of strangers. Where the carrier uses cars of the most approved type used generally by others engaged in the same occupation, and exercises a high degree of care in maintaining them in suitable condition, the carrier cannot be charged with negligence in this respect.

3. **Exempting causes**

a. **Force majeure**

- Alberta Yobido vs. Court of Appeals, G.R. No. 113003, October 17, 1997

ALBERTA YOBIDO and CRESENCIO YOBIDO, *Petitioners,* -versus - COURT OF APPEALS, LENY TUMBOY, ARDEE TUMBOY and JASMIN TUMBOY, *Respondents.*
G.R. No. 113003, THIRD DIVISION, October 17, 1997, ROMERO, *J.*

A fortuitous event is possessed of the following characteristics: (a) the cause of the unforeseen and unexpected occurrence, or the failure of the debtor to comply with his obligations, must be independent of human will; (b) it must be impossible to foresee the event which constitutes the caso fortuito, or if it can be foreseen, it must be impossible to avoid; (c) the occurrence must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and (d) the obligor must be free from any participation in the aggravation of the injury resulting to the creditor.

FACTS:

On April 26, 1988, spouses Tito and Leny Tumboy and their minor children named Ardee and Jasmin, bearded at Mangagoy, Surigao del Sur, a Yobido Liner bus bound for Davao City. Along Picop Road in Km. 17, Sta. Maria, Agusan del Sur, the left front tire of the bus exploded. The bus fell into a ravine around three (3) feet from the road and struck a tree. The incident resulted in the death of 28-year-old Tito Tumboy and physical injuries to other passengers.

On November 21, 1988, a complaint for breach of contract of carriage, damages and attorney's fees was filed by Leny and her children against Alberta Yobido, the owner of the bus, and Cresencio Yobido, its driver, before the Regional Trial Court of Davao City. When the defendants therein filed their answer to the complaint, they raised the affirmative defense of caso fortuito. They also filed a third-party complaint against Philippine Phoenix Surety and Insurance, Inc. This third-party defendant filed an answer with compulsory counterclaim. At the pre-trial conference, the parties agreed to a stipulation of facts.

Upon a finding that the third party defendant was not liable under the insurance contract, the lower court dismissed the third party complaint. No amicable settlement having been arrived at by the parties, trial on the merits ensued.

The plaintiffs asserted that violation of the contract of carriage between them and the defendants was brought about by the driver's failure to exercise the diligence required of the carrier in transporting passengers safely to their place of destination. According to Leny Tumboy, the bus left Mangagoy at 3:00 o'clock in the afternoon. The winding road it traversed was not cemented and was wet due to the rain; it was rough with crushed rocks. The bus which was full of passengers had cargoes on top. Since it was "running fast," she cautioned the driver to slow down but he merely stared at her through the mirror. At around 3:30 p.m., in Trento, she heard something explode and immediately, the bus fell into a ravine.

For their part, the defendants tried to establish that the accident was due to a fortuitous event. Abundio Salce, who was the bus conductor when the incident happened, testified that the 42-seater bus was not full as there were only 32 passengers, such that he himself managed to get a seat. He added that the bus was running at a speed of "60 to 50" and that it was going slow because of the zigzag road. He affirmed that the left front tire that exploded was a "brand new tire" that he mounted on the bus on April 21, 1988 or only five (5) days before the incident. The Yobido Liner secretary, Minerva Fernando, bought the new Goodyear tire from Davao Toyo Parts on April 20, 1988 and she was present when it was mounted on the bus by Salce. She stated that all driver applicants in Yobido Liner underwent actual driving tests before they were employed. Defendant

Cresencio Yobido underwent such test and submitted his professional driver's license and clearances from the barangay, the fiscal and the police.

ISSUE:

Whether or not the explosion of a newly installed tire of a passenger vehicle is a fortuitous event that exempts the carrier from liability for the death of a passenger.

RULING: NO.

Under the circumstances of this case, the explosion of the new tire may not be considered a fortuitous event. There are human factors involved in the situation. The fact that the tire was new did not imply that it was entirely free from manufacturing defects or that it was properly mounted on the vehicle. Neither may the fact that the tire bought and used in the vehicle is of a brand name noted for quality, resulting in the conclusion that it could not explode within five days use. Be that as it may, it is settled that an accident caused either by defects in the automobile or through the negligence of its driver is not a caso fortuito that would exempt the carrier from liability for damages. They failed to rebut the testimony of Leny Tumboy that the bus was running so fast that she cautioned the driver to slow down. These contradictory facts must, therefore, be resolved in favor of liability in view of the presumption of negligence of the carrier in the law.

Moreover, a common carrier may not be absolved from liability in case of force majeure or fortuitous event alone. The common carrier must still prove that it was not negligent in causing the death or injury resulting from an accident.16 This Court has had occasion to state:

While it may be true that the tire that blew-up was still good because the grooves of the tire were still visible, this fact alone does not make the explosion of the tire a fortuitous event. No evidence was presented to show that the accident was due to adverse road conditions or that precautions were taken by the jeepney driver to compensate for any conditions liable to cause accidents. The sudden blowing-up, therefore, could have been caused by too much air pressure injected into the tire coupled by the fact that the jeepney was overloaded and speeding at the time of the accident.

Having failed to discharge its duty to overthrow the presumption of negligence with clear and convincing evidence, petitioners are hereby held liable for damages. Article 176419 in relation to Article 220620 of the Civil Code prescribes the amount of at least three thousand pesos as damages for the death of a passenger. Under prevailing jurisprudence, the award of damages under Article 2206 has been increased to fifty thousand pesos (P50,000.00).

b. When force majeure does not apply

- Fortune Express, Inc., vs. Court of Appeals, G.R. No. 119756, March 18, 1999

FORTUNE EXPRESS, INC., *Petitioners,* -versus - COURT OF APPEALS, PAULIE U.CAORONG, and minor childrenYASSER KING CAORONG, ROSE HEINNI and PRINCE ALEXANDER, all surnamed CAORONG, and represented by their mother PAULIE U. CAORONG, *Respondents.*

G.R. No. 119756, SECOND DIVISION, March 18, 1999, MENDOZA, *J.*

To considered as force majeure, it is necessary that (1) the cause of the breach of the obligation must be independent of the human will; (2) the event must be either unforeseeable or

unavoidable; (3) the occurrence must be render it impossible for the debtor to fulfill the obligation in a normal manner; and (4) the obligor must be free of participation in, or aggravation of, the injury to the creditor.

FACTS:

A bus of Fortune Express Inc. (FEI) figured in an accident with a jeepney resulting in the death of several passengers of the jeepney, including two Maranaos. Sgt. Reynaldo Bastasa of the Philippine Constabulary informed Diosdado Bravo (Bravo), operations manager of FEI that certain Maranaos were planning to take revenge by burning some of FEI's buses. Bravo assured him that the necessary precautions to insure the safety of lives and property would be taken.

Three armed Maranaos who pretended to be passengers, seized a bus of FEI. The one of the Maranaos started pouring gasoline inside the bus, as the other held the passenger at bay with a handgun. The passengers, including Atty. Caorong, stepped out of the bus and went behind the bushes in a field some distance from the highway. However, Atty. Caorong returned to the bus to retrieve something from the overhead rack. One of the passengers heard gun shots from inside the bus and saw that Atty. Caorong was hit. Then the bus was set on fire. Some of the passengers were able to pull Atty. Caorong out of the burning bus and rush him to a hospital in Iligan City, but he died while undergoing operation.

ISSUE:

Whether or not the acts of the Maranaos were considered caso fortuito.

RULING: NO.

The Court held that the seizure of the bus of FEI was foreseeable and, therefore, was not a fortuitous event which would exempt FEI from liability. The absence of any of the requisites mentioned above would prevent the obligor from being excused from liability. It was held that the common carrier was liable for its failure to take the necessary precautions against an approaching typhoon, of which it was warned, resulting in the loss of the lives of several passengers. The event was forseeable, and, thus, the second requisite mentioned above was not fulfilled. This ruling applies by analogy to the present case. Despite the report from Sgt. Bastasa that the Maranaos were going to attack its buses, FEI took no steps to safeguard the lives and properties of its passengers. Had FEI and its employees been vigilant they would not have failed to see that the malefactors had a large quantity of gasoline with them. Under the circumstances, simple precautionary measures to protect the safety of passengers, such as frisking passengers and inspecting their baggage, preferably with non-intrusive gadgets such as metal detectors, before allowing them on board could have been employed without violating the passenger's constitutional rights. In the case, it is clear that because of the negligence of petitioner's employees, the seizure of the bus by the Maranaos was made possible.

It is evident that FEI's employees failed to prevent the attack on one of FEI's buses because they did not exercise the diligence of a good father of a family. Hence, FEI should be held liable for the death of Atty. Caorong.

5. **Extent of Liability for Damages**

- Philippine Airlines, Inc. vs. Hon. Court of Appeals, G.R. No. 54470, May 8, 1990

PHILIPPINE AIRLINES, INC., *Petitioners,* -versus - HON. COURT OF APPEALS and NATIVIDAD VDA. DE PADILLA, substituted by her legal heirs, namely: AUGUSTO A. PADILLA, ALBERTO A. PADILLA, CRESENCIO R. ABES (representing the deceased Isabel Padilla Abes) MIGUEL A. PADILLA and RAMON A. PADILLA, *Respondents.*

G.R. No. L-54470, FIRSTDIVISION, May 08, 1990, GRIÑO-AQUINO, *J.*

Under Article 1764 and Article 2206(1) of the Civil Code, the award of damages for death is computed on the basis of the life expectancy of the deceased, not of his beneficiary.

FACTS:

Starlight Flight No. 26 of the Philippine Air Lines (PAL) took off from the Manduriao Airport in Iloilo, on its way to Manila, with 33 persons on board, including the plane's complement. The plane did not reach its destination but crashed.

As a result of her son's death, Mrs. Padilla filed a complaint against PAL, demanding payment of P600, 000 as actual and compensatory damages, plus exemplary damages and P60, 000 as attorney's fees. PAL denied that the accident was caused by its negligence or that of any of the plane's flight crew, and the principle of law generally recognized and applied by the courts in the United States that the controlling element in determining loss of earnings arising from death is, as established by authorities, the life expectancy of the deceased or of the beneficiary, whichever is shorter.

The trial court rendered a decision ordering the PAL to pay Mrs. Padilla the sum of P477, 00 0.00 as award for the expected income of the Nicanor; plus moral damages and as attorney's fees. On Appeal, the Court of Appeals affirmed the decision of the trial court in toto.

ISSUE:

Whether or not the life expectancy of the Nicanor should be the basis in computing the awarded indemnity rather than on the life expectancy of Mrs. Padilla.

RULING: YES.

The Court held that under Article 1764 and Article 2206(1) of the Civil Code, the award of damages for death is computed on the basis of the life expectancy of the deceased, not of his beneficiary.

Art. 1764 provides that damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Article 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier. Art. 2206 provides that the amount of damages for death caused by a crime or quasi- delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death; x x x

In the case of Davila vs. PAL, 49 SCRA 497 which involved the same tragic plane crash, this Court determined not only PALs liability for negligence or breach of contract, but also the manner of computing the damages due the plaintiff therein which it based on the life expectancy of the deceased, Pedro Davila, Jr..

- Pan American World Airways, Inc. vs. Intermediate Appellate Court, G.R. No. 68988, June 21, 1990

PAN AMERICAN WORLD AIRWAYS, INC., ***Petitioners,*** **-versus - INTERMEDIATE APPELLATE COURT, and EDMUNDO P. ONGSIAKO,** ***Respondents.***
G.R. No. L-68988, FIRST DIVISION, June 21, 1990, NARVASA, *J.*

Article 2220 of the Civil Code says that moral damages may be awarded in breach of contract where the defendant acted fraudulently or in bad faith. The rule also applies to common carriers. So, proof of infringement of an agreement by a party, standing alone, will not justify an award of moral damages. There must, in addition, as the law points out, be competent evidence of fraud of bad faith by that party.

FACTS:

Edmundo P. Ongsiako (Ongsiako) was a paying passenger on the PAN AM Flight 842 that left Manila for Honolulu, Hawaii, U.S.A. with Los Angeles, California, as his ultimate destination. At Honolulu, Ongsiako discovered that his luggage was not carried on board. It was left at PAN AM's airport office in Manila where it was found a week later. A PAN AM employee in Honolulu, instead of helping him search for his bag, arrogantly threatened to bump him off in Honolulu should he persist in looking for his bag.

PAN AM assails this award of moral damages as without evidentiary foundation, or at the very least, excessive. The trial court ordered PAN AM to pay Ongsiako for damages including P350, 000 of moral damages. On Appeal, the trial court's judgment was affirmed by the Intermediate Appellate Court.

ISSUE:

Whether or not PAN AM is liable for moral damages.

RULING: YES.

The Court held that Under Article 2220 of the Civil Code says that moral damages may be awarded in breach of contract where the defendant acted fraudulently or in bad faith. The rule also applies to common carriers. So, proof of infringement of an agreement by a party, standing alone, will not justify an award of moral damages. There must, in addition, as the law points out, be competent evi dence of fraud of bad faith by that party. If the plaintiff, for instance, fails to take the witness stand and testify as to his social humiliation, wounded feelings, anxiety, etc., moral damages cannot be recovered.

In the present case, men of reasonable perceptions will not disagree with the conclusion that Ongsiako suffered mental anguish, anxiety and shock when he found that his luggage did not travel with him.

What traveller would not suffer from such feelings if he found himself in a foreign land without any article of clothing other than what he had on? The injury thus suffered by Ongsiako is one that would arise generally, in the special circumstances of this case; it follows as a matter of course. PAN AM breach of the contract was the substantial cause in bringing about the harm or injury to Ongsiako.

The Court believes and so holds that there is sufficient evidence of gross and reckless negligence amounting to bad faith on the part of PAN AM. If PAN AM was not sure that it could transport plaintiff and his luggage to Los Angeles, it should not have accepted Ongsiako who was a waitlisted passenger. It is not a valid excuse on its part to claim that Ongsiako checked in at the last minute and that there was insufficient time to load his bag in the plane.

In fact, that makes the position of PAN AM even more untenable, because in accepting and holding on to Ongsiako as its passenger, probably to fill in cancelled bookings, although it knew or must have known that the bag of Ongsiako might not be loaded on time, it was guilty of conduct amounting to bad faith. Accepting last minute passengers and their baggage with no definite assurance that the carrier can comply with its obligation due to lack of time amounts to negligence so gross and reckless as to amount to malice or bad faith.

- China Airlines Limited vs. Court of Appeals, 211 SCRA 897 (1992)

CHINA AIRLINES LIMITED, *Petitioners,* -versus - COURT OF APPEALS and MANUEL J. OCAMPO, *Respondents.*

G.R. No. 94590, THIRD DIVISION, July 29, 1992, FELICIANO, *J.*

The law distinguishes a contractual breach effected in good faith from one attended by bad faith. Where in breaching the contract, the defendant is not shown to have acted fraudulently or in bad faith, liability for damages is limited to the natural and probable consequences of the breach of the obligation and which the parties had foreseen or could reasonably have foreseen; and in that case, such liability would not include liability for moral and exemplary damages.

FACTS:

Manuel J. Ocampo (Ocampo) bought a Group Tour round-trip ticket for Manila-San Francisco Manila from China Airlines Limited (CAL). It is a condition of a Group Tour ticket that the holder must stay in the United States for at least 14 but not exceeding 35 days. Ocampo's return flight from San Francisco to Manila was scheduled for May 24, 1979, i.e., the 15th day after arrival in San Francisco. Ocampo, however, wanted to leave for Manila earlier than May 24, 1979 because he had several business meetings scheduled to be held here prior to May 24, 1979. Ocampo sought to make special arrangements with CAL Manila for a change in schedule. The travel agency assured him that the necessary adjustments would be made and that he could definitely take the CAL flight from San Francisco on May 18 1979. Upon arrival in San Francisco, Ocampo proceeded to CAL San Francisco office to confirm his revised return flight schedule. CAL San Francisco, however, declined to confirm his return flight, since the date indicated on the ticket was not May 18, 1979 but rather

May 24, 1979. Ocampo was accordingly constrained to take a Philippine Airlines flight which left San Francisco on May 20, 1979, the earliest available return flight which Ocampo could secure after May 18, 1979.

Upon arrival in Manila, Ocampo demanded an explanation and he was told candidly that a mistake had been committed by an employee of CAL Manila who had sent a negative reply to CAL San Francisco's request for confirmation without first consulting Ocampo's passenger reservation card.

ISSUE:

Whether or not CAL is liable for damages for breach of contract of carriage.

RULING: YES.

The Court held that Ocampo was able to show that CAL had indeed confirmed a seat for him on May 18, 1979 flight from San Francisco to Manila. Thus, CAL had breached its contract of carriage with Ocampo by such failure or refusal to board him on that flight. However, the Court said that that breach of contractual obligation had not been attended by bad faith or malice or gross negligence amounting to bad faith.

The law distinguishes a contractual breach effected in good faith from one attended by bad faith. Where in breaching the contract, the defendant is not shown to have acted fraudulently or in bad faith, liability for damages is limited to the natural and probable consequences of the breach of the obligation and which the parties had foreseen or could reasonably have foreseen; and in that case, such liability would notinclude liability for moral and exemplary damages.

Under Article 2232 of the Civil Code, in a contractual or quasi-contractual relationship, exemplary damages may be awarded only if the defendant had acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. The Court was unable to so characterize the behavior here shown of the employees of CAL Manila and of CAL San Francisco. Thus, the Court believes and so hold that the damages recoverable by Ocampo are limited to the peso value of the Philippine Airlines ticket it had purchased for his return flight from San Francisco; and reasonable expenses occasioned to private respondent by reason of the delay in his return San Francisco-Manila trip — exercising the Court's discretion, the Court believes that for such expenses, US$1,500.00 would be a reasonable amount — plus attorney's fees in the amount of P15,000.00, considering that respondent Ocampo was ultimately compelled to litigate his claim against CAL.

- Sulpicio Lines, Inc., vs. The Honorable Court of Appeals, G.R. No. 113578, July 14, 1995

SULPICIO LINES, INC., ***Petitioners,*** **-versus - The Honorable COURT OF APPEALS and TITO DURAN TABUQUILDE and ANGELINA DE PAZ TABUQUILDE,** ***Respondents.***
G.R. No. 113578, FIRST DIVISION, July 14, 1995, QUIASON, *J.*

The Civil Code, in Article 1764 thereof, expressly makes Article 2206 applicable to the death of a passenger caused by the breach of contract by a common carrier. Accordingly, a common carrier is

liable for actual or compensatory damages under Article 2206 in relation to Article 1764 of the Civil Code for deaths of its passengers caused by the breach of the contract of transportation.

FACTS:

Tito Duran Tabuquilde (Tito) and his three-year old daughter Jennifer Anne boarded the M/V Dona Marilyn owned by Sulpicio Lines Inc. (Sulpicio Lines) at North Harbor, Manila. While in transit, M/V Dona Marilyn encountered severe weather which caused huge waves due to Typhoon Unsang. The ship captain ordered the vessel to proceed to Tacloban when prudence dictated that he should have taken it to the nearest port for shelter, thus violating his duty to exercise extraordinary diligence in the carrying of passengers safely to their destination. Due to strong waves, said vessel overturned, throwing Tito and Jennifer Anne, along with hundreds of passengers into the tumultuous sea. Tito survived the tragedy but Jennifer Anne died.

A claim for damages was filed by Tito with the Sulpicio Lines in connection with the death of Jennifer Anne.

ISSUE:

Whether or not Sulpicio Lines is liable for damages.

The Court held a common carrier is obliged to transport its passengers to their destinations with the utmost diligence of a very cautious person and that Sulpicio Lines failed to exercise the extraordinary diligence required of a common carrier, which resulted in the sinking of the M/V Dona Marilyn and death of some of its passengers.

The Court of Appeals was correct in confirming the award of damages for the death of Jennifer Anne, a passenger on board the stricken vessel of Sulpicio Lines. It is true that under Article 2206 of the Civil Code of the Philippines, only deaths caused by a crime as quasi delict are entitled to actual and compensatory damages without the need of proof of the said damages. Thus, one can conclude that damages arising from culpa contractual are not compensable without proof of special damages sustained by the heirs of the victim.

However, the Civil Code, in Article 1764 thereof, expressly makes Article 2206 applicable to the death of a passenger caused by the breach of contract by a common carrier. Accordingly, a common carrier is liable for actual or compensatory damages under Article 2206 in relation to Article 1764 of the Civil Code for deaths of its passengers caused by the breach of the contract of transportation. The trial court awarded an indemnity of P30, 000.00 for the death of Jennifer Anne. The award of damages under Article 2206 has been increased to P50, 000.00. With respect to the award of moral damages, the general rule is that said damages are not recoverable in culpa contractual except when the presence of bad faith was proven. However, in breach of contract of carriage, moral damages may be recovered when it results in the death of a passenger. With respect to the award of exemplary damages, Article 2232 of the Civil Code of the Philippines gives the Court the discretion to grant said damages in breach of contract when the defendant acted in a wanton, fraudulent and reckless manner.

- Collin A. Morris vs. Court of Appeals, G.R. No. 127957, February 21, 2001

COLLIN A. MORRIS and THOMAS P. WHITTIER, *Petitioners,* -versus - COURT OF APPEALS (Tenth Division) and SCANDINAVIAN AIRLINES SYSTEM, *Respondents.*

G.R. No. 127957, SECOND DIVISION, February 21, 2001, PARDO, *J.*

In awarding moral damages for breach of contract of carriage, the breach must be wanton and deliberately injurious or the one responsible acted fraudulently or with malice or bad faith. Where in breaching the contract of carriage the defendant airline is not shown to have acted fraudulently or in bad faith, liability for damages is limited to the natural and probable consequences of the breach of obligation which the parties had foreseen or could have reasonably foreseen. In that case, such liability does not include moral a nd exemplary damages. Moral damages are generally not recoverable in culpa contractual except when bad faith had been proven. However, the same damages may be recovered when breach of contract of carriage results in the death of a passenger.

FACTS:

Collin A. Morris and Thomas P. Whittier (petitioners) had a series of business meetings in the Philippines and they requested their travel agent to book them as first class passengers in SAS Manila-Tokyo flight on February 14, 1978. SAS booked them as first-class passengers on Flight SK 893, Manila-Tokyo flight on February 14, 1978, at 3:50 in the afternoon. After about 15 minutes upon arrival at the MIA, the petitioners noticed that their travel documents were not being processed at the check-in counter. They were informed that there were no more seats on the plane for which reason they could not be accommodated on the flight. The supervisor said that they checked in at exactly 3:10 in the afternoon and the flight was scheduled to leave MIA at 3:50 in the afternoon.

The petitioners filed with the RTC of Makati an action for damages for breach of contract of air carriage against SAS because they were bumped off from SAS Flight SK 893, Manila-Tokyo, on February 14, 1978, despite a confirmed booking in the first class section of the flight. The trial court ordered SAS to pay damages, attorney's fees and cost. On appeal, the CA reversed the decision of the trial court.

ISSUE:

Whether or not SAS is liable for damages for breach of contract of carriage.

RULING: NO.

The Court held that when the petitioners arrived at the airport after the closure of the flight manifest, SAS's employee could not be faulted for not entertaining petitioners' tickets and travel documents for processing, as the checking in of passengers for SAS Flight SK 893 was finished, there was no fraud or bad faith as would justify the court's award or normal damages. The facts revealed petitioners were not allowed to board the plane due to their failure to check-in on time. Petitioners admitted that they were at the check-in counter at around 3:10, exactly the same time the flight manifest was closed, but still too late to be accommodated on the plane.

It must be emphasized that a contract to transport passengers is quite different kind and degree from any other contractual relations, and this is because relation, which an air carrier sustains with the public. Its business is mainly with the travelling public. It invites people business is mainly with the traveling public. It invites people to avail themselves of the comforts and advantages it offers. The contract of air carriage, therefore, generates a relation attended with a pubic duty. Neglect or malfeasance of the carrier's employees naturally could give ground for an action for damages.

The award of exemplary damages has no factual basis. It is requisite that the act must be accompanied by bad faith or done in wanton, fraudulent or malevolent manner—circumstances which are absent in this case. In addition, exemplary damages cannot be awarded as the requisite element of compensatory damages was not present.

The rule is that moral damages are recoverable in a damage suit predicated upon a breach of contract of carriage only where (a) the mishap result in the death of a passenger and (b) it is proved that the carrier was guilty of fraud and bad faith even if death does not result.

Bad faith does not simply connote bad judgement or negligence, it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud.

- Smith Bell Dodwell Shipping Agency Corp. vs. Borja, 383 SCRA 341 (2002)

SMITH BELL DODWELL SHIPPING AGENCY CORPORATION v. CATALINO BORJA and INTERNATIONAL TO WAGE AND TRANSPORT CORPORATION

G.R. No. 143008, June 10, 2002, PANGANIBAN, J.

The owner or the person in possession and control of a vessel is liable for all natural and proximate damages caused to persons and property by reason of negligence in its management or navigation. The liability for the loss of the earning capacity of the deceased is fixed by taking into account the net income of the victim at the time of death or at the time of the incident and that person's probable life expectancy.

FACTS:

Catalino Borja was aboard a vessel owned Smith Bell Shipping when an explosion happened. Upon hearing the explosion, Borja, who was at that time inside the cabin preparing reports, ran outside to check what happened. Seeing the fire and fearing for his life, Borja hurriedly jumped over board to save himself.

However, the water was likewise on fire due mainly to the spilled chemicals which were contained in the vessel. Borja made demands against Smith Bell for the damages caused by the explosion. It appears that on September 23, 1987, Smith Bell filed a written request with the Bureau of Customs for the attendance of the latter's inspection team on vessel M/T King Family which was due to arrive at the port of Manila on September 24, 1987.

On the same day, Supervising Customs Inspector Manuel Ma. D. Nalgan instructed Respondent Catalino Borja to board said vessel and perform his duties as inspector upon the vessels arrival until its departure. At that time, Borja was a customs inspector of the Bureau of Customs receiving a salary of P31,188.25 per annum.

At about 11 o'clock in the morning on September 24, 1987, while M/T King Family was unloading chemicals unto two (2) barges owned by ITTC, a sudden explosion occurred setting the vessels afire. Upon hearing the explosion, [Borja], who was at that time inside the cabin preparing reports, ran outside to check what happened. Again, another explosion was heard.

Seeing the fire and fearing for his life, Borja hurriedly jumped over board to save himself. However, the water was likewise on fire due mainly to the spilled chemicals. Despite the tremendous heat,

Borja swam his way for one (1) hour until he was rescued by the people living in the squatters area and sent to San Juan De Dios Hospital.

After weeks of intensive care at the hospital, his attending physician diagnosed Borja to be permanently disabled due to the incident. Borja made demands against Smith Bell and ITTC for the damages caused by the explosion. However, both denied liabilities and attributed to each other negligence. The trial court ruled in favor of Respondent Borja and held petitioner liable for damages and loss of income. The Court of Appeals affirmed the trial court.

ISSUE:

Whether or not Smith Bell is liable for damages to Borja.

RULING: YES.

The Court held that while knowing that the vessel was carrying dangerous inflammable chemicals, Smith Bell's officers and crew failed to take all the necessary precautions to prevent an accident.

Smith Bell was, therefore, negligent. Negligence is conduct that creates undue risk of harm to another. It is the failure to observe that degree of care, precaution and vigilance that the circumstances justly demand, whereby that other person suffers injury. Petitioner's vessel was carrying chemical cargo -- alkyl benzene and methyl methacrylate monomer. While knowing that their vessel was carrying dangerous inflammable chemicals, its officers and crew failed to take all the necessary precautions to prevent an accident. Petitioner was, therefore, negligent.

The three elements of quasi delict are: (a) damages suffered by the plaintiff, (b) fault or negligence of the defendant, and (c) the connection of cause and effect between the fault or negligence of the defendant and the damages inflicted on the plaintiff. All these elements were established in this case. Knowing fully well that it was carrying dangerous chemicals, Smith Bell was negligent in not taking all the necessary precautions in transporting the cargo.

As a result of the fire and the explosion during the unloading of the chemicals from petitioners vessel, Respondent Borja suffered the following damage: and injuries: (1) chemical burns of the face and arms; (2) inhalation of fumes from burning chemicals; (3) exposure to the elements while floating in sea water for about three (3) hours; (4) homonymous hemianopsia or blurring of the right eye [which was of] possible toxic origin; and (5) cerebral infract with neo-vascularization, left occipital region with right sided headache and the blurring of vision of right eye.

Hence, the owner or the person in possession and control of a vessel and the vessel are liable for all natural and proximate damage caused to persons and property by reason of negligent management or navigation.

- Victory Liner, Inc. vs. Rosalito Gammad, G.R. No. 159636, November 25, 2004

VICTORY LINER, INC., *Petitioner,* -versus - ROSALITO GAMMAD, APRIL ROSSAN P. GAMMAD, ROI ROZANO P. GAMMAD and DIANA FRANCES P. GAMMAD, *Respondents.*
G.R. No. 159636, FIRST DIVISION, November 25, 2004, YNARES-SANTIAGO, *J.*

In culpa contractual or breach of contract, moral damages may be recovered when the defendant acted in bad faith or was guilty of gross negligence (amounting to bad faith) or in wanton disregard of contractual obligations and, as in this case, when the act of breach of contract itself constitutes the tort that results in physical injuries. By special rule in Article 1764 in relation to Article 2206 of the Civil Code, moral damages may also be awarded in case the death of a passenger results from a breach of carriage.On the other hand, exemplary damages, which are awarded by way of example or correction for the public good may be recovered in contractual obligations if the defendant acted in wanton, fraudulent, reckless, oppressive, or malevolent manner.

FACTS:

Rosalito Gammad and his wife Marie Grace Pagulayan-Gammad were on board an air-conditioned Victory Liner bus bound for Tuguegarao, Cagayan from Manila. At about 3:00 a.m., the bus while running at a high speed fell on a ravine somewhere in Barangay Baliling, Sta. Fe, Nueva Vizcaya, which resulted in the death of Marie Grace and physical injuries to other passengers. Respondent heirs of the Mary Grace filed a complaint with the RTC for damages arising from culpa contractual against Victory Liner. Victory Liner claimed that the incident was purely accidental and that it has always exercised extraordinary diligence in its 50 years of operation.

The trial court rendered its decision in favor of the respondents and against Victory Liner ordering the latter to pay damages and attorney's fees. The Court of Appeals affirmed with modification the decision of the trial court in relation to the amounts of damages to be awarded.

ISSUE:

Whether or not Victory Liner is liable for breach of contract of carriage.

RULING: YES.

The Court held that Victory Liner was guilty of breach of contract of carriage. A common carrier is bound to carry its passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard to all the circumstances. In a contract of carriage, it is presumed that the common carrier was at fault or was negligent when a passenger dies or is injured. Unless the presumption is rebutted, the court need not even make an express finding of fault or negligence on the part of the common carrier. This statutory presumption may only be overcome by evidence that the carrier exercised extraordinary diligence. In the instant case, there is no evidence to rebut the statutory presumption that the proximate cause of Marie Grace's death was the negligence of petitioner.

Article 1764 in relation to Article 2206 of the Civil Code, holds the common carrier in breach of its contract of carriage that results in the death of a passenger liable to pay the following: (1) indemnity for death, (2) indemnity for loss of earning capacity, and (3) moral damages. In the present case, respondent heirs of the deceased are entitled to indemnity for the death of Marie Grace which under current jurisprudence is fixed at P50, 000.00. The award of compensatory damages for the loss of the deceased's earning capacity should be deleted for lack of basis. As a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the

deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.

Respondents should be awarded moral damages to compensate for the grief caused by the death of the deceased resulting from Victory Liner's breach of contract of carriage. Furthermore, the Victory Liner failed to prove that it exercised the extraordinary diligence required for common carriers, it is presumed to have acted recklessly. Thus, the award of exemplary damages is proper.

R. Bill of Lading

1. Definition

- Unsworth Transport International Phils., Inc. vs. Court of Appeals, G.R. No. 166250, July 26, 2010

UNSWORTH TRANSPORT INTERNATIONAL (PHILS.), INC., -versus - COURT OF APPEALS and PIONEER INSURANCE AND SURETY CORPORATION, *Respondents.*
G.R. No. 166250, SECOND DIVISION, July 26, 2010, NACHURA, *J.*

A bill of lading is a written acknowledgement of the receipt of goods and an agreement to transport and to deliver them at a specified place to a person named or on his or her order. It operates both as a receipt and as a contract. It is a receipt for the goods shipped and a contract to transport and deliver the same as therein stipulated. As a receipt, it recites the date and place of shipment, describes the goods as to quantity, weight, dimensions, identification marks, condition, quality, and value. As a contract, it names the contracting parties, which include the consignee; fixes the route, destination, and freight rate or charges; and stipulates the rights and obligations assumed by the parties.

FACTS:

On August 31, 1992, the shipper Sylvex Purchasing Corporation delivered to UTI a shipment of 27 drums of various raw materials for pharmaceutical manufacturing. The subject shipment was insured with private respondent Pioneer Insurance and Surety Corporation in favor of Unilab against all risks in the amount of ₱1,779,664.77 under and by virtue of Marine Risk Note Number MC RM UL 0627 926 and Open Cargo Policy No. HO-022-RIU.

On the same day that the bill of lading was issued, the shipment was loaded in a sealed 1x40 container van, with no. APLU-982012, boarded on APL's vessel M/V "Pres. Jackson," Voyage 42, and transshipped to APL's M/V "Pres. Taft" for delivery to petitioner in favor of the consignee United Laboratories, Inc. (Unilab).

On September 30, 1992, the shipment arrived at the port of Manila. On October 6, 1992, petitioner received the said shipment in its warehouse after it stamped the Permit to Deliver Imported Goods procured by the Champs Customs Brokerage. Three days thereafter, or on October 9, 1992, Oceanica Cargo Marine Surveyors Corporation (OCMSC) conducted a stripping survey of the shipment located in petitioner's warehouse stating that 1-steel drum STC Vitamin B Complex Extra[ct] with cut/hole on side, with approx. spilling of 1% all others in good condition.

On October 15, 1992, the arrastre Jardine Davies Transport Services, Inc. (Jardine) issued Gate Pass No. 761412 which stated that "22 drums Raw Materials for Pharmaceutical Mfg." were

loaded on a truck with Plate No. PCK-434 facilitated by Champs for delivery to Unilab's warehouse. The materials were noted to be complete and in good order in the gate pass. On the same day, the shipment arrived in Unilab's warehouse and was immediately surveyed by an independent surveyor, J.G. Bernas Adjusters & Surveyors, Inc. (J.G. Bernas). The Report stated: 1-p/bag torn on side contents partly spilled; and 1-s/drum #7 punctured and retaped on bottom side content lacking 5-drums shortship/short delivery.

On October 23 and 28, 1992, the same independent surveyor conducted final inspection surveys which yielded the same results. Consequently, Unilab's quality control representative rejected one paper bag containing dried yeast and one steel drum containing Vitamin B Complex as unfit for the intended purpose.

On November 7, 1992, Unilab filed a formal claim for the damage against private respondent and UTI. On November 20, 1992, UTI denied liability on the basis of the gate pass issued by Jardine that the goods were in complete and good condition; while private respondent paid the claimed amount on March 23, 1993. By virtue of the Loss and Subrogation Receipt issued by Unilab in favor of private respondent, the latter filed a complaint for Damages against APL, UTI and petitioner with the RTC of Makati. RTC ruled in favor of the private respondent. The Court of appeals affirmed the trial court.

ISSUE:

Whether or not UTI is liable for the value not stated in the bill of lading.

RULING: NO.

The evidences presented conclusively prove the fact of shipment in good order and condition, and the consequent damage to one steel drum of Vitamin B Complex Extract while in the possession of petitioner which failed to explain the reason for the damage. Further, petitioner failed to prove that it observed the extraordinary diligence and precaution which the law requires a common carrier to exercise and to follow in order to avoid damage to or destruction of the goods entrusted to it for safe carriage and delivery.

However, we *affirm* the applicability of the ***Package Limitation Rule under the COGSA***, contrary to the RTC and the CA's findings. It is to be noted that the Civil Code does not limit the liability of the common carrier to a fixed amount per package. In all matters not regulated by the Civil Code, the rights and obligations of common carriers are governed by the Code of Commerce and special laws. Thus, the COGSA supplements the Civil Code by establishing a provision limiting the carrier's liability in the absence of a shipper's declaration of a higher value in the bill of lading. Section 4(5) of the COGSA provides:

> (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 of 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 the bill of lading. This declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the carrier.

In the present case, the shipper did not declare a higher valuation of the goods to be shipped. Furthermore, the insertion of an invoice number does not in itself sufficiently and convincingly show that petitioner had knowledge of the value of the cargo. Petitioner's liability should be limited to $500 per steel drum. In this case, as there was only one drum lost, private respondent is entitled to receive only $500 as damages for the loss.

1. **Three-Fold Character**

- Keng Hua Paper Products Co., Inc. vs. Court of Appeals, 286 SCRA 257 (1998)

KENG HUA PAPER PRODUCTS CO. INC., ***Petitioners,*** **-versus - COURT OF APPEALS; REGIONAL TRIAL COURT OF MANILA, BR. 21; and SEA-LAND SERVICE, INC.,** ***Respondents.***
G.R. No. 116863, FIRST DIVISION, February 12, 1998, PANGANIBAN, *J.*

A bill of lading serves two functions. First, it is a receipt for the goods shipped. Second, it is a contract by which 3 parties: the shipper, the carrier, and the consignee undertake specific responsibilities and assume stipulated obligations. The acceptance of a bill of lading by the shipper and the consignee, with full knowledge of its contents, gives rise to the presumption that the same was a perfected and binding contract.

FACTS:

Sea-Land Service Inc, a shipping company, is a foreign corporation licensed to do business in the Philippines. On June 29, 1982, plaintiff received at its Hong Kong terminal a sealed container, Container No. SEAU 67523, containing seventy-six bales of "unsorted waste paper" for shipment to Keng Hua Paper Products, Co. in Manila. A bill of lading to cover the shipment was issued by the plaintiff.

On July 9, 1982, the shipment was discharged at the Manila International Container Port. Notices of arrival were transmitted to the defendant but the latter failed to discharge the shipment from the container during the "free time" period or grace period. The said shipment remained inside the plaintiff's container from the moment the free time period expired on July 29, 1982 until the time when the shipment was unloaded from the container on November 22, 1983, or a total of four hundred eighty-one (481) days. During the 481-day period, demurrage charges accrued. Within the same period, letters demanding payment were sent by the plaintiff to the defendant who, however, refused to settle its obligation which eventually amounted to P67,340.00. Numerous demands were made on the defendant but the obligation remained unpaid. Plaintiff thereafter commenced this civil action for collection and damages.

In its answer, defendant, by way of special and affirmative defense, alleged that it purchased fifty (50) tons of waste paper from the shipper in Hong Kong, Ho Kee Waste Paper, as manifested in Letter of Credit No. 824858 issued by Equitable Banking Corporation, with partial shipment permitted; that under the letter of credit, the remaining balance of the shipment was only ten (10) metric tons as shown in Invoice No. H-15/82; that the shipment plaintiff was asking defendant to accept was twenty (20) metric tons which is ten (10) metric tons more than the remaining balance; that if defendant were to accept the shipment, it would be violating Central Bank rules and regulations and custom and tariff laws; that plaintiff had no cause of action against the defendant because the latter did not hire the former to carry the merchandise; that the cause of action should be against the shipper which contracted the plaintiff's services and not against defendant; and that

the defendant duly notified the plaintiff about the wrong shipment through a letter dated January 24, 1983.

The RTC found petitioner liable for demurrage. The petitioner appealed to the Court of Appeals, arguing that the lower court erred in (1) awarding the sum of P67,340 in favor of the private respondent, (2) rejecting petitioner's contention that there was overshipment, (3) ruling that petitioner's recourse was against the shipper. Respondent Court of Appeals denied the appeal and affirmed the lower court's decision in toto.

ISSUE:

Whether petitioner is bound by the bill of lading.

RULING: YES.

A bill of lading serves two functions. First, it is a receipt for the goods shipped. Second, it is a contract by which 3 parties: the shipper, the carrier, and the consignee undertake specific responsibilities and assume stipulated obligations. The acceptance of a bill of lading by the shipper and the consignee, with full knowledge of its contents, gives rise to the presumption that the same was a perfected and binding contract. RTC and CA held that the bill of lading was a valid and perfected contract between the shipper (Ho Kee), the consignee (KengHua), and the carrier (Sea-Land). Section 17 of the bill of lading provided that the shipper and the consignee were liable for the payment of demurrage charges for the failure to discharge the containerized shipment beyond the grace period allowed by tariff rules. Applying said stipulation, both lower courts found KengHua liable.

Having been afforded an opportunity to examine the said document, KengHua did not immediately object to or dissent from any term or stipulation therein. It was only 6 months later, that it sent a letter to Sealand saying that it could not accept the shipment. KengHua's inaction for such a long period conveys the clear inference that it accepted the terms and conditions of the bill of lading. The letter merely proved its refusal to pick up the cargo, not its rejection of the bill of lading.

KengHua's attempt to evade its obligation to receive the shipment on the pretext that this may cause it to violate customs, tariff and central bank laws must likewise fail. Mere apprehension of violating said laws, without a clear demonstration that taking delivery of the shipment has become legally impossible cannot defeat the KengHua's contractual obligation and liability under the bill of lading. It's prolonged failure to receive and discharge the cargo from the Sea-Land's vessel constitutes a violation of the terms of the bill of lading and is liable for demurrage.

2. Parties

- Everett Steamship Corporation vs. Court of Appeals, 297 SCRA 496 (1998)

EVERETT STEAMSHIP CORPORATION, *Petitioners,* -versus - COURT OF APPEALS and HERNANDEZ TRADING CO. INC., *Respondents.*

G.R. No. 122494, SECOND DIVISION, October 08, 1998, MARTINEZ, *J.*

Even if the consignee was not a signatory to the contract of carriage between the shipper and the carrier, the consignee can still be bound by the contract. The right of a party here, to recover for loss of a shipment consigned to him under a bill of lading drawn up only by and between the shipper and the carrier, springs from either a relation of agency that may exist between him and the shipper or consignor, or his status as stranger in whose favor some stipulation is made in said contract, and who becomes a party thereto when he demands fulfillment of that stipulation, when Hernandez Trading formally claimed reimbursement for the missing goods from Everett Steamship and subsequently filed a case against the latter based on the very same bill of lading, it accepted the provisions of the contract and thereby made itself a party thereto, or at least has come to court to enforce it. Thus, it cannot now reject or disregard the carrier's limited liability stipulation in the bill of lading. It is now bound by the whole stipulations in the bill of lading and must respect the same.

FACTS:

Hernandez Trading Co. Inc. imported three crates of bus spare parts, from its supplier, Maruman Trading Company, Ltd. (Maruman Trading), a foreign corporation based in Inazawa, Aichi, Japan. The crates were shipped from Nagoya, Japan to Manila on board "ADELFAEVERETTE," a vessel owned by petitioner's principal, Everett Orient Lines. The said crates were covered by Bill of Lading.

Upon arrival at the port of Manila, it was discovered that the crate marked MARCO C/No. 14 was missing. This was confirmed and admitted by petitioner in its letter of January 13, 1992 addressed to private respondent, which thereafter made a formal claim upon petitioner for the value of the lost cargo amounting to One Million Five Hundred Fifty Two Thousand Five Hundred (Y1,552,500.00) Yen, the amount shown in an Invoice No. MTM-941, dated November 14, 1991. However, petitioner offered to pay only One Hundred Thousand (Y100,000.00) Yen, the maximum amount stipulated under Clause 18 of the covering bill of lading which limits the liability of petitioner.

Private respondent rejected the offer and thereafter instituted a suit for collection docketed as Civil Case No. C-15532, against petitioner before the Regional Trial Court of Caloocan City, Branch 126.

ISSUE:

Whether Hernandez Trading as consignee, who is not a signatory to the bill of lading is bound by the stipulations thereof.

RULING: YES.

In Sea-Land Service, Inc. vs. IAC (G.R. No. 75118 August 31, 1987), the Court held that even if the consignee was not a signatory to the contract of carriage between the shipper and the carrier, the consignee can still be bound by the contract. The right of a party here, to recover for loss of a shipment consigned to him under a bill of lading drawn up only by and between the shipper and the carrier, springs from either a relation of agency that may exist between him and the shipper or consignor, or his status as stranger in whose favor some stipulation is made in said contract, and who becomes a party thereto when he demands fulfillment of that stipulation, in this case the delivery of the goods or cargo shipped. In neither capacity can he assert personally, in bar to any provision of the bill of lading, the alleged circumstance that fair and free agreement to such provision was vitiated by its being in such fine print as to be hardly readable.

When Hernandez Trading formally claimed reimbursement for the missing goods from Everett Steamship and subsequently filed a case against the latter based on the very same bill of lading, it accepted the provisions of the contract and thereby made itself a party thereto, or at least has come to court to enforce it. Thus, it cannot now reject or disregard the carrier's limited liability stipulation in the bill of lading. It is now bound by the whole stipulations in the bill of lading and must respect the same. To defeat the carrier's limited liability, the aforecited Clause 18 of the bill of lading requires that the shipper should have declared in writing a higher valuation of its goods before receipt thereof by the carrier and insert the said declaration in the bill of lading, with extra freight paid. These requirements in the bill of lading were never complied with by the shipper, hence, the liability of the carrier under the limited liability clause stands.

3. Kinds of bill of lading

- Magellan Manufacturing Marketing Corporation vs. Court of Appeals, G.R. No. 95529, August 22, 1991

MAGELLAN MANUFACTURING MARKETING CORPORATION,* *Petitioners,* -versus - COURT OF APPEALS, ORIENT OVERSEAS CONTAINER LINES and F.E. ZUELLIG, INC., *Respondents.*
G.R. No. 95529, SECOND DIVISION, August 22, 1991, REGALADO, *J.*

An on board bill of lading is one in which it is stated that the goods have been received on board the vessel which is to carry the goods, whereas a received for shipment bill of lading is one in which it is stated that the goods have been received for shipment with or without specifying the vessel by which the goods are to be shipped. Received for shipment bills of lading are issued whenever conditions are not normal and there is insufficiency of shipping space. An on board bill of lading is issued when the goods have been actually placed aboard the ship with every reasonable expectation that the shipment is as good as on its way. Therefore, a party to a maritime contract would require an on board bill of lading because of its apparent guaranty of certainty of shipping as well as the seaworthiness of the vessel which is to carry the goods.

FACTS:

Magellan Manufacturers Marketing Corp. (MMMC) entered into a contract with Choju Co. of Yokohama, Japan to export anahaw fans for a consideration. As payment, a letter of credit (LC) was issued to MMMC by the buyer. James Cu, presidentof MMMC then contracted F.E. Zuellig, a shipping agent, through its solicitor, one Mr. King, to ship the anahaw fans through Orient Overseas Container Lines, Inc., (OOCL) specifying that he needed an on-board bill of lading and that transhipment is not allowed under the LC.

MMMC paid F.E. Zuellig the freight charges and secured a copy of the bill of lading which was presented to Allied Bank. The bank then credited the amount covered by the LC to MMMC's account. However, when MMMC's president James Cu, went back to the bank later, he was informed that the payment was refused by the buyer allegedly because there was no on-board bill of lading, and there was a transhipment of goods. As a result of the refusal of the buyer to accept, the anahaw fans were shipped back to Manila, for which they demanded from MMMC payment. MMMC abandoned the whole cargo and asked OOCL for damages.

ISSUE:

Whether the subject bill of lading is an on board bill of lading or a received for shipment bill of lading.

RULING:

It is a received for shipment bill of lading. MMMC knew that its buyer, Choju Co., Ltd., particularly required that there be an on board bill of lading, obviously due to the guaranty afforded by such a bill of lading over any other kind of bill of lading. The buyer could not have insisted on such a stipulation on a pure whim or caprice, but rather because of its reliance on the safeguards to the cargo that having an on board bill of lading ensured. Herein MMMC cannot feign ignorance of the distinction between an "on board" and a "received for shipment" bill of lading, as manifested by James Cu's testimony. It is only to be expected that those long engaged in the export industry should be familiar with business usages and customs. In its petition, MMMC avers that "when petitioner teamed of what happened, it saw private respondent F.E. Zuellig which, in turn, issued a certification that the Anahaw fans were already on board MV Pacific Despatcher.

It cannot plausibly be said that the aforestated certification of F.E. Zuellig, Inc. can qualify the bill of lading, as originally issued, into an on board bill of lading as required by the terms of the LC issued. For one, the certification was issued way beyond the expiry date specified in the LC for the presentation of an on board bill of lading. Thus, even assuming that by a liberal treatment of the certification it could have the effect of converting the received for shipment bill of lading into an on board of bill of lading, as petitioner would have us believe, such an effect may be achieved only as of the date of its issuance and onwards. The fact remains, though, that on the crucial date, no on board bill of lading was presented by MMMC in compliance with the terms of the LC and this default consequently negates its entitlement to the proceeds thereof. Said certification, if allowed to operate retroactively, would render illusory the guaranty afforded by an on board bill of lading, that is, reasonable certainty of shipping the loaded cargo aboard the vessel specified, not to mention that it would indubitably be stretching the concept of substantial compliance too far. Neither can MMMC escape liability by adverting to the bill of lading as a contract of adhesion, thus warranting a more liberal consideration in its favor to the extent of interpreting ambiguities against OOCL and F.E. Zuelig as allegedly being the parties who gave rise thereto. The bill of lading is clear on its face. There is no occasion to speak of ambiguities or obscurities whatsoever. All of its terms and conditions are plainly worded and commonly understood by those in the business.

4. Stipulations in a bill of lading

- Provident Insurance Corp. vs. Court of Appeals, G.R. No. 118030, January 15, 2004

PROVIDENT INSURANCE CORP., ***Petitioner,*** **-versus - HONORABLE COURT OF APPEALS and AZUCAR SHIPPING CORP.,** ***Respondents.***

G.R. No. 118030, FIRST DIVISION, January 15, 2004, YNARES-SANTIAGO, *J.*

The bill of lading defines the rights and liabilities of the parties in reference to the contract of carriage. Stipulations therein are valid and binding in the absence of any showing that the same are contrary to law, morals, customs, public order and public policy. Where the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of the

stipulations shall control. There can be no question about the validity and enforceability of Stipulation 7 in the bill of lading. The twenty-four hour requirement under the said stipulation is, by agreement of the contracting parties, a sine qua non for the accrual of the right of action to recover damages against the carrier.

FACTS:

On or about June 5, 1989, the vessel MV "Eduardo II" took and received on board at Sangi, Toledo City a shipment of 32,000 plastic woven bags of various fertilizer in good order and condition for transportation to Cagayan de Oro City. The subject shipment was consigned to Atlas Fertilizer Corporation, and covered by Bill of Lading No. 01 and Marine Insurance Policy No. CMI-211/89-CB.

Upon its arrival at General Santos City on June 7, 1989, the vessel MV "Eduardo II" was instructed by the consignee's representative to proceed to Davao City and deliver the shipment to its Davao Branch in Tabigao.

On June 10, 1989, the MV "Eduardo II" arrived in Davao City where the subject shipment was unloaded. In the process of unloading the shipment, three bags of fertilizer fell overboard and 281 bags were considered to be unrecovered spillages. Because of the mishandling of the cargo, it was determined that the consignee incurred actual damages in the amount of P68,196.16.

As the claims were not paid, petitioner Provident Insurance Corporation indemnified the consignee Atlas Fertilizer Corporation for its damages. Thereafter, petitioner, as subrogee of the consignee, filed on June 3, 1991 a complaint against respondent carrier seeking reimbursement for the value of the losses/damages to the cargo.

Respondent carrier moved to dismiss the complaint on the ground that the claim or demand by petitioner has been waived, abandoned or otherwise extinguished for failure of the consignee to comply with the required claim for damages set forth in the first sentence of Stipulation No. 7 of the bill of lading. The RTC dismissed the complaint which decision was affirmed by the Court of Appeals.

ISSUE:

Whether or not carrier's failure to make the prompt notice of claim as required is fatal to the right to claim indemnification for damages.

RULING: YES.

Carriers and depositaries sometimes require presentation of claims within a short time after delivery as a condition precedent to their liability for losses. Such requirement is not an empty formalism. It has a definite purpose, i.e., to afford the carrier or depositary a reasonable opportunity and facilities to check the validity of the claims while the facts are still fresh in the minds of the persons who took part in the transaction and the document are still available.

Considering that a prompt demand was necessary to foreclose the possibility of fraud or mistake in ascertaining the validity of claims, there was a need for the consignee or its agent to observe the conditions provided for in Stipulation 7. Hence, Provident's insistence that the carrier had knowledge of the damage because one of its officers supervised the unloading operations and signed a discharging report, cannot be construed as sufficient compliance with the aforementioned proviso. The Discharge Report is not the notice referred to in Stipulation 7, hence, its accomplishment cannot be considered substantial compliance of the requirement embodied therein. Moreover, a reading of the first paragraph of Stipulation 7 will readily show that upon the consignee or its agent rests the obligation to make the necessary claim within the prescribed period and not merely rely on the supposed knowledge of the damages by the carrier.

2. **Delivery of Goods**

1. **Period of Delivery**

- Maersk Line vs. Court of Appeals, 222 SCRA 108 (1993)

MAERSK LINE, *Petitioner,* -versus - COURT OF APPEALS AND EFREN V. CASTILLO, doing business under the name and style of Ethegal Laboratories, *Respondents.*
G.R. No. 94761, THIRD DIVISION, May 17, 1993, BIDIN, *J.*

The oft-repeated rule regarding a carrier's liability for delay is that in the absence of a special contract, a carrier is not an insurer against delay in transportation of goods. When a common carrier undertakes to convey goods, the law implies a contract that they shall be delivered at destination within a reasonable time, in the absence, of any agreement as to the time of delivery. But where a carrier has made an express contract to transport and deliver properly within a specified time, it is bound to fulfill its contract and is liable for any delay, no matter from what cause it may have arisen. This result logically follows from the well-settled rule that where the law creates a duty or charge, and the default in himself, and has no remedy over, then his own contract creates a duty or charge upon himself, he is bound to make it good notwithstanding any accident or delay by inevitable necessity because he might have provided against it by contract.

FACTS:

On November 12, 1976, Efren Castillo ordered from Eli Lilly. Inc. of Puerto Rico through its (Eli Lilly, Inc.'s) agent in the Philippines, Elanco Products, 600,000 empty gelatin capsules for the manufacture of his pharmaceutical products. The capsules were placed in six (6) drums of 100,000 capsules each valued at US $1,668.71.

Through a Memorandum of Shipment, the shipper Eli Lilly, Inc. of Puerto Rico advised private respondent as consignee that the 600,000 empty gelatin capsules in six (6) drums of 100,000 capsules each, were already shipped on board MV "Anders Maerskline" under Voyage No. 7703 for shipment to the Philippines via Oakland, California. In said Memorandum, shipper Eli Lilly, Inc. specified the date of arrival to be April 3, 1977.

For reasons unknown, said cargo of capsules were mishipped and diverted to Richmond, Virginia, USA and then transported back Oakland, Califorilia. The goods finally arrived in the Philippines on June 10, 1977 or after two (2) months from the date specified in the memorandum. As a consequence, private respondent as consignee refused to take delivery of the goods on account of its failure to arrive on time.

Private respondent alleging gross negligence and undue delay in the delivery of the goods, filed an action before the court a quo for rescission of contract with damages against petitioner and Eli Lilly, Inc. as defendants.

Denying that it committed breach of contract, petitioner alleged in its that answer that the subject shipment was transported in accordance with the provisions of the covering bill of lading and that its liability under the law on transportation of good attaches only in case of loss, destruction or deterioration of the goods as provided for in Article 1734 of Civil Code.

Defendant Eli Lilly, Inc., on the other hand, filed its answer with compulsory and cross-claim. In its cross-claim, it alleged that the delay in the arrival of the subject merchandise was due solely to the gross negligence of petitioner Maersk Line.

ISSUE:

Whether Efren Castillo is entitled to damages resulting from delay in the delivery of the shipment in the absence in the bill of lading of a stipulation on the period of delivery.

RULING: YES.

A bill of lading usually becomes effective upon its delivery to and acceptance by the shipper. It is presumed that the stipulations of the bill were, in the absence of fraud, concealment or improper conduct, known to the shipper, and he is generally bound by his acceptance whether he reads the bill or not. However, the ruling applies only if such contracts will not create an absurd situation as in the case at bar. The questioned provision in the subject bill of lading has the effect of practically leaving the date of arrival of the subject shipment on the sole determination and will of the carrier. While it is true that common carriers are not obligated by law to carry and to deliver merchandise, and persons are not vested with the right to prompt delivery, unless such common carriers previously assume the obligation to deliver at a given date or time, delivery of shipment or cargo should at least be made within a reasonable time.

An examination of the subject bill of lading shows that the subject shipment was estimated to arrive in Manila on April 3, 1977. While there was no special contract entered into by the parties indicating the date of arrival of the subject shipment, petitioner nevertheless, was very well aware of the specific date when the goods were expected to arrive as indicated in the bill of lading itself. In this regard, there arises no need to execute another contract for the purpose, as it would be a mere superfluity. In the case before us, we find that a delay in the delivery of the goods spanning a period of 2 months and 7 days was beyond the realm of reasonableness.

2. Delivery Without Surrender of Bill of Lading

- National Trucking and Forwarding Corporation vs. Lorenzo Shipping Corporation, G.R. No. 153563, February 07, 2005

NATIONAL TRUCKING AND FORWARDING CORPORATION, *Petitioner,* -versus - LORENZO SHIPPING CORPORATION, *Respondent.*
G.R. No. 153563, FIRST DIVISION, February 07, 2005, QUISUMBING, *J.*

In case the consignee, upon receiving the goods, cannot return the bill of lading subscribed by the carrier, because of its loss or of any other cause, he must give the latter a receipt for the goods delivered, this receipt producing the same effects as the return of the bill of lading. The surrender of the original bill of lading is not a condition precedent for a common carrier to be discharged of its contractual obligation. If surrender of the original bill of lading is not possible, acknowledgment of the delivery by signing the delivery receipt suffices.

FACTS:

The gov't entered into a contract of carriage of goods with National Trucking and Forwarding Corporation (NTFC). Thus, the latter shipped the bags of non-fat dried milk through Lorenzo Shipping Corporation (LSC). The consignee named in the bills of lading issued by LSC was Abdurahman Jama, NTFC's branch supervisor. On reaching the port, LSC's agent, Efren Ruste Shipping Agency (ERSA), unloaded the bags of non-fat dried milk and delivered the goods to NTFC's warehouse. Before each delivery delivery checkers of ERSA, requested Abdurahman to surrender the original bills of lading, but the latter merely presented certified true copies thereof. Upon completion of each delivery, the delivery checkers asked Abdurahman to sign the delivery receipts. However, at times when Abdurahman had to attend to other business before a delivery was completed, he instructed his subordinates to sign the delivery receipts for him. Notwithstanding the precautions taken, NTFC allegedly did not receive the subject goods. Thus NTFC filed a formal claim for non-delivery of the goods shipped through LSC in a letter. LSC explained that the cargo had already been delivered to Abdurahman Jama.

ISSUE:

Whether or not LSC is presumed at fault or negligent as common carrier for the loss or deterioration of the goods.

RULING: NO.

The Court agreed with the court a quo that LSC adequately proved that it exercised extraordinary diligence. Although the original bills of lading remained with NTFC, LSC's agents demanded from Abdurahman the certified true copies of the bills of lading. They also asked the latter and in his absence, his designated subordinates, to sign the cargo delivery receipts.

We also note that some delivery receipts were signed by Abdurahman's subordinates and not by Abdurahman himself as consignee. Further, delivery checkers Rogelio and Ismael testified that Abdurahman was always present at the initial phase of each delivery, although on the few occasions when Abdurahman could not stay to witness the complete delivery of the shipment, he authorized his subordinates to sign the delivery receipts for him. This, to our mind, is sufficient and substantial compliance with the requirements.

- DESIGNER BASKETS, INC., v. AIR SEA TRANSPORT, INC. AND ASIA CARGO CONTAINER LINES, INC., G.R. No. 184513, March 09, 2016

DESIGNER BASKETS, INC., *Petitioner,* -versus - AIR SEA TRANSPORT, INC. AND ASIA CARGO CONTAINER LINES, INC., *Respondents.*
G.R. No. 184513, THIRD DIVISION, March 09, 2016, JARDELEZA, *J.*

The general rule is that upon receipt of the goods, the consignee surrenders the bill of lading to the carrier and their respective obligations are considered canceled. Article 353 of the Code of Commerce, however, provides two exceptions where the goods may be released without the surrender of the bill of lading because the consignee can no longer return it. These exceptions are when the bill of lading gets lost or for other cause. In either case, the consignee must issue a receipt to the carrier upon the release of the goods. Such receipt shall produce the same effect as the surrender of the bill of lading.

Here, the buyer could not produce the bill of lading covering the shipment not because it was lost, but for another cause: the bill of lading was retained by the seller pending buyer's full payment of the shipment. Buyer and carrier then entered into an Indemnity Agreement, wherein the former asked the latter to release the shipment even without the surrender of the bill of lading. The execution of this Agreement, and the undisputed fact that the shipment was released to seller pursuant to it, operates as a receipt in substantial compliance with the last paragraph of Article 353 of the Code of Commerce.

FACTS:

DBI is a domestic corporation engaged in the production of housewares and handicraft items for export. Sometime in October 1995, Ambiente, a foreign-based company, ordered from DBI 223 cartons of assorted wooden items (the "Shipment"). The Shipment was worth US$12,590.87 and payable through telegraphic transfer. Ambiente designated ACCLI as the forwarding agent that will ship out its order from the Philippines to the United States (US). ACCLI is a domestic corporation acting as agent of ASTI, a US based corporation engaged in carrier transport business, in the Philippines.

On January 7, 1996, DBI delivered the shipment to ACCLI for sea transport from Manila and delivery to Ambiente at 8306 Wilshire Blvd., Suite 1239, Beverly Hills, California. To acknowledge receipt and to serve as the contract of sea carriage, ACCLI issued to DBI triplicate copies of the Bill of Lading. DBI retained possession of the originals of the bills of lading pending the payment of the goods by Ambiente. ASTI released the Shipment to Ambiente on the strength of an Indemnity Agreement executed in its favor.

DBI then made several demands to Ambiente for the payment of the shipment, but to no avail. Thus, on October 7, 1996, DBI filed the Original Complaint against Ambiente, ACCLI and ASTI for the payment of the value of the Shipment, damages and legal fees.

ASTI, ACCLI and its directors and incorporators filed a motion to dismiss. They argued that: (a) they are not the real parties-in-interest in the action because the cargo was delivered and accepted by Ambiente. The case, therefore, was a simple case of non- payment of the buyer; (b) relative to the incorporators-stockholders of ACCLI, piercing the corporate veil is misplaced; (c) contrary to the allegation of DBI, the bill of lading covering the shipment does not contain a proviso exposing ASTI to liability in case the shipment is released without the surrender of the bill of lading; and (d) the Original Complaint did not attach a certificate of non-forum shopping.

DBI opposed the said motion, asserting that ASTI and ACCLI failed to exercise the required extraordinary diligence when they allowed the cargoes to be withdrawn by the consignee without

the surrender of the original bill of lading. ASTI, ACCLI, and ACCLI's incorporators-stockholders countered that it is DBI who failed to exercise extraordinary diligence in protecting its own interest.

They averred that whether or not the buyer-consignee pays the seller is already outside of their concern. Before the case was resolved by the lower court, DBI impleaded Ambiente as additional party defendant. The RTC found ASTI, ACCLI and its incorporators solidarily liable with Ambiente. The incorporators were, however, absolved from liability. The CA affirmed that Ambiente is liable but absolved ASTI and ACCLI. According to the CA, there is nothing in the applicable laws that require the surrender of bills of lading before the goods may be released to the buyer/consignee. The CA stressed that DBI failed to present evidence to prove its assertion that the surrender of the bill of lading upon delivery of the goods is a common mercantile practice.

As for ASTI, the CA explained that its only obligation as a common carrier was to deliver the shipment in good condition. It did not include looking beyond the details of the transaction between the seller and the consignee, or more particularly, ascertaining the payment of the goods by the buyer Ambiente.

ISSUE:

Whether ASTI/ACCLI may be held liable for releasing the Shipment without first demanding for the surrender of the Bill of Lading.

RULING: NO.

A common carrier may release the goods to the consignee even without the surrender of the bill of lading. Under Article 350 of the Code of Commerce, "the shipper as well as the carrier of the merchandise or goods may mutually demand that a bill of lading be made." A bill of lading, when issued by the carrier to the shipper, is the legal evidence of the contract of carriage between the former and the latter. It defines the rights and liabilities of the parties in reference to the contract of carriage. The stipulations in the bill of lading are valid and binding unless they are contrary to law, morals, customs, public order or public policy.

Here, ACCLI, as agent of ASTI, issued Bill of Lading No. AC/MLLA601317 to DBI. This bill of lading governs the rights, obligations and liabilities of DBI and ASTI. DBI claims that Bill of Lading No. AC/MLLA601317 contains a provision stating that ASTI and ACCLI are "to release and deliver the cargo/shipment to the consignee, x x x, only after the original copy or copies of the said Bill of Lading is or are surrendered to them; otherwise they become liable to [DBI] for the value of the shipment. Quite tellingly, however, DBI does not point or refer to any specific clause or provision on the bill of lading supporting this claim. The language of the bill of lading shows no such requirement. There is no obligation, therefore, on the part of ASTI and ACCLI to release the goods only upon the surrender of the original bill of lading.

Further, a carrier is allowed by law to release the goods to the consignee even without the latter's surrender of the bill of lading. The third paragraph of Article 353 of the Code of Commerce is enlightening:

> Article 353. The legal evidence of the contract between the shipper and the carrier shall be the bills of lading, by the contents of which the disputes which may arise regarding their execution and performance shall be decided, no exceptions being admissible other than those of falsity and material error in the drafting.

After the contract has been complied with, the bill of lading which the carrier has issued shall be returned to him, and by virtue of the exchange of this title with the thing transported, the respective obligations and actions shall be considered cancelled, unless in the same act the claim which the parties may wish to reserve be reduced to writing, with the exception of that provided for in Article 366.

In case the consignee, upon receiving the goods, cannot return the bill of lading subscribed by the carrier, because of its loss or any other cause, he must give the latter a receipt for the goods delivered, this receipt producing the same effects as the return of the bill of lading.

The general rule is that upon receipt of the goods, the consignee surrenders the bill of lading to the carrier and their respective obligations are considered canceled. The law, however, provides two exceptions where the goods may be released without the surrender of the bill of lading because the consignee can no longer return it. These exceptions are when the bill of lading gets lost or for other cause. In either case, the consignee must issue a receipt to the carrier upon the release of the goods. Such receipt shall produce the same effect as the surrender of the bill of lading. The non-surrender of the original bill of lading does not violate the carrier's duty of extraordinary diligence over the goods. The surrender of the original bill of lading is not a condition precedent for a common carrier to be discharged of its contractual obligation.

3. **Requirements/Conditions precedent for Filing Claims (Coastwise or inter-island commerce)**
   1. **Notice requirement**

- Philippine American General Insurance Co., Inc. and Tagum Plastics, Inc. vs. Sweet Lines, Inc., G.R. No. 87434 August 5, 1992

PHILIPPINE AMERICAN GENERAL INSURANCE CO., INC. and TAGUM PLASTICS, INC., *Petitioners,* -versus - SWEET LINES, INC., DAVAO VETERANS ARRASTRE AND PORT SERVICES, INC. and HON. COURT OF APPEALS, *Respondents.*
G.R. No. 87434, SECOND DIVISION, August 5, 1992, REGALADO, *J.*

Where the contract of shipment contains a reasonable requirement of giving notice of loss of or injury to the goods, the giving of such notice is a condition precedent to the action for loss or injury or the right to enforce the carrier's liability. Such requirement is not an empty formalism. The fundamental reason or purpose of such a stipulation is not to relieve the carrier from just liability, but reasonably to inform it that the shipment has been damaged and that it is charged with liability therefor, and to give it an opportunity to examine the nature and extent of the injury. This protects the carrier by affording it an opportunity to make an investigation of a claim while the matter is fresh and easily investigated so as to safeguard itself from false and fraudulent claims. Notice is a condition precedent and the carrier is not liable if notice is not given in accordance with the stipulation, as the failure to comply with such a stipulation in a contract of carriage with respect to notice of loss or claim for damage bars recovery for the loss or damage suffered.

FACTS:

Vessel SS "VISHVA YASH" belonging to or operated by the foreign common carrier, took on board cargoes for shipment to Manila and later for transhipment to Davao consigned to the order of FEBTC of Manila, with arrival notice to Tagum Plastics, Inc. (TPI), Davao. Cargoes were covered by Bills of Lading issued by the foreign common carrier. The cargoes were likewise insured by the TPI with Philippine American General Insurance Co., Inc. (Philamgen). Said vessel arrived at Manila and discharged its cargoes for transhipment to Davao. For this purpose, the foreign carrier awaited and made use of the services of the vessel called M/V "Sweet Love" owned and operated by Sweet Lines Inc. (SLI) interisland carrier. The shipments were discharged from the interisland carrier into the custody of the consignee. Some bags were shorthanded, missing, torn, spilled, emptied or contaminated with foreign matters. In resisting the claim, SLI raised prescription as its defense.

ISSUE:

Whether or not the notice requirement is a condition precedent for their cause of action to arise.

RULING: YES.

Paragraph 5 of the bills of lading which unequivocally prescribes a time frame of 30 days for filing a claim with the carrier in case of loss of or damage to the cargo and 60 days from accrual of the right of action for instituting an action in court, both must concur. It has long been held that Article 366 of the Code of Commerce applies not only to overland and river transportation but also to maritime transportation. The filing of a claim with the carrier within the time limitation therefor under Article 366 actually constitutes a condition precedent to the accrual of a right of action against a carrier for damages caused to the merchandise. The shipper or the consignee must allege and prove the fulfillment of the condition and if he omits such allegations and proof, no right of action against the carrier can accrue in his favor. As the requirements are reasonable conditions precedent, they are not limitations of action. Being conditions precedent, their performance must precede a suit for enforcement and the vesting of the right to file suit does not take place until the happening of these conditions. Before an action can be commenced all the essential elements of the cause of action must be complete. All valid conditions precedent to the institution of the particular action, whether prescribed by statute, fixed by agreement of the parties or implied by law must be performed or complied with before commencing the action, unless waived.

There is neither any showing of compliance by TPI with the requirement for the filing of a notice of claim within the prescribed period. It may then be said that while they may possibly have a cause of action, for failure to comply with the above condition precedent they lost whatever right of action they may have in their favor or that remedial right or right to relief had prescribed. Provisions of the law on the matter would disclose that there is no constitutional or statutory prohibition infirming par. 5 of subject Bill of Lading. The stipulated period of 60 days is reasonable enough for them to ascertain the facts and thereafter to sue, if need be, and the 60-day period agreed upon by the parties which shortened the statutory period within which to bring action for breach of contract is valid and binding. The shortened period for filing suit is not unreasonable and has in fact been generally recognized to be a valid business practice in the shipping industry.

Knowledge on the part of the carrier of the loss of or damage to the goods deducible from the issuance of said report is not equivalent to nor does it approximate the legal purpose served by the filing of the requisite claim, that is, to promptly apprise the carrier about a consignee's intention

to file a claim and thus cause the prompt investigation of the veracity and merit thereof for its protection. It would be an unfair imposition to require the carrier, upon discovery in the process of preparing the report on losses or damages of any and all such loss or damage, to presume the existence of a claim against it when at that time the carrier is expectedly concerned merely with accounting for each and every shipment and assessing its condition.

Unless and until a notice of claim is therewith timely filed, the carrier cannot be expected to presume that for every loss or damage tallied, a corresponding claim has been filed or is already in existence as would alert it to the urgency for an immediate investigation of the soundness of the claim. The report on losses and damages is not the claim referred to and required by the bills of lading for it does not fix responsibility for the loss or damage, but merely states the condition of the goods shipped. The claim contemplated, in whatever form, must be something more than a notice that the goods have been lost or damaged; it must contain a claim for compensation or indicate an intent to claim.

- Lorenzo Shipping Corp. vs. Chubb and Sons, Inc., G.R. No. 147724, June 8, 2004

LORENZO SHIPPING CORP., *Petitioners,* -versus - CHUBB and SONS, Inc., GEARBULK, Ltd. and PHILIPPINE TRANSMARINE CARRIERS, INC., *Respondents.*

G.R. No. 147724, SECOND DIVISION, June 8, 2004, PUNO, *J.*

The twenty four-hour period prescribed by Art. 366 of the Code of Commerce within which claims must be presented does not begin to run until the consignee has received such possession of the merchandise. There must be delivery by the carrier to the consignee at the place of destination.

FACTS:

Lorenzo Shipping transported to Davao City 581 bundles of black steel pipes on board M/V Lorcon IV. The goods were insured by the consignee Sumimoto Corp. with Chubb and Sons Inc. In Davao, Transmarine Carriers received the shipment for delivery to the US and found that the pipes were submerged in seawater. Gearbulk loaded the shipment to its vessel for carriage to the US. While the cargo was in transit from Davao to the US, consignee Sumimoto sent a letter of intent to Lorenzo Shipping informing them that Sumimoto will be filing a claim based on the damaged cargo.

The shipment arrived in the US and the surveyor found that the pipes were heavily rusted. Sumimoto rejected the damaged steel pipes. It filed a marine insurance claims with Chubb and Sons which the latter settled for US$104, 151. Chubb and Sons filed a complaint for collection of money against Lorenzo Shipping, Gearbulk and Transmarine. In its answer, Lorenzo Shipping averred that prescription, laches, and extinguishment of obligations and actions had set in.

Lorenzo Shipping contends that Sumimoto, Chubb's predecessor-in-interest did not validly make a claim for damages within the 24-hour period prescribed by the Code of Commerce.

ISSUE:

Whether or not Sumitomo validly made a claim for damages.

RULING: YES.

The twenty four-hour period prescribed by Art. 366 of the Code of Commerce within which claims must be presented does not begin to run until the consignee has received such possession of

the merchandise that he may exercise over it the ordinary control pertinent to ownership.There must be delivery of the cargo by the carrier to the consignee at the place of destination. In the case at bar, consignee Sumitomo has not received possession of the cargo, and has not physically inspected the same at the time the shipment was discharged from M/V Lorcon IV in Davao City. Lorenzo Shipping failed to establish that an authorized agent of the consignee Sumitomo received the cargo at Sasa Wharf in Davao City. Transmarine Carriers as agent of respondent Gearbulk, Ltd., which carried the goods from Davao City to the United States, and the principal, respondent Gearbulk, Ltd. itself, are not the authorized agents as contemplated by law. What is clear from the evidence is that the consignee received and took possession of the entire shipment only when the latter reached the United States' shore. Only then was delivery made and completed. And only then did the 24-hour prescriptive period start to run.

- Aboitiz Shipping Corporation vs. Insurance Company of North America, G.R. No. 168402, August 6, 2008

ABOITIZ SHIPPING CORPORATION, *Petitioner,* -versus - INSURANCE COMPANY OF NORTH AMERICA, *Respondent.*

G.R. No. 168402, THIRD DIVISION, August 6, 2008, REYES, R.T., *J.*

The giving of notice of loss or injury is a condition precedent to the action for loss or injury or the right to enforce the carrier's liability. This notice requirement protects the carrier by affording it an opportunity to make an investigation of the claim while the matter is still fresh and easily investigated. It is meant to safeguard the carrier from false and fraudulent claims.

FACTS:

STIP was the consignee of a cargo containing wooden tools and workbenches insured with Insurance Company of North America. The container van was shipped from Germany to Singapore, then to Manila. In Manila, the container van was received by Aboitiz Shipping and was then boarded on Aboitiz's ship which arrived in Cebu. On August 11, 1993, the cargo was withdrawn from the port by the representative of STIP and was delivered to Don Bosco Technical School Cebu. It was received by Mr. Bernhard Willig.

On August 13, 1993, Willig called the Claims Head of Aboitiz Shipping, Mr. Mayo Perez, informing him that the cargo sustained water damage. Perez immediately went to the warehouse and checked the condition of the container and other cargoes. He found that the bottom of the crate was slightly broken but the crate had no water marks. However, he confirmed that the tools which were stored inside the crate were already corroded. In a letter dated August 15, 1993, Willig informed Aboitiz of the damage noticed up on opening of the cargo.

STIP contacted ICNA for insurance claims. On September 21, 1993, the consignee STIP filed a formal claim with Aboitiz for the damage to its cargo. Aboitiz refused to settle the claim. ICNA paid the consignee and filed a complaint for collection of damages against Aboitiz. The RTC ruled in favor of Aboitiz but the CA reversed.

Aboitiz contends that STIP failed file its claim within the period prescribed under the Code of Commerce, hence ICNA has no cause of action.

ISSUE:

Whether or not STIP filed the notice of claim within the period prescribed by the Code of Commerce.

RULING: YES.

The giving of notice of loss or injury is a condition precedent to the action for loss or injury or the right to enforce the carrier's liability. This notice requirement protects the carrier by affording it an opportunity to make an investigation of the claim while the matter is still fresh and easily investigated. It is meant to safeguard the carrier from false and fraudulent claims.

Under the Code of Commerce, the notice of claim must be made within twenty four (24) hours from receipt of the cargo if the damage is not apparent from the outside of the package. For damages that are visible from the outside of the package, the claim must be made immediately. These periods, as well as the manner of giving notice, may be modified in the terms of the bill of lading, which is the contract between the parties.

In the case of Philippine Charter Insurance Corporation (PCIC) v. Chemoil Lighterage Corporation, the notice was allegedly made by the consignee through telephone and the SC denied the claim for damages as the notice did not comply with the notice requirement under the law. However, there are peculiar circumstances in the instant case that constrain the SC to rule differently from the PCIC case, albeit this ruling is being made pro hac vice, not to be made a precedent for other cases.

The shipment arrived on August 11 and the letter of STIP dated August 15 was received only on September 21. However, Aboitiz admits that even before it received the written notice of claim, Mr. Mayo B. Perez, Claims Head of the company, was informed by telephone sometime in August 13, 1993. Mr. Perez then immediately went to the warehouse and to the delivery site to inspect the goods in behalf of Aboitiz.

Provisions specifying a time to give notice of damage to common carriers are ordinarily to be given a reasonable and practical, rather than a strict construction. In this case, due consideration is given to the fact that the final destination of the cargo was a school institution where protocols must be followed. When the goods were delivered, the necessary clearance had to be made before the package was opened. Upon opening and discovery of the damaged condition of the goods, a report to this effect had to pass through the proper channels before it could be finalized and endorsed by the institution to the claims department of the shipping company.

The call to Aboitiz was made two days from delivery, a reasonable period considering that the goods could not have corroded instantly overnight such that it could only have sustained the damage during transit.

Moreover, Aboitiz was able to immediately inspect the damage while the matter was still fresh. In so doing, the main objective of the prescribed time period was fulfilled. Thus, there was substantial compliance with the notice requirement in this case.

- UCPB General Insurance Co., Inc., vs. Aboitiz Shipping Corporation, e*t. al.,* G.R. No. 168433, February 10, 2009

UCPB GENERAL INSURANCE CO., INC., ***Petitioner,*** **-versus - ABOITIZ SHIPPING CORP. EAGLE EXPRESS LINES, DAMCO INTERMODAL SERVICES, INC., and PIMENTEL CUSTOMS BROKERAGE CO.,** ***Respondents.***

G.R. No. 168433, SECOND DIVISION, February 10, 2009, TINGA, *J.*

The 24-hour claim requirement is a condition precedent to the accrual of a right of action against a carrier for loss of, or damage to, the goods. The shipper or consignee must allege and prove the fulfilment of the condition. Otherwise, no right of action against the carrier can accrue.

FACTS:

San Miguel Corp (SMC) purchased from Tawian three units of waste water treatment plant. The goods came from the USA and arrived at the port of Manila and were transported to Cebu on board Aboitiz's ship.

After its arrival in Cebu, the goods were delivered to SMC on August 2, 1991 and it was then discovered that one electrical motor was damaged.

Pursuant to an insurance agreement, UCPB paid SMC and SMC executed a subrogation form. UCPB then filed a complaint for recovery of money against Aboitiz. The RTC ruled in favor of UCPB. However, the CA reversed and ruled that UCPB's right of action did not accrue because UCPB failed to file a fo rmal notice of claim within 24 hours from SMC'c receipt of the damaged merchandise as required by Art 366 of the Code of Commerce.

UCPB asserts that the claim requirement does not apply to this case because the damage to the merchandise had already been known to the carrier as its representative was present when the cargo was found damaged upon discharge from the foreign carrier.

ISSUE:

Whether or not the claim requirement is a condition precedent to the accrual of a right of action against the carrier

RULING: YES.

The shipper or consignee must allege and prove the fulfilment of the condition. Otherwise, no right of action against the carrier can accrue in favor of the former. The requirement to give notice of loss or damage to the goods is not an empty formalism. The fundamental reason of such a stipulation is not to relieve the carrier from just liability, but reasonably to inform it that the shipment has been damaged and that it is charged with liability therefor, and to give it an opportunity to examine the nature and extent of the injury. This protects the carrier by affording it an opportunity to make an investigation of a claim while the matter is still fresh and easily investigated so as to safeguard itself from false and fraudulent claims.

The shipment in this case was received by SMC on August 2, 1991. However, the claims were dated October 30, 1991, more than three (3) months from receipt of the shipment and, at that, even after the extent of the loss had already been determined by SMC's surveyor. The claim was, therefore,

clearly filed beyond the 24-hour time frame prescribed by Art. 366 of the Code of Commerce. Aboitiz also had no knowledge of the damage to the cargo since it was not its agent but the agent of the freight consolidator who was present when the cargo was inspected.

2. **Period to file Actions**
   - Loadstar Shipping Co., Inc. vs. Court of Appeals, 315 SCRA 339 (1999)

LOADSTAR SHIPPING CO., INC., *Petitioner,* -versus - COURT OF APPEALS and THE MANILA INSURANCE CO., INC., *Respondents.*
G.R. No. 131621, FIRST DIVISION, September 28, 1999, DAVIDE, JR., C.J., *J.*

Since neither the Civil Code nor the Code of Commerce provides for a prescriptive period for the filing of actions, the one-year period prescribed by the Carriage of Goods by Sea Act may be applied suppletorily. Any stipulation reducing the one-year period is null and void.

FACTS:

Loadstar Shipping received on board it vessel crates and bales of wood insured with Manila Insurance Co. November 20, 1984 on its way to Manila from Agusan del Norte, the vessel along with its cargo sank. As a result of the loss of the cargo, the consignee made a claim with Loadstar which it ignored. As the insurer, Manila Insurance paid the consignee. On February 4, 1985, Manila Insurance filed a complaint against Loadstar.

Loadstar avers that the claim of Manila Insurance had already prescribed, the case having been instituted beyond the period stated in the bills of lading for instituting the same — suits based upon claims arising from shortage, damage, or non-delivery of shipment shall be instituted within sixty days from the accrual of the right of action. The vessel sank on 20 November 1984; yet, the case for recovery was filed only on 4 February 1985.

ISSUE:

Whether or not Manila Insurance's cause of action had already prescribed.

RULING: NO.

Inasmuch as neither the Civil Code nor the Code of Commerce states a specific prescriptive period on the matter, the Carriage of Goods by Sea Act (COGSA) — which provides for a one-year period of limitation on claims for loss of, or damage to, cargoes sustained during transit — may be applied suppletorily to the case at bar. This one-year prescriptive period also applies to the insurer of the goods. In this case, the period for filing the action for recovery has not yet elapsed. Moreover, a stipulation reducing the one-year period is null and void; it must, accordingly, be struck down.

In this case, the provision in the Bill of Lading providing that suits must be filed within 60 days from accrual of the right of action violated the one-year period prescribed under the COGSA. Hence, it is void and cannot be applied.

- Federal Express Corporation vs. American Home Assurance Company, G.R. No. 150094, August 18, 2004
-

FEDERAL EXPRESS CORPORATION, *Petitioner,* -versus - AMERICAN HOME ASSURANCE COMPANY and PHILAM INSURANCE COMPANY, INC., *Respondents.*
G.R. No. 150094, THIRD DIVISION, August 18, 2004, PANGANIBAN, *J.*

Basic is the requirement that before suing to recover loss of or damage to transported goods, the plaintiff must give the carrier notice of the loss or damage, within the period prescribed by the Warsaw Convention and/or the airway bill.

FACTS:

Smithkline Beecham delivered to Burlington Express, an agent of Federal Express, a shipment of 109 cartons of vaccines for delivery to consignee Smithkline in Makati. The shipment was covered by an Airway Bill with the words "Refrigerate when not in transit". It also provided that no action shall be maintained unless a written notice is filed within 14 days from delivery. The vaccines were transported to Manila by Federal Express.Upon arrival, the vaccines were stored at Cargohaus's warehouse. Smithkline's customs broker found that the same were stored only in a room with 2 air conditioners running instead of a refrigerator. The broker did not proceed with the withdrawal of the vaccines and instead, samples were taken to the Bureau of Animal Industry for examination. Smithkline found that the vaccines were unusable. It filed a claim with American Home Assurance through its representative in the Philippines, PhilAm Insurance Co. PhilAm paid Smithkline and filed an action for damages against Federal Express, imputing negligence in handling the cargo.

Federal Express contends that PhilAm's claim and right of action are already barred because the latter and even the consignee never filed with the carrier any written notice or complaint regarding its claim for damage to the cargo within the period required by the Warsaw Convention or even the Airway Bill.

ISSUE:

Whether or not the written notice is a condition precedent for the accrual of right to institute the action.

RULING: YES.

The filing of a claim with the carrier within the time limitation therefor actually constitutes a condition precedent to the accrual of a right of action against a carrier for loss of or damage to the goods. The shipper or consignee must allege and prove the fulfilment of the condition. If it fails to do so, no right of action against the carrier can accrue in favor of the former.

The reasons for such a stipulation are (1) to inform the carrier that the cargo has been damaged, and that it is being charged with liability therefor; and (2) to give it an opportunity to examine the nature and extent of the injury. When an airway bill or any contract of carriage for that matter has a stipulation that requires a notice of claim for loss of or damage to goods shipped and the stipulation is not complied with, its enforcement can be prevented and the liability cannot be imposed on the carrier. Being a condition precedent, the notice must precede a suit for enforcement. In the present case, there is neither an allegation nor a showing of respondents' compliance with this requirement within the prescribed period. While respondents may have had a

cause of action then, they cannot now enforce it for their failure to comply with the aforesaid condition precedent.

S. Maritime Commerce

10. Charter Parties

- Lintonjua Shipping Company, Inc. vs. National Seamen Board, 176 SCRA 189 (1989)

LITONJUA SHIPPING COMPANY INC., PETITIONER v. NATIONAL SEAMEN BOARD AND GREGORIO P. CANDONGO RESPONDENTS.
G.R. NO. L-51910, THIRD DIVISION, AUGUST 10, 1989, FELICIANO, *J.*

It is well settled that in a demise or bareboat charter, the charterer is treated as owner pro hac vice of the vessel, the charterer assuming in large measure the customary rights and liabilities of the shipowner in relation to third persons who have dealt with him or with the vessel. In such case, the Master of the vessel is the agent of the charterer and not of the shipowner. The charterer or owner pro hac vice, and not the general owner of the vessel, is held liable for the expenses of the voyage including the wages of the seamen.

FACTS:

Petitioner is the duly appointed local crewing managing office of the Fairwind Shipping Corporation.

On September 11, 1976 M/V Dufton Bay an ocean-going vessel of foreign registry owned by the R.D. Mullion ship broking agency under charter by Fairwind, while in the port of Cebu contracted the services (among others) of Gregorio Candongo as Third Engineer for 12 months with a monthly wage of US$500.00. The agreement was executed before the Cebu Area Manning Unit of the NSB, after which respondent boarded the vessel.

On December 28, 1976 before the expiration of contract, respondent was required to disembark at Port Kilang, Malaysia. Describe in his seaman's handbook is the reason "by owner's arrange."

Condongo filed a complaint against Mullion (Shipping company) for violation of contract and against Litonjua as agent of shipowner.

On February 1977, National Seamen Board rendered a judgment by default for failure of petitioners to appear during the initial hearing, rendering the same to pay Candongo because there was no sufficient or valid cause for the respondents to terminate the service of the complainant.

Litonjua's defense: Contends that the shipowner, nor the charterer, was the employer of private respondent; and that liability for damages cannot be imposed upon petitioner which was a mere agent of the charterer.

ISSUE:

Whether or not Litonjua may be held liable to the private respondent on the contract of employment.

RULING:

YES. The first basis is the charter party which existed between Mullion, the shipowner, and Fairwind, the charterer.

It is well settled that in a demise or bare boat charter, the charterer is treated as owner pro hac vice of the vessel, the charterer assuming in large measure the customary rights and liabilities of the shipowner in relation to third persons who have dealt with him or with the vessel. In such case, the Master of the vessel is the agent of the charterer and not of the shipowner. The charterer or owner pro hac vice, and not the general owner of the vessel, is held liable for the expenses of the voyage including the wages of the seamen.

Treating Fairwind as owner pro hac vice, petitioner Litonjua having failed to show that it was not such, the Court believes and so holds that petitioner Litonjua, as Philippine agent of the charterer, may be held liable on the contract of employment between the ship captain and the private respondent.

There is a second and ethically more compelling basis for holding petitioner Litonjua liable on the contract of employment of private respondent. The charterer of the vessel, Fairwind, clearly benefitted from the employment of private respondent as Third Engineer of the Dufton Bay, along with the ten (10) other Filipino crewmembers recruited by Captain Ho in Cebu at the same occasion.

In so doing, petitioner Litonjua certainly in effect represented that it was taking care of the crewing and other requirements of a vessel chartered by its principal, Fairwind.

Last, but certainly not least, there is the circumstance that extreme hardship would result for the private respondent if petitioner Litonjua, as Philippine agent of the charterer, is not held liable to private respondent upon the contract of employment.

- National Food Authority vs. Court of Appeals, G.R. No. 96453, August 4, 1999

NATIONAL FOOD AUTHORITY, ROSELINDA GERALDEZ, RAMON SARGAN AND APELINA A. YAP, PETITIONERS, v. THE HON. COURT OF APPEALS AND HONGFIL SHIPPING CORPORATION, RESPONDENTS.
G.R. NO. 96453, THIRD DIVISION, AUGUST 4, 1999, PURISIMA, *J.:*

A charter party is classified into (1) "bareboat" or "demise" charter and (2) contract of affreightment. Subject contract is one of affreightment, whereby the owner of the vessel leases part or all of its space to haul goods for others. It is a contract for special service to be rendered by the owner of the vessel. Under such contract, the ship retains possession, command, and navigation of the ship, the charterer or freighter merely having use of the space in the vessel in return for his payment of the charter hire.

FACTS:

National Food Authority (NFA), thru its officers, entered into a "Letter of Agreement for Vessel/Barge Hire with Hongfil for the shipment of 200,000 bags of corn grains from Cagayan de Oro City to Manila.

The loading of bags of corn grains in the vessel commenced but it took a longer period of 21 days, 15 hours, and 18 minutes to finish than as was certified by the arrastre firm as there was a strike staged by the arrastre workers in view of the refusal of the striking stevedores to attend to their work. The vessel was allowed to depart for the port of Manila and arrived there, but unfortunately, it took a longer period of 20 days, 14 hours and 33 minutes to finish the unloading than the discharging rate certified by the Port of Manila, due to the unavailability of a berthing space for the vessel M/V CHARLIE/DIANE. Only 166,798 bags were unloaded at the Port of Manila.

After the discharging was completed, NFA paid Hongfil the amount of P1,006,972.11 covering the shipment of corn grains. Thereafter, Hongfil sent its billing to NFA claiming payment for freight covering the shut-out load or deadfreight as well as demurrage, allegedly sustained during the loading and unloading of subject shipment of corn grains. When NFA refused to pay the amount reflected in the billing, Hongfil brought the present action against NFA.

ISSUES:

1) Can petitioners be held liable for deadfreight?

2) Can petitioners be held liable for demurrage?

RULING:

1) Yes. It bears stressing that subject Letter of Agreement is considered a Charter Party.

A charter party is classified into (1) "bareboat" or "demise" charter and (2) contract of affreightment. Subject contract is one of affreightment, whereby the owner of the vessel leases part or all of its space to haul goods for others. It is a contract for special service to be rendered by the owner of the vessel. Under such contract, the ship retains possession, command, and navigation of the ship, the charterer or freighter merely having use of the space in the vessel in return for his payment of the charter hire.

Under the law, the cargo not loaded is considered a deadfreight. It is the amount paid by or recoverable from a charterer of a ship for the portion of the ship's capacity the latter contracted for but failed to occupy. Explicit and succinct is the law that the liability for deadfreight is on the charterer. (Article 680 of the Code of Commerce).

2) No. Demurrage is the sum fixed in a charter party as a remuneration to the owner of the ships for the detention of his vessel beyond the number of days allowed by the charter party for loading or unloading or for sailing. Liability for demurrage, using the word in its technical sense, exists only when expressly stipulated in the contract.

Shipper or charterer is liable for the payment of demurrage claims when he exceeds the period for loading and unloading as agreed upon or the agreed "laydays". The period for such may or may not be stipulated in the contract. A charter party may either provide for a fixed laydays or

contain general or indefinite words such as "customary quick dispatch" or "as fast as the streamer can load". In the case at bar, the charter party provides merely for a general or indefinite words of "customary quick dispatch". Such stipulation implies that loading and unloading of the cargo should be within a reasonable time.

The charterer NFA could not be held liable for demurrage for it appears that cause of delay was not imputable to either of the parties. The cause of delay during the loading was the strike staged by the crew of the arrastre operator, and the unavailability of a berthing space for the vessel during the unloading. Here, the Court holds that the delay sued upon was still within the "reasonable time" embraced in the stipulation of "Customary Quick Dispatch".

Furthermore, considering the subject contract of affreightment contains an express provision "Demurrage/Dispatch: NONE", the same left the parties with no recourse but to apply the literal meaning of such stipulation.

- Caltex Philippines, Inc. vs. Sulpicio Lines, Inc., *et. al.,* G.R. No. 131166, September 30, 1999

CALTEX (PHILIPPINES), INC., *PETITIONER*, v. SULPICIO LINES, INC., GO SIOC SO, ENRIQUE S. GO, EUSEBIO S. GO, CARLOS S. GO, VICTORIANO S. GO, DOMINADOR S. GO, RICARDO S. GO, EDWARD S. GO, ARTURO S. GO, EDGAR S. GO, EDMUND S. GO, FRANCISCO SORIANO, VECTOR SHIPPING CORPORATION, TERESITA G. CAÑEZAL AND SOTERA E. CAÑEZAL, *RESPONDENTS.*

G.R. NO. 131166, FIRST DIVISION, SEPTEMBER 30, 1999, PARDO, *J.*:

A charter party is a contract by which an entire ship, or some principal part thereof, is let by the owner to another person for a specified time or use; a contract of affreightment is one by which the owner of a ship or other vessel lets the whole or part of her to a merchant or other person for the conveyance of goods, on a particular voyage, in consideration of the payment of freight. A contract of affreightment may be either time charter, wherein the leased vessel is leased to the charterer for a fixed period of time, or voyage charter, wherein the ship is leased for a single voyage. In both cases, the charter-party provides for the hire of the vessel only, either for a determinate period of time or for a single or consecutive voyage, the ship owner to supply the ship's store, pay for the wages of the master of the crew, and defray the expenses for the maintenance of the ship. If the charter is a contract of affreightment, which leaves the general owner in possession of the ship as owner for the voyage, the rights and the responsibilities of ownership rest on the owner. The charterer is free from liability to third persons in respect of the ship.

FACTS:

On December 20, 1987, motor tanker MV Vector, carrying petroleum products of Caltex, collided in the open sea with passenger ship MV Doña Paz, causing the death of all but 25 of the latter's passengers. Among those who died were Sebastian Canezal and his daughter Corazon

Canezal. On March 22, 1988, the board of marine inquiry found that Vector Shipping Corporation was at fault. On February 13, 1989, Teresita Cañezal and Sotera E. Cañezal, Sebastian Cañezal's wife and mother respectively, filed with the Regional Trial Court of Manila a complaint for damages arising from breach of contract of carriage against Sulpicio Lines. Sulpicio filed a third-party complaint against Vector and Caltex. The trial court dismissed the complaint against Caltex, but the Court of Appeals included the same in the liability. Hence, Caltex filed this petition.

ISSUE:

Is the charterer of a sea vessel liable for damages resulting from a collision between the chartered vessel and a passenger ship?

RULING:

First: The charterer has no liability for damages under Philippine Maritime laws.

Petitioner and Vector entered into a contract of affreightment, also known as a voyage charter.

A charter party is a contract by which an entire ship, or some principal part thereof, is let by the owner to another person for a specified time or use; a contract of affreightment is one by which the owner of a ship or other vessel lets the whole or part of her to a merchant or other person for the conveyance of goods, on a particular voyage, in consideration of the payment of freight. A contract of affreightment may be either time charter, wherein the leased vessel is leased to the charterer for a fixed period of time, or voyage charter, wherein the ship is leased for a single voyage. In both cases, the charter-party provides for the hire of the vessel only, either for a determinate period of time or for a single or consecutive voyage, the ship owner to supply the ship's store, pay for the wages of the master of the crew, and defray the expenses for the maintenance of the ship. If the charter is a contract of affreightment, which leaves the general owner in possession of the ship as owner for the voyage, the rights and the responsibilities of ownership rest on the owner. The charterer is free from liability to third persons in respect of the ship.

Second: MT Vector is a common carrier. The charter party agreement did not convert the common carrier into a private carrier. The parties entered into a voyage charter, which retains the character of the vessel as a common carrier. It is imperative that a public carrier shall remain as such, notwithstanding the charter of the whole or portion of a vessel by one or more persons, provided the charter is limited to the ship only, as in the case of a time-charter or voyage charter. It is only when the charter includes both the vessel and its crew, as in a bareboat or demise that a common carrier becomes private, at least insofar as the particular voyage covering the charter-party is concerned. Indubitably, a ship-owner in a time or voyage charter retains possession and control of the ship, although her holds may, for the moment, be the property of the charterer. A common carrier is a person or corporation whose regular business is to carry passengers or property for all persons who may choose to employ and to remunerate him. 16 MT Vector fits the definition of a common carrier under Article 1732 of the Civil Code.

The public must of necessity rely on the care and skill of common carriers in the vigilance over the goods and safety of the passengers, especially because with the modern development of science and invention, transportation has become more rapid, more complicated and somehow more hazardous. For these reasons, a passenger or a shipper of goods is under no obligation to conduct an inspection of the ship and its crew, the carrier being obliged by law to impliedly warrant

its seaworthiness.

The charterer of a vessel has no obligation before transporting its cargo to ensure that the vessel it chartered complied with all legal requirements. The duty rests upon the common carrier simply for being engaged in "public service." The relationship between the parties in this case is governed by special laws. Because of the implied warranty of seaworthiness, shippers of goods, when transacting with common carriers, are not expected to inquire into the vessel's seaworthiness, genuineness of its licenses and compliance with all maritime laws. To demand more from shippers and hold them liable in case of failure exhibits nothing but the futility of our maritime laws insofar as the protection of the public in general is concerned. Such a practice would be an absurdity in a business where time is always of the essence. Considering the nature of transportation business, passengers and shippers alike customarily presume that common carriers possess all the legal requisites in its operation.

11. Bareboat/Demise Charter

- Shipping Company, Inc., vs. National Seamen Board, 176 SCRA 189 (1989)

LITONJUA SHIPPING COMPANY INC., PETITIONER v. NATIONAL SEAMEN BOARD AND GREGORIO P. CANDONGO RESPONDENTS.
G.R. NO. L-51910, THIRD DIVISION, AUGUST 10, 1989, FELICIANO, *J.*

It is well settled that in a demise or bareboat charter, the charterer is treated as owner pro hac vice of the vessel, the charterer assuming in large measure the customary rights and liabilities of the shipowner in relation to third persons who have dealt with him or with the vessel. In such case, the Master of the vessel is the agent of the charterer and not of the shipowner. The charterer or owner pro hac vice, and not the general owner of the vessel, is held liable for the expenses of the voyage including the wages of the seamen.

FACTS:

Petitioner is the duly appointed local crewing managing office of the Fairwind Shipping Corporation.

On September 11, 1976 M/V Dufton Bay an ocean-going vessel of foreign registry owned by the R.D. Mullion ship broking agency under charter by Fairwind, while in the port of Cebu contracted the services (among others) of Gregorio Candongo as Third Engineer for 12 months with a monthly wage of US$500.00. The agreement was executed before the Cebu Area Manning Unit of the NSB, after which respondent boarded the vessel.

On December 28, 1976 before the expiration of contract, respondent was required to disembark at Port Kilang, Malaysia. Describe in his seaman's handbook is the reason "by owner's arrange."

Condongo filed a complaint against Mullion (Shipping company) for violation of contract and against Litonjua as agent of shipowner.

On February 1977, National Seamen Board rendered a judgment by default for failure of petitioners to appear during the initial hearing, rendering the same to pay Candongo because there was no sufficient or valid cause for the respondents to terminate the service of the complainant.

Litonjua's defense: Contends that the shipowner, nor the charterer, was the employer of private respondent; and that liability for damages cannot be imposed upon petitioner which was a mere agent of the charterer.

ISSUE:

Whether or not Litonjua may be held liable to the private respondent on the contract of employment

RULING:

YES. The first basis is the charter party which existed between Mullion, the shipowner, and Fairwind, the charterer.

It is well settled that in a demise or bare boat charter, the charterer is treated as owner pro hac vice of the vessel, the charterer assuming in large measure the customary rights and liabilities of the shipowner in relation to third persons who have dealt with him or with the vessel. In such case, the Master of the vessel is the agent of the charterer and not of the shipowner. The charterer or owner pro hac vice, and not the general owner of the vessel, is held liable for the expenses of the voyage including the wages of the seamen.

Treating Fairwind as owner pro hac vice, petitioner Litonjua having failed to show that it was not such, the Court believes and so holds that petitioner Litonjua, as Philippine agent of the charterer, may be held liable on the contract of employment between the ship captain and the private respondent.

There is a second and ethically more compelling basis for holding petitioner Litonjua liable on the contract of employment of private respondent. The charterer of the vessel, Fairwind, clearly benefitted from the employment of private respondent as Third Engineer of the Dufton Bay, along with the ten (10) other Filipino crewmembers recruited by Captain Ho in Cebu at the same occasion.

In so doing, petitioner Litonjua certainly in effect represented that it was taking care of the crewing and other requirements of a vessel chartered by its principal, Fairwind.

Last, but certainly not least, there is the circumstance that extreme hardship would result for the private respondent if petitioner Litonjua, as Philippine agent of the charterer, is not held liable to private respondent upon the contract of employment.

12. Time Charter

- Oceaneering Contractrors (Phils), Inc. vs. Nestor Barreto, doing business as NNB Lighterage , G.R. No. 184215, February 9, 2011

OCEANEERING CONTRACTORS (PHILS.), INC. v. NESTOR N. BARRETTO, DOING BUSINESS AS N.N.B. LIGHTERAGE

G.R. NO. 184215, FIRST DIVISION, 9 FEBRUARY 2011, (PEREZ, J.)

Actual or compensatory damages are those damages which the injured party is entitled to recover for the wrong done and injuries received when none were intended.

FACTS:

Nestor N. Barretto (Barretto) and Oceaneering Contractors (Phils.) Inc. (Oceaneering) entered into a Time Charter Agreement whereby Oceaneering hired Barretto's barge Antonieta for the purpose of transporting construction materials from Manila to Ayungon, Negros Oriental. During the voyage, the said barge capsized. Barretto then informed Oceaneering that it was going to proceed with the salvage, refloating and repair of the barge. In turn, Oceaneering demanded from Barretto the return of the unused charter payment and the reimbursement of its salvaging expenses. Thereafter, Barretto filed a complaint for damages against Oceaneering before the Regional Trial Court (RTC) contending that the accident was attributable to the incompetence and negligence which attended the loading of the cargo by Oceaneering's hired employees. Averring that the accident was caused by the negligence of Barretto's employees and the dilapidated hull of the barge which rendered it unseaworthy, Oceaneering filed its counterclaims praying for the value of its cargo, salvaging expenses, exemplary damages, attorney's fees and litigation expenses.

The RTC dismissed Barretto's complaint for failure to adduce evidence to prove that the accident was due to the negligence of Oceaneering's employees. It also dismissed Oceaneering's counterclaims as the value of its cargo was not included in the demand letters it served Barretto. The Court of Appeals (CA) reversed and ruled that the sinking of the vessel created a presumption of negligence and/or unseaworthiness which Barretto failed to overcome and gave rise to his liability for Oceaneering's lost cargo despite the latter's failure to insure the same. Applying the rule, however, that actual damages should be proved with a reasonable degree of certainty, the CA denied Oceaneering's claim for the value of its lost cargo.

ISSUE:

Whether or not Oceaneering is entitled to actual damages or the value of its cargo.

RULING:

YES. In finding Oceaneering's petition impressed with partial merit, uppermost in the Court's mind is the fact that actual or compensatory damages are those damages which the injured party is entitled to recover for the wrong done and injuries received when none were intended. Pertaining as they do to such injuries or losses that are actually sustained and susceptible of measurement, they are intended to put the injured party in the position in which he was before he was injured. Insofar as actual or compensatory damages are concerned, Article 2199 of the Civil Code of the Philippines provides that except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved.

Conformably with the said provision, the rule is long and well settled that there must be pleading and proof of actual damages suffered for the same to be recovered. In addition to the fact that the amount of loss must be capable of proof, it must also be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable. The burden of proof of the damage suffered is, consequently, imposed on the party claiming the same who should adduce the best evidence available in support thereof, like sales and delivery receipts, cash and

check vouchers and other pieces of documentary evidence of the same nature. In the absence of corroborative evidence, it has been held that self-serving statements of account are not sufficient basis for an award of actual damages. Corollary to the principle that a claim for actual damages cannot be predicated on flimsy, remote, speculative, and insubstantial proof, courts are, likewise, required to state the factual bases of the award.

Applying the just discussed principles to the case at bench, the Court finds that Oceaneering correctly fault the CA for not granting its claim for actual damages or, more specifically, the portions thereof which were duly pleaded and adequately proved before the RTC. While concededly not included in the demand letters dated 12 March 1998 and 13 July 1998 Oceaneering served Barretto, the former's counterclaims for the value of its lost cargo in the sum of P4,055,700.00 and salvaging expenses in the sum of P125,000.00 were distinctly pleaded and prayed for in the 26 January 1999 answer it filed a quo. Rather than the entire P4,055,700.00 worth of construction materials reflected in the inventory which Engr. Oracion claims to have prepared on 29 November 1997, based on the delivery and official receipts from Oceaneering's suppliers, the Court is, however, inclined to grant only the items which were duly proved by the vouchers and receipts on record. The foregoing sums all add up to of P2,577,620.00 from which should be deducted the sum of P351,000.00 representing the value of the nine steel pipes salvaged by Oceaneering, or a total of P2,226,620.00 in actual damages representing the value of the latter's lost cargo. Excluded from the computation are the items which, on account of the dates of their procurement, could not have possibly been included in the 29 November 1997 inventory prepared by Engr. Oracion.

13. Voyage/Trip Charter

- Cebu Salvage Corporation vs. Philippine Home Assurance Corporation, G.R. No. 150403, January 25, 2007

CEBU SALVAGE CORPORATION, PETITIONER, v. PHILIPPINE HOME ASSURANCE CORPORATION, RESPONDENT.
G.R. NO. 150403, FIRST DIVISION, JANUARY 25, 2007, CORONA, *J.:*

Under a voyage charter, the shipowner retains the possession, command and navigation of the ship, the charterer or freighter merely having use of the space in the vessel in return for his payment of freight. An owner who retains possession of the ship remains liable as carrier and must answer for loss or non-delivery of the goods received for transportation.

FACTS:

Petitioner Cebu Salvage Corporation (as carrier) and Maria Cristina Chemicals Industries, Inc. [MCCII] (as charterer) entered into a voyage charter wherein petitioner was to load 800 to 1,100 metric tons of silica quartz on board the M/T Espiritu Santo at Ayungon, Negros Occidental for transport to and discharge at Tagoloan, Misamis Oriental to consignee Ferrochrome Phils., Inc. The shipment never reached its destination, however, because the M/T Espiritu Santo sank in the afternoon of December 24, 1984 off the beach of Opol, Misamis Oriental, resulting in the total loss of the cargo.

MCCII filed a claim for the loss of the shipment with its insurer, respondent Philippine Home Assurance Corporation. Respondent paid the claim in the amount of P211,500 and was subrogated to the rights of MCCII. Thereafter, it filed a case against petitioner for reimbursement of

the amount it paid MCCII.

ISSUE:

Whether or not the petitioner can be held liable?

RULING:

YES, petitioner can be held liable.

Petitioner and MCCII entered into a "voyage charter," also known as a contract of affreightment wherein the ship was leased for a single voyage for the conveyance of goods, in consideration of the payment of freight.

Under a voyage charter, the shipowner retains the possession, command and navigation of the ship, the charterer or freighter merely having use of the space in the vessel in return for his payment of freight. An owner who retains possession of the ship remains liable as carrier and must answer for loss or non-delivery of the goods received for transportation.

There is no dispute that petitioner was a common carrier. At the time of the loss of the cargo, it was engaged in the business of carrying and transporting goods by water, for compensation, and offered its services to the public.

From the nature of their business and for reasons of public policy, common carriers are bound to observe extraordinary diligence over the goods they transport according to the circumstances of each case. In the event of loss of the goods, common carriers are responsible, unless they can prove that this was brought about by the causes specified in Article 1734 of the Civil Code. In all other cases, common carriers are presumed to be at fault or to have acted negligently, unless they prove that they observed extraordinary diligence.

Petitioner was the one which contracted with MCCII for the transport of the cargo. It had control over what vessel it would use. All throughout its dealings with MCCII, it represented itself as a common carrier. The fact that it did not own the vessel it decided to use to consummate the contract of carriage did not negate its character and duties as a common carrier. The MCCII (respondent's subrogor) could not be reasonably expected to inquire about the ownership of the vessels which petitioner carrier offered to utilize. As a practical matter, it is very difficult and often impossible for the general public to enforce its rights of action under a contract of carriage if it should be required to know who the actual owner of the vessel is. In fact, in this case, the voyage charter itself denominated petitioner as the "owner/operator" of the vessel.

While it is true that a bill of lading may serve as the contract of carriage between the parties, it cannot prevail over the express provision of the voyage charter that MCCII and petitioner executed.

The Bill of Lading becomes, therefore, only a receipt and not the contract of carriage in a charter of the entire vessel, for the contract is the Charter Party, and is the law between the parties who are bound by its terms and condition provided that these are not contrary to law, morals, good customs, public order and public policy.

To summarize, a contract of carriage of goods was shown to exist; the cargo was loaded on board the vessel; loss or non-delivery of the cargo was proven; and petitioner failed to prove that it

exercised extraordinary diligence to prevent such loss or that it was due to some casualty or force majeure. The voyage charter here being a contract of affreightment, the carrier was answerable for the loss of the goods received for transportation.

14. Liability of Ship Owners and Shipping Agents

- Chua Yek Hong vs. Intermediate Appellate Court, G.R. No. 74811, September 30, 1988

CHUA YEK HONG, PETITIONER, v. INTERMEDIATE APPELLATE COURT, MARIANO GUNO AND DOMINADOR OLIT, RESPONDENTS.
G.R. NO. L-74811, SECOND DIVISION, SEPTEMBER 30, 1988, MELENCIO-HERRERA, *J.*

If the ship owner or agent may in any way be held civilly liable at all for injury to or death of passengers arising from the negligence of the captain in cases of collisions or shipwrecks, his liability is merely co-extensive with his interest in the vessel such that a total loss thereof results in its extinction.

FACTS:

Petitioner contracted with the herein private respondent to deliver 1,000 sacks of copra, valued at P101,227.40, on board the vessel M/V Luzviminda I owned by the latter. However it did not reach its destination, the vessel capsized and sank with all its cargo.

Petitioner instituted a complaint against private respondent for breach of contract incurring damages.

Private respondent's defense is that even assuming that the alleged cargo was truly loaded aboard their vessel, their liability had been extinguished by reason of the total loss of said vessel.

RTC rendered judgment in favor of Chua Yek Hong however CA reversed the decision by applying Article 587 of the Code of Commerce and the doctrine in Yangco vs. Lasema (73 Phil. 330 [1941]) and held that private respondents' liability, as ship owners, for the loss of the cargo is merely co-extensive with their interest in the vessel such that a total loss thereof results in its extinction.

ISSUE:

Whether or not respondent Appellate Court erred in applying the doctrine of limited liability under Article 587 of the Code of Commerce as expounded in Yangco vs. Laserna, supra.

RULING:

NO. Respondent Appellate Court did not err in applying the doctrine of limited liability under Article 587 of the Code of Commerce as expounded in Yangco vs. Laserna, supra

If the ship owner or agent may in any way be held civilly liable at all for injury to or death of passengers arising from the negligence of the captain in cases of collisions or shipwrecks, his liability is merely co-extensive with his interest in the vessel such that a total loss thereof results in its extinction. (Yangco vs. Laserna, et al., supra).

The limited liability rule, however, is not without exceptions, namely: (1) where the injury or death to a passenger is due either to the fault of the ship owner, or to the concurring negligence of the ship owner and the captain (Manila Steamship Co., Inc. vs. Abdulhaman supra); (2) where the vessel is insured; and (3) in workmen's compensation claims (Abueg vs. San Diego, supra).

In this case, there is nothing in the records to show that the loss of the cargo was due to the fault of the private respondent as shipowners, or to their concurrent negligence with the captain of the vessel.

- Macondray & Co., Inc. vs. Provident Insurance Corp., 445 SCRA 644 (2004)

MACONDRAY & CO., INC., *PETITIONER*, *v.* PROVIDENT INSURANCE CORPORATION, *RESPONDENT*.
G.R. NO. 154305, THIRD DIVISION, DECEMBER 9, 2004, PANGANIBAN, *J*.:

Article 586 of the Code of Commerce states that a ship agent is "the person entrusted with provisioning or representing the vessel in the port in which it may be found."

Hence, whether acting as agent of the owner of the vessel or as agent of the charterer, petitioner will be considered as the ship agent and may be held liable as such, as long as the latter is the one that provisions or represents the vessel.

FACTS:

On February 16, 1991, at Vancouver, B.C. Canada, CANPOTEX SHIPPING SERVICES LIMITED INC., of Saskatoon, Saskatchewan, (hereinafter the SHIPPER), shipped and loaded on board the vessel M/V 'Trade Carrier', 5000 metric tons of Standard Grade Muriate of Potash in bulk for transportation to and delivery at the port of Sangi, Toledo City, Cebu, in favor of ATLAS FERTILIZER CORPORATION, (hereinafter CONSIGNEE). Subject shipments were insured with [respondent] against all risks under and by virtue of an Open Marine Policy.

When the shipment arrived, CONSIGNEE discovered that the shipment sustained losses/shortage of 476.140 metric tons valued at ₱1,657,700.95. Provident paid losses. Formal claims was then filed with Trade & Transport and Macondray but the same refused and failed to settle the same.

Defendant MACONDRAY filed ANSWER, denying liability over the losses, having NO absolute relation with defendant TRADE AND TRANSPORT, the alleged operator of the vessel who transported the subject shipment; that accordingly, MACONDRAY is the local representative of the SHIPPER; the charterer of M/V TRADE CARRIER and not party to this case; that it has no control over the acts of the captain and crew of the Carrier and cannot be held responsible for any damage arising from the fault or negligence of said captain and crew; that upon arrival at the port of Sangi, Toledo City, Cebu, the M/V Trade Carrier discharged the full amount of shipment, as shown by the

draft survey with a total quantity of 5,033.59 metric tons discharged from the vessel and delivered to the CONSIGNEE.

ISSUE:

Whether or not Macondray and Co. Inc., as an agent is responsible for any loss sustained by any party from the vessel owned by defendant Trade and Transport.

RULING:

Indeed, although it is not an agent of Trade and Transport, petitioner can still be the ship agent of the vessel M/V Trade Carrier.

Article 586 of the Code of Commerce states that a ship agent is "the person entrusted with provisioning or representing the vessel in the port in which it may be found."

Hence, whether acting as agent of the owner of the vessel or as agent of the charterer, petitioner will be considered as the ship agent and may be held liable as such, as long as the latter is the one that provisions or represents the vessel.

The trial court found that petitioner "was appointed as local agent of the vessel, which duty includes arrangement for the entrance and clearance of the vessel." Further, the CA found and the evidence shows that petitioner represented the vessel. The latter prepared the Notice of Readiness, the Statement of Facts, the Completion Notice, the Sailing Notice and Custom's Clearance. Petitioner's employees were present at Sangi, Toledo City, one day before the arrival of the vessel, where they stayed until it departed. They were also present during the actual discharging of the cargo. Moreover, Mr. de la Cruz, the representative of petitioner, also prepared for the needs of the vessel, like money, provision, water and fuel.

These acts all point to the conclusion that it was the entity that represented the vessel in the Port of Manila and was the ship agent within the meaning and context of Article 586 of the Code of Commerce.

As ship agent, it may be held civilly liable in certain instances. The Code of Commerce provides:

Article 586. The shipowner and the ship agent shall be civilly liable for the acts of the captain and for the obligations contracted by the latter to repair, equip, and provision the vessel, provided the creditor proves that the amount claimed was invested for the benefit of the same."

Article 587. The ship agent shall also be civilly liable for the indemnities in favor of third persons 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.

Petitioner does not dispute the liabilities of the ship agent for the loss/shortage of 476.140 metric tons of standard-grade Muriate of Potash valued at ₱1,657,700.95. Hence, the Court finds no reason to delve further into the matter or to disturb the finding of the CA holding petitioner, as ship agent, liable to respondent for the losses sustained by the subject shipment.

- Centennial Transmarine, Inc. et al. vs. Ruben G. Dela Cruz, 563 SCRA 210 (2008)

CENTENNIAL TRANSMARINE, INC., CENTENNIAL MARITIME SERVICES CORPORATION AND/OR B+H EQUIMAR SINGAPORE, PTE. LTD., *PETITIONERS*, *v.* RUBEN G. DELA CRUZ, *RESPONDENT*.
G.R. NO. 180719, THIRD DIVISION, AUGUST 22, 2008, YNARES-SANTIAGO, *J.*

Article 627 of the Code of Commerce defines the Chief Mate, also called Chief Officer or Sailing Mate, as "the second chief of the vessel, and unless the agent orders otherwise, shall take the place of the captain in cases of absence, sickness, or death, and shall then assume all his powers, duties, and responsibilities." A Chief Officer, therefore, is second in command, next only to the captain of the vessel.

Moreover, the Standards of Training, Certification and Watchkeeping for Seafarers 1978 (STCW '78), to which the Philippines is a signatory, defines a Chief Mate as "the deck officer next in rank to the master and upon whom the command of the ship will fall in the event of incapacity of the master."

The exercise of discretion and judgment in directing a ship's course is as much managerial in nature as decisions arrived at in the confines of the more conventional board room or executive office. Important functions pertaining to the navigation of the vessel like assessing risks and evaluating the vessel's situation are managerial in nature.

Thus, respondent, as Chief Officer, is a managerial employee; hence, petitioners need to show by substantial evidence the basis for their claim that respondent has breached their trust and confidence.

FACTS:

On May 9, 2000, petitioner Centennial Transmarine, Inc., for and in behalf of its foreign principal, petitioner Centennial Maritime Services, Corp., hired respondent Dela Cruz as Chief Officer of the oil tanker vessel "MT Aquidneck," owned by petitioner B+H Equimar, Singapore, Pte. Ltd., for a period of nine months.

On May 15, 2000, respondent boarded "MT Aquidneck" and performed his functions as Chief Officer. However, on September 14, 2000, respondent was relieved of his duties and repatriated to the Philippines. Failing to get a satisfactory explanation from petitioners for his relief, respondent filed a complaint for illegal dismissal with prayer for payment of his salaries for the unexpired portion of contract, moral and exemplary damages and attorney's fees on October 7, 2000.

On the other hand, petitioner alleged that respondent was relieved of his functions as Chief Officer due to his inefficiency and lack of job knowledge. Capt. Kowalewski allegedly informed them of respondent's lack of experience in tanker operations which exposed the vessel and its crew to danger and caused additional expenses. Petitioners allegedly advised respondent to take a refresher course in order to facilitate his deployment to another vessel. However, instead of taking a refresher course, respondent filed a case for illegal dismissal.

ISSUE:

Whether or not a Chief Officer of an oil tanker vessel required to explain why he should not be relieved for being incompetent was deprived of due process of law

RULING:

Petitioners allege loss of trust and confidence due to incompetence as the ground for respondent's dismissal. Loss of trust and confidence is premised on the fact that the employee holds a position whose functions may only be performed by someone who has the confidence of management. Such employee may be managerial or rank-and-file, but the nature of his position determines the requirements for a valid dismissal.

With respect to a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Proof beyond

reasonable doubt is not required, only substantial evidence which must establish clearly and convincingly the facts on which the loss of confidence rests.

Article 627 of the Code of Commerce defines the Chief Mate, also called Chief Officer or Sailing Mate, as "the second chief of the vessel, and unless the agent orders otherwise, shall take the place of the captain in cases of absence, sickness, or death, and shall then assume all his powers, duties, and responsibilities." A Chief Officer, therefore, is second in command, next only to the captain of the vessel.

Moreover, the Standards of Training, Certification and Watchkeeping for Seafarers 1978 (STCW '78), to which the Philippines is a signatory, defines a Chief Mate as "the deck officer next in rank to the master and upon whom the command of the ship will fall in the event of incapacity of the master."

The exercise of discretion and judgment in directing a ship's course is as much managerial in nature as decisions arrived at in the confines of the more conventional board room or executive office. Important functions pertaining to the navigation of the vessel like assessing risks and evaluating the vessel's situation are managerial in nature.[15]

Thus, respondent, as Chief Officer, is a managerial employee; hence, petitioners need to show by substantial evidence the basis for their claim that respondent has breached their trust and confidence.

Petitioners' basis for dismissing respondent was the alleged entry by Captain Kowalewski in the ship's logbook regarding respondent's inexperience and inefficiency. A ship's log/logbook is the official record of a ship's voyage which its captain is obligated by law to keep wherein he records the decisions he has adopted, a summary of the performance of the vessel, and other daily events. A logbook is a respectable record that can be relied upon when the entries therein are presented in evidence.

In the instant case, however, respondent correctly pointed out that the issue is not whether an official logbook entry is acceptable in evidence, but whether a document purporting to be a copy of a logbook entry has been duly established to be authentic and not spurious.

In *Wallem Maritime Services, Inc. v. National Labor Relations Commission*,[18] citing Haverton Shipping Ltd. v. National Labor Relations Commission, the Court ruled that a **copy** of an official entry in the logbook is legally binding and serves as an exception to the hearsay rule. In the said case, however, there was no controversy as to the genuineness of the said entry and the authenticity of the copy presented in evidence.

In the instant case, respondent has consistently assailed the genuineness of the purported entry and the authenticity of such copy. He alleged that before his repatriation, there was no entry in the ship's official logbook regarding any incident that might have caused his relief; that Captain Kowalewski's signature in such purported entry was forged. In support of his allegations, respondent submitted three official documents[22]bearing the signature of Capt. Sczepan Kowalewski which is different from the one appearing in Annex E. Thus, it was incumbent upon petitioners to prove the authenticity of Annex E, which they failed to do. Likewise, the purported report of Capt. Kowalewski dated September 1, 2000 (Annex D), and the statements of Safety Officer Khaldun Nacem Faridi and Chief Officer Josip Milin (Annexes G and H) also cannot be given weight for lack of authentication.

Although technical rules of evidence do not strictly apply to labor proceedings, however, in the instant case, authentication of the above-mentioned documents is necessary because their genuineness is being assailed, and since petitioners offered no corroborating evidence. These documents and their contents have to be duly identified and authenticated lest an injustice would result from a blind adoption of such contents. Thus, the unauthenticated documents relied upon by

petitioners are mere self-serving statements of their own officers and were correctly disregarded by the Court of Appeals.

Moreover, records show that respondent was not afforded due process. For officers and crew who are working in foreign vessels involved in overseas shipping, there must be compliance with the applicable laws on overseas employment as well as with the regulations issued by the Philippine Overseas Employment Administration (POEA), such as those embodied in the Standard Contract for Seafarers Employed Abroad (Standard Contract).

Except for the self-serving allegation that respondent was required to explain why he should not be relieved for being incompetent, petitioners offered no proof to show that they furnished respondent a written notice of the charges against him, or that there was a formal investigation of the charges, or that respondent was furnished a written notice of the penalty imposed upon him. Respondent was verbally ordered to disembark the vessel and was repatriated to the Philippines without being told of the reasons for his relief.

Respondent's dismissal was not for just cause and without due process. He is therefore entitled to be paid his salaries for the unexpired portion of his employment contract.

- PHIL-NIPPON KYOEI, CORP. v. ROSALIA T. GUDELOSAO, G.R. No. 181375, July 13, 2016

PHIL-NIPPON KYOEI, CORP. v. ROSALIA T. GUDELOSAO, ON HER BEHALF AND IN BEHALF OF MINOR CHILDREN CHRISTY MAE T. GUDELOSAO AND ROSE ELDEN T. GUDELOSAO, CARMEN TANCONTIAN, ON HER BEHALF AND IN BEHALF OF THE CHILDREN CAMELA B. TANCONTIAN, BEVERLY B. TANCONTIAN, AND ACE B. TANCONTIAN

G.R. NO. 181375, THIRD DIVISION, JULY 13, 2016, JARDELEZA, J.

In Abueg v. San Diego, it was ruled that the limited liability rule found in the Code of Commerce is inapplicable in a liability created by statute to compensate employees and laborers, or the heirs and dependents, in cases of injury received by or inflicted upon them while engaged in the performance of their work or employment.

Based on Section 176 of the Insurance Code, casualty insurance may cover liability or loss arising from accident or mishap. In a liability insurance, the insurer assumes the obligation to pay third party in whose favor the liability of the insured arises. On the other hand, personal accident insurance refers to insurance against death or injury by accident or accidental means. In an accidental death policy, the accident causing the death is the thing insured against. The Court ruled that while the Personal Accident Policies are casualty insurance, they do not answer for petitioner's liabilities arising from the sinking of the vessel. It is an indemnity insurance procured by petitioner for the benefit of the seafarers. As a result, petitioner is not directly liable to pay under the policies because it is merely the policyholder of the Personal Accident Policies.

FACTS:

Petitioner, a domestic shipping corporation, purchased a "Ro-Ro" passenger/cargo vessel "MV Mahlia" in Japan. For the vessel's one month conduction voyage from Japan to the Philippines, petitioner, as local principal, and Top Ever Marine Management Maritime Co., Ltd. (TMCL), as foreign principal, hired Edwin C. Gudelosao, Virgilio A. Tancontian, and six other crewmembers. They were hired through the local manning agency of TMCL, Top Ever Marine Management

Philippine Corporation (TEMMPC). TEMMPC, through their president and general manager, Capt. Oscar Orbeta (Capt. Orbeta), and the eight crewmembers signed separate contracts of employment. Petitioner secured a Marine Insurance Policy (Maritime Policy No. 00001) from SSSICI over the vessel for Pl 0,800,000.00 against loss, damage, and third party liability or expense, arising from the occurrence of the perils of the sea for the voyage of the vessel from Onomichi, Japan to Batangas, Philippines. This Marine Insurance Policy included Personal Accident Policies for the eight crewmembers for P3,240,000.00 each in case of accidental death or injury.

While still within Japanese waters, the vessel sank due to extreme bad weather condition. Only Chief Engineer Nilo Macasling survived the incident while the rest of the crewmembers, including Gudelosao and Tancontian, perished. Respondents, as heirs and beneficiaries of Gudelosao and Tancontian, filed separate complaints for death benefits and other damages against petitioner, TEMMPC, Capt. Orbeta, TMCL, and SSSICI, with the Arbitration Branch of the National Labor Relations Commission (NLRC). The NLRC absolved petitioner, TEMMPC and TMCL and Capt. Orbeta from any liability based on the limited liability rule. It, however, affirmed SSSICI's liability after finding that the Personal Accident Policies answer for the death benefit claims under the Philippine Overseas Employment Administration Standard Employment Contract (POEASEC).

However, the CA found that the NLRC erred when it ruled that the obligation of petitioner, TEMMPC and TMCL for the payment of death benefits under the POEA-SEC was ipso facto transferred to SSSICI upon the death of the seafarers. The CA noted that the benefits being claimed are not dependent upon whether there is total loss of the vessel, because the liability attaches even if the vessel did not sink. Thus, it was error for the NLRC to absolve TEMMPC and TMCL on the basis of the limited liability rule.

Significantly though, the CA ruled that petitioner is not liable under the POEA-SEC, but by virtue of its being a shipowner. Thus, petitioner is liable for the injuries to passengers even without a determination of its fault or negligence. It is for this reason that petitioner obtained insurance from SSSICI - to protect itself against the consequences of a total loss of the vessel caused by the perils of the sea. Consequently, SSSICI's liability as petitioner's insurer directly arose from the contract of insurance against liability (i.e., Personal Accident Policy). The CA then ordered that petitioner's liability will only be extinguished upon payment by SSSICI of the insurance proceeds.

Hence, this petition to the SC where petitioner claims that the CA erred in ignoring the fundamental rule in Maritime Law that the shipowner may exempt itself from liability by abandoning the vessel and freight it may have earned during the voyage, and the proceeds of the insurance if any. Since the liability of the shipowner is limited to the value of the vessel unless there is insurance, any claim against petitioner is limited to the proceeds arising from the insurance policies procured from SSSICI. Thus, there is no reason in making petitioner's exoneration from liability conditional on SSSICI's payment of the insurance proceeds.

ISSUES:

1. Whether the doctrine of real and hypothecary nature of maritime law (also known as the limited liability rule) applies in favor of petitioner.

2. Whether the CA erred in ruling that the liability of petitioner is extinguished only upon SSSICI's payment of insurance proceeds.

RULING:

1. Doctrine of limited liability is not applicable to claims under POEA-SEC.

The limited liability rule intends to limit the liability of the shipowner or agent to the value of the vessel, its appurtenances and freightage earned in the voyage, provided that the owner or agent abandons the vessel. When the vessel is totally lost, in which case abandonment is not required because there is no vessel to abandon, the liability of the shipowner or agent for damages is extinguished. Nonetheless, the limited liability rule is not absolute and is without exceptions. It does not apply in cases: (1) where the injury or death to a passenger is due either to the fault of the shipowner, or to the concurring negligence of the shipowner and the captain; (2) where the vessel is insured; and (3) in workmen's compensation claims.

In Abueg v. San Diego, it was ruled that the limited liability rule found in the Code of Commerce is inapplicable in a liability created by statute to compensate employees and laborers, or the heirs and dependents, in cases of injury received by or inflicted upon them while engaged in the performance of their work or employment.

Akin to the death benefits under the Labor Code, death benefits under the POEA-SEC are given when the employee dies due to a work-related cause during the term of his contract. The liability of the shipowner or agent under the POEA-SEC has likewise nothing to do with the provisions of the Code of Commerce regarding maritime commerce. But while the nature of death benefits under the Labor Code and the POEA-SEC are similar, the death benefits under the POEA-SEC are intended to be separate and distinct from, and in addition to, whatever benefits the seafarer is entitled to under Philippine laws, including those benefits which may be claimed from the State Insurance Fund.

Thus, the claim for death benefits under the POEA-SEC is the same species as the workmen's compensation claims under the Labor Code - both of which belong to a different realm from that of Maritime Law. Therefore, the limited liability rule does not apply to petitioner's liability under the POEA-SEC.

2. SSSICI 's liability as insurer under the Personal Accident Policies is direct.

The Court, however, find that the CA erred in ruling that "upon payment of the insurance proceeds to said widows by respondent SOUTH SEA SURETY & INSURANCE CO., INC., respondent PHIL- NIPPON CORPORATION's liability to all the complainants is deemed extinguished. "

This ruling makes petitioner's liability conditional upon SSSICI's payment of the insurance proceeds. In doing so, the CA determined that the Personal Accident Policies are casualty insurance, specifically one of liability insurance. The CA determined that petitioner, as insured, procured from SSSICI the Personal Accident Policies in order to protect itself from the consequences of the total loss of the vessel caused by the perils of the sea. The CA found that the liabilities insured against are all monetary claims, excluding the benefits under the POEA-SEC, of respondents in connection with the sinking of the vessel.

The Court ruled that while the Personal Accident Policies are casualty insurance, they do not answer for petitioner's liabilities arising from the sinking of the vessel. It is an indemnity insurance procured by petitioner for the benefit of the seafarers. As a result, petitioner is not directly liable to pay under the policies because it is merely the policyholder of the Personal Accident Policies.

Based on Section 176 of the Insurance Code, casualty insurance may cover liability or loss arising from accident or mishap. In a liability insurance, the insurer assumes the obligation to pay third party in whose favor the liability of the insured arises. On the other hand, personal accident insurance refers to insurance against death or injury by accident or accidental means. In an accidental death policy, the accident causing the death is the thing insured against.

The liability of SSSICI to the beneficiaries is direct under the insurance contract. Under the contract, petitioner is the policyholder, with SSSICI as the insurer, the crewmembers as the cestui que vie or the person whose life is being insured with another as beneficiary of the proceeds, and the latter's heirs as beneficiaries of the policies. Upon petitioner's payment of the premiums intended as additional compensation to the crewmembers, SSSICI as insurer undertook to indemnify the crewmernbers' beneficiaries from an unknown or contingent event. Thus, when the CA conditioned the extinguishment of petitioner's liability on SSSICI's payment of the Personal Accident Policies' proceeds, it made a finding that petitioner is subsidiarily liable for the face value of the policies. To reiterate, however, there is no basis for such finding; there is no obligation on the part of petitioner to pay the insurance proceeds because petitioner is, in fact, the obligee or policyholder in the Personal Accident Policies. Since petitioner is not the party liable for the value of the insurance proceeds, it follows that the limited liability rule does not apply as well.

- Tsuneishi Heavy Industries (Cebu), Inc. v. Mis Maritime Corp., G.R. No. 193572, [April 4, 2018]

TSUNEISHI HEAVY INDUSTRIES (CEBU), INC. *V.* MIS MARITIME CORPORATION, G.R. NO. 193572, FIRST DIVISION, APRIL 04, 2018, (JARDELEZA, *J.*)

Tsuneishi's argument is rooted on a faulty understanding of a lien and a writ of preliminary attachment. As we said, a maritime lien exists in accordance with the provision of the Ship Mortgage Decree. It is enforced by filing a proceeding in court. When a maritime lien exists, this means that the party in whose favor the lien was established may ask the court to enforce it by ordering the sale of the subject property and using the proceeds to settle the obligation.

On the other hand, a writ of preliminary attachment is issued precisely to create a lien. When a party moves for its issuance, the party is effectively asking the court to attach a property and hold it liable for any judgment that the court may render in his or her favor. This is similar to what a lien does.

To be clear, we repeat that when a lien already exists, this is already equivalent to an attachment. This is where Tsuneishi's argument fails. Clearly, because it claims a maritime lien in accordance with the Ship Mortgage Decree, all Tsuneishi had to do is to file a proper action in court for its enforcement.

FACTS:

Respondent (or "MIS") contracted Tsuneishi to dry dock and repair its vessel M/T MIS-1. The vessel dry docked in Tsuneishi's shipyard. Tsuneishi rendered the required services. However, about a month later and while the vessel was still dry docked, Tsuneishi conducted an engine test on M/T MIS-1. The vessel's engine emitted smoke. The parties eventually discovered that this was caused by a burnt crank journal. The crankpin also showed hairline cracks due to defective lubrication or deterioration. Tsuneishi insists that the damage was not its fault while MIS insists on

the contrary. Nevertheless, as an act of good will, Tsuneishi paid for the vessel's new engine crankshaft, crankpin, and main bearings.

Tsuneishi billed MIS for payment of its repair and dry docking services. MIS refused to pay this amount. Instead, it demanded that Tsuneishi pay the income that the vessel lost in the six months that it was not operational and dry docked at Tsuneishi's shipyard. It also asked that its claim be set off against the amount billed by Tsuneishi. MIS further insisted that after the set off, Tsuneishi still had the obligation to pay it the amount of US$152,891.10. Tsuneishi rejected MIS' demands. It delivered the vessel to MIS.

MIS signed an Agreement for Final Price. However, despite repeated demands, MIS refused to pay Tsuneishi the amount billed under their contract. Tsuneishi claims that MIS also caused M/T White Cattleya, a vessel owned by Cattleya Shipping, to stop its payment for the services Tsuneishi rendered for the repair and dry docking of the vessel.

Tsuneishi filed a complaint with prayer for preliminary attachment against MIS before the RTC. This complaint stated that it is invoking the admiralty jurisdiction of the RTC to enforce a maritime lien under Section 21 of the Ship Mortgage Decree of 1978 (Ship Mortgage Decree).

In particular, Tsuneishi argued that Section 21 of the Ship Mortgage Decree provides for a maritime lien in favor of any person who furnishes repair or provides use of a dry dock for a vessel.

ISSUE:

Whether a maritime lien under Section 21 of the Ship Mortgage Decree may be enforced through a writ of preliminary attachment under Rule 57 of the Rules of Court.

RULING: No.

A lien is a "legal claim or charge on property, either real or personal, as a collateral or security for the payment of some debt or obligation." It attaches to a property by operation of law and once attached, it follows the property until it is discharged. What it does is to give the party in whose favor the lien exists the right to have a debt satisfied out of a particular thing. It is a legal claim or charge on the property which functions as a collateral or security for the payment of the obligation.

Section 21 of the Ship Mortgage Decree establishes a lien. It states:

Sec. 21. *Maritime Lien for Necessaries; Persons entitled to such Lien.* – Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessaries to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit *in rem* and it shall be necessary to allege or prove that credit was given to the vessel.

In practical terms, this means that the holder of the lien has the right to bring an action to seek the sale of the vessel and the application of the proceeds of this sale to the outstanding obligation. Through this lien, a person who furnishes repair, supplies, towage, use of dry dock or marine railway, or other necessaries to any vessel, in accordance with the requirements under Section 21, is able to obtain security for the payment of the obligation to him.

A party who has a lien in his or her favor has a remedy in law to hold the property liable for the payment of the obligation. A lienholder has the remedy of filing an action in court for the enforcement of the lien. In such action, a lienholder must establish that the obligation and the corresponding lien exist before he or she can demand that the property subject to the lien be sold for the payment of the obligation. Thus, a lien functions as a form of security for an obligation.

Liens, as in the case of a maritime lien, arise in accordance with the provision of particular laws providing for their creation, such as the Ship Mortgage Decree which clearly states that certain persons who provide services or materials can possess a lien over a vessel. The Rules of Court also provide for a provisional remedy which effectively operates as a lien. This is found in Rule 57 which governs the procedure for the issuance of a writ of preliminary attachment.

Tsuneishi is correct that the Ship Mortgage Decree does not provide for the specific procedure through which a maritime lien can be enforced. Its error is in insisting that a maritime lien can only be operationalized by granting a writ of preliminary attachment under Rule 57 of the Rules of Court. Tsuneishi argues that the existence of a maritime lien should be considered as another ground for the issuance of a writ of preliminary attachment under the Rules of Court.

Tsuneishi's argument is rooted on a faulty understanding of a lien and a writ of preliminary attachment. As we said, a maritime lien exists in accordance with the provision of the Ship Mortgage Decree. It is enforced by filing a proceeding in court. When a maritime lien exists, this means that the party in whose favor the lien was established may ask the court **to enforce it** by ordering the sale of the subject property and using the proceeds to settle the obligation.

On the other hand, a writ of preliminary attachment is issued precisely **to create a** lien. When a party moves for its issuance, the party is effectively asking the court to attach a property and hold it liable for any judgment that the court may render in his or her favor. This is similar to what a lien does. It functions as a security for the payment of an obligation. In *Quasha Asperilla Ancheta Valmonte Peña & Marcos v. Juan,* the Court held: "An attachment proceeding is for the purpose of creating a lien on the property to serve as security for the payment of the creditors' claim. Hence, where a lien already exists, as in this case a maritime lien, the same is already equivalent to an attachment."

When a lien already exists, this is already equivalent to an attachment. This is where Tsuneishi's argument fails. Clearly, because it claims a maritime lien in accordance with the Ship Mortgage Decree, all Tsuneishi had to do is to file a proper action in court for its enforcement. The issuance of a writ of preliminary attachment on the pretext that it is the only means to enforce a maritime lien is superfluous. The reason that the Ship Mortgage Decree does not provide for a detailed procedure for the enforcement of a maritime lien is because it is not necessary. Section 21 already provides for the simple procedure—file an action *in rem* before the court

15. Limited liability rule/hyphotecary nature of maritime law

- Aboitiz Shipping Corporation vs. General Accident Fire and Life Assurance Corporation Ltd., 217 SCRA 359 (1993)

ABOITIZ SHIPPING CORPORATION, PETITIONER, v. GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LTD., RESPONDENT.

G.R. NO. 100446, THIRD DIVISION, JANUARY 21, 1993, MELO, J.:

The real and hypothecary nature of maritime law simple means that the liability of the carrier in connection with losses related to maritime contracts is confined to the vessel, which is hypothecated for such obligations or which stands as the guaranty for their settlement.

FACTS:

Petitioner is a corporation engaged in the business of maritime trade as a carrier. As such, it owned and operated the M/V P/ ABOITIZ, a common carrier that sank on voyage from Hong Kong to Manila.

Private respondent GAFLAC is a foreign insurance company pursuing its remedy as a subrogee of several cargo consignees whose respective cargo sank with the said vessel and for which it has priory paid. The sinking of vessel gave rise to filling of suit to recover the lost cargo either by shippers, their successors-in-interest, or the cargo insurers like GAFLAC as subrogees. The sinking was initially investigated by the Board of Marine Inquiry, which found that such sinking was due to fortuitous event.

ISSUE:

Whether or not the doctrine of limited liability is applicable to the case.

RULING:

The real and hypothecary nature of maritime law simple means that the liability of the carrier in connection with losses related to maritime contracts is confined to the vessel, which is hypothecated for such obligations or which stands as the guaranty for their settlement. It has its origin by reason of the conditions and risks attending maritime trade in its earliest years when such trade was replete with innumerable and unknown hazards since vessels had to go through largely uncharted waters to ply their trade.

Thus, the liability of the vessel owner and agent arising from the operation of such vessel were confined to the vessel itself, its equipment, freight and insurance, if any, which limitation served to induce capitalist into effectively wagering their resources against consideration of the large attainable in the trade.

- Chua Yek Hong vs. Intermediate Appellate Court, G.R. No. 74811, September 30, 1988

CHUA YEK HONG, PETITIONER, v. INTERMEDIATE APPELLATE COURT, MARIANO GUNO AND DOMINADOR OLIT, RESPONDENTS.
G.R. NO. L-74811, SECOND DIVISION, SEPTEMBER 30, 1988, MELENCIO-HERRERA, *J.*

If the ship owner or agent may in any way be held civilly liable at all for injury to or death of passengers arising from the negligence of the captain in cases of collisions or shipwrecks, his liability is merely co-extensive with his interest in the vessel such that a total loss thereof results in its extinction.

FACTS:

Petitioner contracted with the herein private respondent to deliver 1,000 sacks of copra, valued at P101,227.40, on board the vessel M/V Luzviminda I owned by the latter. However it did not reach its destination, the vessel capsized and sank with all its cargo.

Petitioner instituted a complaint against private respondent for breach of contract incurring damages.

Private respondent's defense is that even assuming that the alleged cargo was truly loaded aboard their vessel, their liability had been extinguished by reason of the total loss of said vessel.

RTC rendered judgment in favor of Chua Yek Hong however CA reversed the decision by applying Article 587 of the Code of Commerce and the doctrine in Yangco vs. Lasema (73 Phil. 330 [1941]) and held that private respondents' liability, as ship owners, for the loss of the cargo is merely co-extensive with their interest in the vessel such that a total loss thereof results in its extinction.

ISSUE:

Whether or not respondent Appellate Court erred in applying the doctrine of limited liability under Article 587 of the Code of Commerce as expounded in Yangco vs. Laserna, supra.

RULING:

NO. Respondent Appellate Court did not err in applying the doctrine of limited liability under Article 587 of the Code of Commerce as expounded in Yangco vs. Laserna, supra

If the ship owner or agent may in any way be held civilly liable at all for injury to or death of passengers arising from the negligence of the captain in cases of collisions or shipwrecks, his liability is merely co-extensive with his interest in the vessel such that a total loss thereof results in its extinction. (Yangco vs. Laserna, et al., supra).

The limited liability rule, however, is not without exceptions, namely: (1) where the injury or death to a passenger is due either to the fault of the ship owner, or to the concurring negligence of the ship owner and the captain (Manila Steamship Co., Inc. vs. Abdulhaman supra); (2) where the vessel is insured; and (3) in workmen's compensation claims (Abueg vs. San Diego, supra).

In this case, there is nothing in the records to show that the loss of the cargo was due to the fault of the private respondent as shipowners, or to their concurrent negligence with the captain of the vessel.

16. Exceptions to Limited Liability

- The Philippine American General Insurance Company, Inc., vs. Court of Appeals, et al., G.R. No. 116940, June 11, 1997

THE PHILIPPINE AMERICAN GENERAL INSURANCE COMPANY, INC. v. CA AND FELMAN SHIPPING LINES

G.R. NO. 116940, FIRST DIVISION, JUNE 11, 1997, (BELLOSILLO, J.)

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.

FACTS:

Coca-Cola Bottlers Philippines, Inc. loaded on board MV Asilda, a vessel owned and operated by FELMAN, 7,500 cases of Coke softdrink bottles to be transported from Zamboanga to Cebu for consignee Coca-Cola, Cebu.

The vessel subsequently sank bringing down her entire cargo with her including the 7,500 cases of Coke softdrink bottles. PHILAMGEN paid Coca-Cola its claim of under the insurance contract.

Claiming its right of subrogation PHILAMGEN sought recourse against FELMAN. FELMAN disclaimed liability for the loss.

ISSUE:

Whether or not MV Asilda was unseaworthy when it left the port of Zamboanga.

RULING:

Yes. MV Asilda was unseaworthy when it left the port of Zamboanga.

The proximate cause of the sinking of MV Asilda was its being top-heavy. Evidence shows that around 2,500 cases of softdrink bottles were stowed on deck. Several days after MV Asilda sank, around 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.

Art. 587 of the Code of Commerce is not applicable to the case at bar. 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. 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. 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.

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.

- Luzon Stevedoring Corporation vs. Court of Appeals, G.R. No. L-58897, December 3, 1987

LUZON STEVEDORING CORPORATION, *PETITIONER*, v. COURT OF APPEALS, HIJOS DE F. ESCANO, INC., AND DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES, *RESPONDENTS*.

G.R. NO. L-58897, FIRST DIVISION, DECEMBER 3, 1987, GANCAYCO, *J.*

The real nature of the liability of the ship owner or agent is embodied in the Code of Commerce. Articles 587, 590 and 837 are intended to limit the liability of the ship owner, provided that the owner or agent abandons the vessel. Although Article 837 does not specifically provide that in case of collision there should be abandonment, to enjoy such limited liability, said article is a mere amplification of the provisions of Articles 587 and 590 which makes it a mere superfluity.

FACTS:

A maritime collision occurred between the tanker CAVITE owned by Luzon Stevedoring Corporation (LSCO) and MV Fernando Escano (a passenger ship) owned by Escano, as a result the passenger ship sunk.

An action in admiralty was filed by Escano against Luzon. The trial court held that LSCO Cavite was solely to blame for the collision and held that Luzon's claim that its liability should be limited under Article 837 of the Code of Commerce has not been established. The Court of Appeals affirmed the trial court. The SC also affirmed the CA. Upon two motions for reconsideration, the Supreme Court gave course to the petition.

ISSUE:

Whether or not in order to claim limited liability under Article 837 of the Code of Commerce, it is necessary that the owner abandon the vessel

RULING:

Yes, abandonment is necessary to claim the limited liability wherein it shall be limited to the value of the vessel with all the appurtenances and freightage earned in the voyage. However, if the injury was due to the ship owner's fault, the ship owner may not avail of his right to avail of limited liability by abandoning the vessel.

The real nature of the liability of the ship owner or agent is embodied in the Code of Commerce. Articles 587, 590 and 837 are intended to limit the liability of the ship owner, provided that the owner or agent abandons the vessel. Although Article 837 does not specifically provide that in case of collision there should be abandonment, to enjoy such limited liability, said article is a mere amplification of the provisions of Articles 587 and 590 which makes it a mere superfluity.

The exception to this rule in Article 837 is when the vessel is totally lost in which case there is no vessel to abandon, thus abandonment is not required. Because of such loss, the liability of the owner or agent is extinguished. However, they are still personally liable for claims under the Workmen's Compensation Act and for repairs on the vessel prior to its loss.

In case of illegal or tortious acts of the captain, the liability of the owner and agent is subsidiary. In such cases, the owner or agent may avail of Article 837 by abandoning the vessel. But if the injury is caused by the owner's fault as where he engages the services of an inexperienced captain or engineer, he cannot avail of the provisions of Article 837 by abandoning the vessel. He is personally liable for such damages.

In this case, the Court held that the petitioner is at fault and since he did not abandon the vessel, he cannot invoke the benefit of Article 837 to limit his liability to the value of the vessel, all appurtenances and freightage earned during the voyage.

- Chua Yek Hong vs. Intermediate Appellate Court, G.R. No. 74811, September 30, 1988

CHUA YEK HONG, PETITIONER, v. INTERMEDIATE APPELLATE COURT, MARIANO GUNO AND DOMINADOR OLIT, RESPONDENTS.
G.R. NO. L-74811, SECOND DIVISION, SEPTEMBER 30, 1988, MELENCIO-HERRERA, *J.*

If the ship owner or agent may in any way be held civilly liable at all for injury to or death of passengers arising from the negligence of the captain in cases of collisions or shipwrecks, his liability is merely co-extensive with his interest in the vessel such that a total loss thereof results in its extinction.

FACTS:

Petitioner contracted with the herein private respondent to deliver 1,000 sacks of copra, valued at P101,227.40, on board the vessel M/V Luzviminda I owned by the latter. However it did not reach its destination, the vessel capsized and sank with all its cargo.

Petitioner instituted a complaint against private respondent for breach of contract incurring damages.

Private respondent's defense is that even assuming that the alleged cargo was truly loaded aboard their vessel, their liability had been extinguished by reason of the total loss of said vessel.

RTC rendered judgment in favor of Chua Yek Hong however CA reversed the decision by applying Article 587 of the Code of Commerce and the doctrine in Yangco vs. Lasema (73 Phil. 330 [1941]) and held that private respondents' liability, as ship owners, for the loss of the cargo is merely co-extensive with their interest in the vessel such that a total loss thereof results in its extinction.

ISSUE:

Whether or not respondent Appellate Court erred in applying the doctrine of limited liability under Article 587 of the Code of Commerce as expounded in Yangco vs. Laserna, supra.

RULING:

NO. Respondent Appellate Court did not err in applying the doctrine of limited liability under Article 587 of the Code of Commerce as expounded in Yangco vs. Laserna, supra

If the ship owner or agent may in any way be held civilly liable at all for injury to or death of passengers arising from the negligence of the captain in cases of collisions or shipwrecks, his liability is merely co-extensive with his interest in the vessel such that a total loss thereof results in its extinction. (Yangco vs. Laserna, et al., supra).

The limited liability rule, however, is not without exceptions, namely: (1) where the injury or death to a passenger is due either to the fault of the ship owner, or to the concurring negligence of the ship owner and the captain (Manila Steamship Co., Inc. vs. Abdulhaman supra); (2) where the vessel is insured; and (3) in workmen's compensation claims (Abueg vs. San Diego, supra).

In this case, there is nothing in the records to show that the loss of the cargo was due to the fault of the private respondent as shipowners, or to their concurrent negligence with the captain of the vessel.

- Philippine American General Insurance Co. vs. Court of Appeals, 273 SCRA 262 (1997)

THE PHILIPPINE AMERICAN GENERAL INSURANCE COMPANY, INC. v. CA AND FELMAN SHIPPING LINES

G.R. NO. 116940, FIRST DIVISION, JUNE 11, 1997, (BELLOSILLO, J.)

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.

FACTS:

Coca-Cola Bottlers Philippines, Inc. loaded on board MV Asilda, a vessel owned and operated by FELMAN, 7,500 cases of Coke softdrink bottles to be transported from Zamboanga to Cebu for consignee Coca-Cola, Cebu.

The vessel subsequently sank bringing down her entire cargo with her including the 7,500 cases of Coke softdrink bottles. PHILAMGEN paid Coca-Cola its claim of under the insurance contract.

Claiming its right of subrogation PHILAMGEN sought recourse against FELMAN. FELMAN disclaimed liability for the loss.

ISSUE:

Whether or not MV Asilda was unseaworthy when it left the port of Zamboanga.

RULING:

Yes. MV Asilda was unseaworthy when it left the port of Zamboanga.

The proximate cause of the sinking of MV Asilda was its being top-heavy. Evidence shows that around 2,500 cases of softdrink bottles were stowed on deck. Several days after MV Asilda sank, around 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.

Art. 587 of the Code of Commerce is not applicable to the case at bar. 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. 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. 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.

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.

- Dela Torre vs. Court of Appeals, G.R. No. 160088, July 13, 2011

AGUSTIN P. DELA TORRE v. THE HONORABLE COURT OF APPEALS, ET AL.

G.R. NOS. 160088 & 160565, THIRD DIVISION, 13 JULY 2011, (MENDOZA, J.)

The only person who could avail of the Limited Liability Rule is the shipowner – he is the very person whom the Rule has been conceived to protect; charterers cannot invoke this as a defense.

FACTS:

Crisostomo G. Concepcion (Concepcion) owned the vessel LCT-Josephine. He entered into a Preliminary Agreement with Roland de la Torre (Roland), wherein Concepcion agreed that the LCT-Josephine would be chartered after its dry-docking and repair. Concepcion and the Philippine Trigon Shipyard Corporation (PTSC), represented by Roland, entered into a Contract of Agreement, wherein the latter would charter LCT-Josephine. Subsequently, PTSC/Roland sub-chartered LCT-Josephine to Trigon Shipping Lines (TSL), a single proprietorship owned by Roland's father, Agustin de la Torre (Agustin). TSL, this time represented by Roland per Agustin's Special Power of Attorney, sub-chartered LCT-Josephine to Ramon Larrazabal (Larrazabal) for the transport of cargo consisting of sand and gravel to Leyte.

During the unloading of the vessel's cargo in Leyte, LCT-Josephine sank. Concepcion demanded that PTSC/Roland refloat LCT-Josephine. The latter assured Concepcion that negotiations were underway for the refloating of his vessel, but this did not materialize. This prompted Concepcion to file a complaint for Sum of Money and Damages against PTSC and Roland. The Regional Trial Court (RTC) declared that the efficient cause of the sinking of the LCT-Josephine was the improper lowering or positioning of the ramp, which was well within the charge or responsibility of the captain and crew of the vessel. The Court of Appeals (CA) affirmed. The charterers and sub- charterers insist the application of the Limited Liability Rule to them.

ISSUE:

Whether or not the Limited Liability Rule should be applied to the charterers and sub-charterers.

RULING:

NO. The Limited Liability Rule under the Code of Commerce has been explained to be that of the real and hypothecary doctrine in maritime law where the shipowner or ship agent's liability is held as merely co-extensive with his interest in the vessel such that a total loss thereof results in its extinction. In this jurisdiction, this rule is provided in three articles of the Code of Commerce. Article 837 specifically applies to cases involving collision which is a necessary consequence of the right to abandon the vessel given to the shipowner or ship agent under Article 587. Similarly, Article 590 is a reiteration of Article 587, only this time the situation is that the vessel is co-owned by several persons. Obviously, the forerunner of the Limited Liability Rule under the Code of Commerce is Article 587. Now, the latter is quite clear on which indemnities may be confined or restricted to the value of the vessel pursuant to the said Rule, and these are the indemnities in favor of third persons which may arise from the conduct of the captain in the care of the goods which he loaded on the vessel. Thus, what is contemplated is the liability to third persons who may have dealt with the shipowner, the agent or even the charterer in case of demise or bareboat charter.

The only person who could avail of this is the shipowner, Concepcion. He is the very person whom the Limited Liability Rule has been conceived to protect. The petitioners cannot invoke this as a defense. Concepcion, as the real shipowner, is the one who is supposed to be supported and encouraged to pursue maritime commerce. Thus, it would be absurd to apply the Limited Liability Rule against him who, in the first place, should be the one benefitting from the said rule. Even if the contract is for a bareboat or demise charter where possession, free administration and even navigation are temporarily surrendered to the charterer, dominion over the vessel remains with the shipowner. Ergo, the charterer or the sub-charterer, whose rights cannot rise above that of the former, can never set up the Limited Liability Rule against the very owner of the vessel.

17. Accidents and Damages in Maritime Commerce

- R.V. Marvan Freight, Inc. vs. Court of Appeals, 424 SCRA 596 (2004)

R.V. MARZAN FREIGHT, INC., petitioner, vs. COURT OF APPEALS and SHIELA'S MANUFACTURING, INC., respondents.
G.R. NO. 128064, SECOND DIVISION, MARCH 4, 2004, CALLEJO, SR., *J.:*

There is no question that Regional Trial Courts are devoid of any competence to pass upon the validity or regularity of seizure and forfeiture proceedings conducted by the Bureau of Customs and to

enjoin or otherwise interfere with these proceedings. The Collector of Customs sitting in seizure and forfeiture proceedings has exclusive jurisdiction to hear and determine all questions touching on the seizure and forfeiture of dutiable goods. The Regional Trial Courts are precluded from assuming cognizance over such matters even through petitions of certiorari, prohibition or mandamus.

FACTS:

Petitioner RV Marzan Freight, Inc., owned and operated a customs-bonded warehouse, which, along with the goods stored therein, was covered by a Philfire insurance policy. On April 12, 1989, raw materials consigned to private respondent Shiela's Manufacturing, Inc., arrived in the Philippines from Keelung, Taiwan. The Bureau of Customs treated the raw materials as subject to ordinary import taxes and were not immediately released to Shiela's Manufacturing.

Later, the District Collector of Customs initiated abandonment proceedings over the cargo and notice was posted. No separate notice was however sent to Shiela's Manufacturing because its address was unknown. After the aforestated proceedings achieved finality but before inventory and sale at public auction, part of the warehouse containing the shipment was burned. Philfire paid to Marzan the amount of P12,000,000, for which the latter was issued a receipt.

Shiela's Manufacturing is now demanding payment of the value of the goods from Marzan, who, however, rejected the demand. Thus, on Dec. 26, 1991, or after the lapse of more than 2 years from the arrival of the cargo in the Philippines, Shiela's Manufacturing filed a complaint for damages with the RTC of Pasig City against Marzan. The lower court ruled in favor of Shiela's Manufacturing.

ISSUE:

Whether or not the trial court had jurisdiction to review and declare ineffective the declaration of the District Collector of Customs in the abandonment proceedings that the subject shipment was abandoned cargo and that, thenceforth, the government ipso facto became the owner thereof

RULING:

Irrefragably, the RTC had jurisdiction over the nature of the private respondent's action, which was one for the collection of the value of the cargo gutted by fire, while under the custody and control of the petitioner preparatory to its sale at public auction by the BOC.

The jurisdiction of the court or other tribunal is determined by the relevant allegations of the complaint and the character of the relief sought, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims accorded therein. The jurisdiction of the trial court does not depend upon the defenses in the answer or in a motion to dismiss.

However, the Supreme Court also held that the trial court was incompetent to pass upon and nullify (1) the seizure of the cargo in the abandonment proceedings, and (2) the declaration made by the District Collector of Customs that the cargo was abandoned and ipso facto owned by the government.

It, likewise, had no jurisdiction to resolve the issue of whether or not the private respondent was the owner of the cargo before it was gutted by fire. The trial court should have rendered

judgment dismissing the complaint, without prejudice to the right of the private respondent to ventilate the issue before the Commissioner of Customs and/or the CTA.

There is no question that Regional Trial Courts are devoid of any competence to pass upon the validity or regularity of seizure and forfeiture proceedings conducted by the Bureau of Customs and to enjoin or otherwise interfere with these proceedings. The Collector of Customs sitting in seizure and forfeiture proceedings has exclusive jurisdiction to hear and determine all questions touching on the seizure and forfeiture of dutiable goods. The Regional Trial Courts are precluded from assuming cognizance over such matters even through petitions of certiorari, prohibition or mandamus.

It is likewise well-settled that the provisions of the Tariff and Customs Code and that of Republic Act No. 1125, as amended, otherwise known as "An Act Creating the Court of Tax Appeals," specify the proper fora and procedure for the ventilation of any legal objections or issues raised concerning these proceedings. Thus, actions of the Collector of Customs are appealable to the Commissioner of Customs, whose decision, in turn, is subject to the exclusive appellate jurisdiction of the Court of Tax Appeals and from there to the Court of Appeals.

The rule that Regional Trial Courts have no review powers over such proceedings is anchored upon the policy of placing no unnecessary hindrance on the government's drive, not only to prevent smuggling and other frauds upon Customs, but more importantly, to render effective and efficient the collection of import and export duties due the State, which enables the government to carry out the functions it has been instituted to perform.

Even if the seizure by the Collector of Customs were illegal, which has yet to be proven, the Court said that such act does not deprive the Bureau of Customs of jurisdiction thereon.

The District Collector of Customs did not lose jurisdiction over the abandonment proceedings. The loss of the cargo did not extinguish his incipient jurisdiction in the said proceedings, nor render functus officio her declaration that the subject shipment had been abandoned.

18. Collisions

- Far Eastern Shipping Company vs. Court of Appeals, G.R. No. 130068, October 1, 1998

FAR EASTERN SHIPPING COMPANY, *Petitioner*, vs. COURT OF APPEALS and PHILIPPINE PORTS AUTHORITY, *Respondents.*
G.R. NO. 130068, G.R. NO. 130150, EN BANC, OCTOBER 1, 1998, REGALADO, *J.*

Under extraordinary circumstances, a pilot must exercise extraordinary care. In this case, Capt. Gavino failed to measure up to such strict standard of care and diligence required of pilots in the performance of their duties. As the pilot, he should have made sure that his directions were promptly and strictly followed.

The master is not entirely absolved of responsibility with respect to navigation when a compulsory pilot is in charge. Except insofar as their liability is limited or exempted by statute, the vessel or her owners are liable for all damages caused by the negligence or other wrongs of the owners or those in charge of the vessel. As a general rule, the owners or those in possession and control of a

vessel and the vessel are liable for all natural and proximate damages caused to persons or property by reason of her negligent management or navigation.

FACTS:

M/V PAVLODAR, owned and operated by the Far Eastern Shipping Company (FESC), arrived at the Port of Manila and was assigned Berth 4 of the Manila International Port, as its berthing space.

Gavino, who was assigned by the Appellant Manila Pilots' Association to conduct the docking maneuvers for the safe berthing, boarded the vessel at the quarantine anchorage and stationed himself in the bridge, with the master of the vessel, Victor Kavankov, beside him. After a briefing of Gavino by Kavankov of the particulars of the vessel and its cargo, the vessel lifted anchor from the quarantine anchorage and proceeded to the Manila International Port. The sea was calm and the wind was ideal for docking maneuvers. When the vessel reached the landmark, one-half mile from the pier, Gavino ordered the engine stopped. When the vessel was already about 2,000 feet from the pier, Gavino ordered the anchor dropped. Kavankov relayed the orders to the crew of the vessel on the bow. The left anchor, with two (2) shackles, were dropped. However, the anchor did not take hold as expected. The speed of the vessel did not slacken. A commotion ensued between the crew members.

After Gavino noticed that the anchor did not take hold, he ordered the engines half-astern. Abellana, who was then on the pier apron, noticed that the vessel was approaching the pier fast. Kavankov likewise noticed that the anchor did not take hold. Gavino thereafter gave the "full-astern" code. Before the right anchor and additional shackles could be dropped, the bow of the vessel rammed into the apron of the pier causing considerable damage to the pier as well as the vessel.

ISSUES:

(1) Is the pilot of a commercial vessel, under compulsory pilotage, solely liable for the damage caused by the vessel to the pier, at the port of destination, for his negligence?;

(2) Would the owner of the vessel be liable likewise if the damage is caused by the concurrent negligence of the master of the vessel and the pilot under a compulsory pilotage?

RULING:

(1) Generally speaking, the pilot supersedes the master for the time being in the command and navigation of the ship, and his orders must be obeyed in all matters connected with her navigation. He becomes the master pro hac vice and should give all directions as to speed, course, stopping and reversing anchoring, towing and the like. And when a licensed pilot is employed in a place where pilotage is compulsory, it is his duty to insist on having effective control of the vessel or to decline to act as pilot.

Under certain systems of foreign law, the pilot does not take entire charge of the vessel but is deemed merely the adviser of the master, who retains command and control of the navigation even in localities where pilotage is compulsory. It is quite common for states and localities to provide for compulsory pilotage, and safety laws have been enacted requiring vessels approaching

their ports, with certain exceptions, to take on board pilots duly licensed under local law. The purpose of these laws is to create a body of seamen thoroughly acquainted with the harbor, to pilot vessels seeking to enter or depart, and thus protect life and property from the dangers of navigation.

Upon assuming such office as a compulsory pilot, Capt. Gavino is held to the universally accepted high standards of care and diligence required of a pilot, whereby he assumes to have skill and knowledge in respect to navigation in the particular waters over which his license extends superior to and more to be trusted than that of the master. He is not held to the highest possible degree of skill and care but must have and exercise the ordinary skill and care demanded by the circumstances, and usually shown by an expert in his profession.

Under extraordinary circumstances, a pilot must exercise extraordinary care. In this case, Capt. Gavino failed to measure up to such strict standard of care and diligence required of pilots in the performance of their duties. As the pilot, he should have made sure that his directions were promptly and strictly followed.

(2) The negligence on the part of Capt. Gavino is evident; but Capt. Kabancov is no less responsible for the collision. The master is still in command of the vessel notwithstanding the presence of a pilot. A perusal of Capt. Kabankov's testimony makes it apparent that he was remiss in the discharge of his duties as master of the ship, leaving the entire docking procedure up to the pilot, instead of maintaining watchful vigilance over this risky maneuver. The owners of a vessel are not personally liable for the negligent acts of a compulsory pilot, but by admiralty law, the fault or negligence of a compulsory pilot is imputable to the vessel and it may be held liable therefor in rem.

Where, however, by the provisions of the statute the pilot is compulsory only in the sense that his fee must be paid, and is not in compulsory charge of the vessel, there is no exemption from liability. Even though the pilot is compulsory, if his negligence was not the sole cause of the injury, but the negligence of the master or crew contributed thereto, the owners are liable. But the liability of the ship in rem does not release the pilot from the consequences of his own negligence. The master is not entirely absolved of responsibility with respect to navigation when a compulsory pilot is in charge. Except insofar as their liability is limited or exempted by statute, the vessel or her owners are liable for all damages caused by the negligence or other wrongs of the owners or those in charge of the vessel. As a general rule, the owners or those in possession and control of a vessel and the vessel are liable for all natural and proximate damages caused to persons or property by reason of her negligent management or navigation.

T. Carriage of Goods by Sea Act

1. Application

- National Development Company vs. Court of Appeals, G.R. No. L-49469, August 19, 1988

NATIONAL DEVELOPMENT COMPANY, petitioner-appellant, vs. THE COURT OF APPEALS and DEVELOPMENT INSURANCE & SURETY CORPORATION, respondents-appellees.
G.R. NO. L-49407, G.R. NO. L-49469, SECOND DIVISION, AUGUST 19, 1988, PARAS, *J.*

Thus, the rule was specifically laid down that for cargoes transported from Japan to the Philippines, the liability of the carrier is governed primarily by the Civil Code and 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 laws (Article 1766, Civil Code). Hence, the Carriage of Goods by Sea Act, a special law, is merely suppletory to the provision of the Civil Code.

FACTS:

National Development Company (NDC) appointed Maritime Company of the Philippines (MCP) as its agent to manage and operate its vessel, 'Dona Nati', for and in behalf of its account.

In 1964, while en route to Japan from San Francisco, Dona Nati collided with a Japanese vessel, 'SS Yasushima Maru', causing its cargo to be damaged and lost. The private respondent, as insurer to the consigners, paid almost Php400,000.00 for said lost and damaged cargo. Hence, the private respondent instituted an action to recover from NDC.

ISSUE:

Which laws govern the loss and destruction of goods due to collision of vessels outside Philippine waters?

RULING:

This issue has already been laid to rest by this Court of Eastern Shipping Lines Inc. v. IAC (1 50 SCRA 469-470 [1987]) where it was held under similar circumstance "that 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" (Article 1753, Civil Code). Thus, the rule was specifically laid down that for cargoes transported from Japan to the Philippines, the liability of the carrier is governed primarily by the Civil Code and 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 laws (Article 1766, Civil Code). Hence, the Carriage of Goods by Sea Act, a special law, is merely suppletory to the provision of the Civil Code.

In the case at bar, it has been established that the goods in question are transported from San Francisco, California and Tokyo, Japan to the Philippines and that they were lost or due to a collision which was found to have been caused by the negligence or fault of both captains of the colliding vessels. Under the above ruling, it is evident that the laws of the Philippines will apply, and it is immaterial that the collision actually occurred in foreign waters, such as Ise Bay, Japan.

Under Article 1733 of 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 the goods and for the safety of the passengers transported by them according to all circumstances of each case. Accordingly, under Article 1735 of the same Code, in all other than those mentioned is Article 1734 thereof, the common carrier shall be presumed to have been at fault or to have acted negigently, unless it proves that it has observed the extraordinary diligence required by law.

It appears, however, that collision falls among matters not specifically regulated by the Civil Code, so that no reversible error can be found in respondent courses application to the case at bar of Articles 826 to 839, Book Three of the Code of Commerce, which deal exclusively with collision of vessels.

More specifically, Article 826 of the Code of Commerce provides that where collision is imputable to the personnel of a vessel, the owner of the vessel at fault, shall indemnify the losses and damages incurred after an expert appraisal. But more in point to the instant case is Article 827 of the same Code, which provides that if the collision is imputable to both vessels, each one shall

suffer its own damages and both shall be solidarily responsible for the losses and damages suffered by their cargoes.

Significantly, under the provisions of the Code of Commerce, particularly Articles 826 to 839, the shipowner or carrier, is not exempt from liability for damages arising from collision due to the fault or negligence of the captain. Primary liability is imposed on the shipowner or carrier in recognition of the universally accepted doctrine that the shipmaster or captain is merely the representative of the owner who has the actual or constructive control over the conduct of the voyage.

There is, therefore, no room for NDC's interpretation that the Code of Commerce should apply only to domestic trade and not to foreign trade. Aside from the fact that the Carriage of Goods by Sea Act (Com. Act No. 65) does not specifically provide for the subject of collision, said Act in no uncertain terms, restricts its application "to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade." Under Section I thereof, it is explicitly provided that "nothing in this Act shall be construed as repealing any existing provision of the Code of Commerce which is now in force, or as limiting its application." By such incorporation, it is obvious that said law not only recognizes the existence of the Code of Commerce, but more importantly does not repeal nor limit its application.

MCP next contends that it cannot be liable solidarity with NDC because it is merely the manager and operator of the vessel Dona Nati not a ship agent. As the general managing agent, according to MCP, it can only be liable if it acted in excess of its authority.

As found by the trial court and by the Court of Appeals, the Memorandum Agreement of September 13, 1962 (Exhibit 6, Maritime) shows that NDC appointed MCP as Agent, a term broad enough to include the concept of Ship-agent in Maritime Law. In fact, MCP was even conferred all the powers of the owner of the vessel, including the power to contract in the name of the NDC (Decision, CA G.R. No. 46513, p. 12; Rollo, p. 40). Consequently, under the circumstances, MCP cannot escape liability.

It is well settled that both the owner and agent of the offending vessel are liable for the damage done where both are impleaded that in case of collision, both the owner and the agent are civilly responsible for the acts of the captain; that while it is true that the liability of the *naviero* in the sense of charterer or agent, is not expressly provided in Article 826 of the Code of Commerce, it is clearly deducible from the general doctrine of jurisprudence under the Civil Code but more specially as regards contractual obligations in Article 586 of the Code of Commerce.

Moreover, the Court held that both the owner and agent (*Naviero*) should be declared jointly and severally liable, since the obligation which is the subject of the action had its origin in a tortious act and did not arise from contract. Consequently, the agent, even though he may not be the owner of the vessel, is liable to the shippers and owners of the cargo transported by it, for losses and damages occasioned to such cargo, without prejudice, however, to his rights against the owner of the ship, to the extent of the value of the vessel, its equipment, and the freight.

As to the extent of their liability, MCP insists that their liability should be limited to P200.00 per package or per bale of raw cotton as stated in paragraph 17 of the bills of lading. Also the MCP argues that the law on averages should be applied in determining their liability

MCP's contention is devoid of merit. The declared value of the goods was stated in the bills of lading and corroborated no less by invoices offered as evidence ' during the trial. Besides, common carriers, in the language of the court in Juan Ysmael & Co., Inc. v. Barrette et al., (51 Phil. 90 [1927]) "cannot limit its liability for injury to a loss of goods where such injury or loss was caused by its own negligence." Negligence of the captains of the colliding vessel being the cause of the collision, and the cargoes not being jettisoned to save some of the cargoes and the vessel, the trial

court and the Court of Appeals acted correctly in not applying the law on averages (Articles 806 to 818, Code of Commerce).

Finally on the issue of prescription, the trial court correctly found that the bills of lading issued allow trans-shipment of the cargo, which simply means that the date of arrival of the ship Dona Nati on April 18,1964 was merely tentative to give allowances for such contingencies that said vessel might not arrive on schedule at Manila and therefore, would necessitate the trans-shipment of cargo, resulting in consequent delay of their arrival. In fact, because of the collision, the cargo which was supposed to arrive in Manila on April 18, 1964 arrived only on June 12, 13, 18, 20 and July 10, 13 and 15, 1964. Hence, had the cargoes in question been saved, they could have arrived in Manila on the above-mentioned dates. Accordingly, the complaint in the instant case was filed on April 22, 1965, that is, long before the lapse of one (1) year from the date the lost or damaged cargo "should have been delivered" in the light of Section 3, sub-paragraph (6) of the Carriage of Goods by Sea Act.

- Sea-Land Service, Inc. vs. Intermediate Appellate Court, G.R. No. 75118, August 31, 1987

SEA-LAND SERVICE, INC., *Petitioner*, v. INTERMEDIATE APPELLATE COURT and PAULINO CUE, doing business under the name and style of "SEN HIAP HING," respondents.

G.R. NO. 75118, FIRST DIVISION, AUGUST 31, 1987,NARVASA, *J.*

Nothing contained in section 4(5) of the Carriage of Goods by Sea Act is repugnant to or inconsistent with any of the provisions of the Civil Code. Said section merely gives more flesh and greater specificity to the rather general terms of Article 1749 (without doing any violence to the plain intent thereof) and of Article 1750, to give effect to just agreements limiting carriers' liability for loss or damage which are freely and fairly entered into.

FACTS:

On 8 January 1981, Sea-Land Service, Inc., a foreign shipping and forwarding company licensed to do business in the Philippines, received from Seaborne Trading Company in Oakland, California a shipment consigned to Sen Hiap Hing, the business name used by Paulino Cue in the wholesale and retail trade which he operated out of an establishment located on Borromeo and Plaridel Streets, Cebu City. The shipper not having declared the value of the shipment, no value was indicated in the bill of lading. The bill described the shipment only as "8 CTNS on 2 SKIDS-FILES." Based on volume measurements Sea-land charged the shipper the total amount of US$209.28 for freightage and other charges.

The shipment was loaded on board the MS Patriot, a vessel owned and operated by Sea-Land, for discharge at the Port of Cebu. The shipment arrived in Manila on 12 February 1981, and there discharged into the custody of the arrastre contractor and the customs and port authorities. Sometime between February 13 and 16, 1981, after the shipment had been transferred, along with other cargoes near Warehouse 3 at Pier 3 in South Harbor, Manila, awaiting transshipment to Cebu, it was stolen by pilferers and has never been recovered.

On 10 March 1981, Paulino Cue, the consignee, made formal claim upon Sea-Land for the value of the lost shipment allegedly amounting to P179,643.48. Sea-Land offered to settle for US$4,000.00, or its then Philippine peso equivalent of P30,600.00. asserting that said amount represented its maximum liability for the loss of the shipment under the package limitation clause in the covering bill of lading.

Cue rejected the offer and thereafter brought suit for damages against Sea-Land.

ISSUES:

Whether or not the stipulation in the questioned bill of lading limiting Sea-Land's liability for loss of or damage to the shipment covered by said bill to US$500.00 per package is valid and binding on Paulino Cue;

RULING:

Consignee in bill of lading has right to recover from carrier although document drawn by consignor and carrier In principle, a consignee in a bill of lading has the right to recover from the carrier or shipper for loss of, or damage to, goods being transported under said bill, although that document may have been — as in practice it oftentimes is — drawn up only by the consignor and the carrier without the intervention of the consignee.

Since the liability of a common carrier for loss of or damage to goods transported by it under a contract of carriage is governed by the laws of the country of destination and the goods in question were shipped from the United States to the Philippines, the liability of Sea-Land to the consignee is governed primarily by the Civil Code, and as ordained by the said Code, suppletorily, in all matters not determined thereby, by the Code of Commerce and special laws. One of these suppletory special laws is the Carriage of Goods by Sea Act, U.S. Public Act No. 521 which was made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade by Commonwealth Act 65, approved on 22 October 1936.

Section 4 (5) of COGSA Section 4(5) of Commonwealth Act 65, in part, 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 the bill of lading. This declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not 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. xxx"

Article 1750 of the Civil Code provides that "A contract fixing the sum that may be recovered by the owner or shipper for the loss, destruction, or deterioration of the goods is valid, if it is reasonable and just under the circumstances, and has been fairly and freely agreed upon."

Nothing contained in section 4(5) of the Carriage of Goods by Sea Act is repugnant to or inconsistent with any of the provisions of the Civil Code. Said section merely gives more flesh and greater specificity to the rather general terms of Article 1749 (without doing any violence to the plain intent thereof) and of Article 1750, to give effect to just agreements limiting carriers' liability for loss or damage which are freely and fairly entered into.

Even if section 4(5) of the Carriage of Goods by Sea Act did not exist, the validity and binding effect of the liability limitation clause in the bill of lading are nevertheless fully sustainable

on the basis alone of the Civil Code provisions. That said stipulation is just and reasonable is arguable from the fact that it echoes Article 1750 itself in providing a limit to liability only if a greater value is not declared for the shipment in the bill of lading. To hold otherwise would amount to questioning the justice and fairness of that law itself.

There can be no doubt or equivocation about the validity and enforceability of freely-agreed-upon stipulations in a contract of carriage or bill of lading limiting the liability of the carrier to an agreed valuation unless the shipper declares a higher value and inserts it into said contract or bill. This proposition, moreover, rests upon an almost uniform weight of authority.

- Philippine First Insurance Co. Inc. vs. Wallem Phils. Shipping, Inc., G.R. No. 165647, March 26, 2009

PHILIPPINES FIRST INSURANCE CO., INC., *Petitioner*, *v.* WALLEM PHILS. SHIPPING, INC., UNKNOWN OWNER AND/OR UNKNOWN CHARTERER OF THE VESSEL M/S "OFFSHORE MASTER" AND "SHANGHAI FAREAST SHIP BUSINESS COMPANY," *Respondents*.
G.R. NO. 165647, SECOND DIVISION, MARCH 26, 2009, TINGA, *J.*

COGSA provides that under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities set forth in the Act. Section 3 (2) thereof then states that among the carriers responsibilities are to properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

FACTS:

October 1995, Anhui Chemicals Import and Export Corp. loaded on board M/S Offshore Master a shipment consisting of sodium sulphate anhydrous, complete and in good order for transportation to and delivery at the port of Manila for consignee, covered by a clean bill of lading.

On October 16, 1995, the shipment arrived in Port of Manila and was discharged which caused various degrees of spillage and losses as evidence by the turn over survey of the arrastre operator. Asia Star Freight delivered the shipments from pier to the consignees in Quezon City, during the unloading, it was found by the consignee that the shipment was damaged and in bad condition.

April 29, 1996, the consignee filed a claim with Wallem for the value of the damaged shipment, to no avail. Since the shipment was insured with Phil. First Insurance against all risks in the amount of P2,470,213.50. The consignee filed a claim against the First Insurance.

First Insurance after examining the turn-over survey, the bad order certificate and other documents paid the consignee but later on sent a demand letter to Wallem for the recovery of the amount paid to the consignee (in exercise of its right of subrogation). Wallem did not respond to the claim.

First Insurance then instituted an action before RTC for damages against Wallem. RTC held the shipping company and the arrastre operator solidarily liable since both are charged with the obligation to deliver the goods in good order condition. The CA reversed and set aside the RTC's decision. CA says that there is no solidary liability between the carrier and the arrastre because it

was clearly established that the damage and losses of the shipment were attributed to the mishandling by the arrastre operator in the discharge of the shipment.

ISSUES:

1. Whether or not as a common carrier, the carrier's duties extend to the obligation to safely discharge the cargo from the vessel;

RULING:

Yes, the vessel is a common carrier, and thus the determination of the existence or absence of liability will be gauged on the degree of diligence required of a common carrier.

The damage of the shipment was documented by the turn-over survey and request for bad order survey, with these documents, petitioner insist that the shipment incurred damages while still in the care and responsibility of Wallem before it was turned over to the arrastre operator. However, RTC found the testimony of Mr. Talens (cargo surveyor) that the loss was caused by the mishandling of the arrastre operator. This mishandling was affirmed by the CA which was the basis for declaring the arrastre operator solely liable for the damage.

It is established that damage or losses were incurred by the shipment during the unloading. As common carrier, they are bound to observe extraordinary diligence in the vigilance over the goods transported by them. Subject to certain exceptions enumerated under Article 1734 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.

For marine vessels, Article 619 of the Code of Commerce provides that the ship captain is liable for the cargo from the time it is turned over to him at the dock or afloat alongside the vessel at the port of loading, until he delivers it on the shore or on the discharging wharf at the port of unloading, unless agreed otherwise.

COGSA provides that under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities set forth in the Act. Section 3 (2) thereof then states that among the carriers responsibilities are to properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

On the other hand, the functions of an arrastre operator involve the handling of cargo deposited on the wharf or between the establishment of the consignee or shipper and the ship's tackle. Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession.

Handling cargo is mainly the arrastre operator's principal work so its drivers/operators or employees should observe the standards and measures necessary to prevent losses and damage to shipments under its custody. Thus, in this case the appellate court is correct insofar as it ruled that an arrastre operator and a carrier may not be held solidarily liable at all times. But the precise question is which entity had custody of the shipment during its unloading from the vessel?

The records are replete with evidence which show that the damage to the bags happened before and after their discharge and it was caused by the stevedores of the arrastre operator who were then under the supervision of Wallem.

It is settled in maritime law jurisprudence that cargoes while being unloaded generally remain under the custody of the carrier. In the instant case, the damage or losses were incurred during the discharge of the shipment while under the supervision of the carrier. Consequently, the carrier is liable for the damage or losses caused to the shipment. As the cost of the actual damage to the subject shipment has long been settled, the trial courts finding of actual damages in the amount of P397,879.69 has to be sustained.

- Insurance Company of North America vs. Asian Terminals, Inc., G.R. No. 180784, February 15, 2012

INSURANCE COMPANY OF NORTH AMERICA v. ASIAN TERMINALS, INC.

G.R. NO. 180784, THIRD DIVISION, FEBRUARY 15, 2012, PERALTA, J:

The COGSA does not mention that an arrastre operator may invoke the prescriptive period of one year; hence, it does not cover the arrastre operator. Prescinding from Section 6 of the COGSA, only the carrier and the ship may put up the defense of prescription if the action for damages is not brought within one year after the delivery of the goods or the date when the goods should have been delivered. It has been held that not only the shipper. Additionally, the consignee or legal holder of the bill may invoke the prescriptive period.

FACTS:

On November 9, 2002, Macro-Lite Korea Corporation shipped to San Miguel Corporation, through M/V "DIMI P" vessel, one hundred eighty-five (185) packages (231,000 sheets) of electrolytic tin free steel, complete and in good order condition and covered by a Bill of Lading. The shipment had a declared value of US$169,850.35 and was insured with petitioner Insurance Company of North America against all risks.

The carrying vessel arrived at the port of Manila on November 19, 2002, and when the shipment was discharged therefrom, it was noted that seven (7) packages thereof were damaged and in bad order. The shipment was then turned over to the custody of respondent Asian Terminals, Inc. (ATI) on November 21, 2002 for storage and safekeeping pending its withdrawal by the consignee's authorized customs broker.

The subject shipment was withdrawn by Marzan from the custody of respondent. Prior to the last withdrawal of the shipment, a joint inspection of the said cargo was conducted which showed that an additional five (5) packages were found to be damaged and in bad order. On January 6, 2003, the consignee, San Miguel Corporation, filed separate claims against respondent and petitioner for the damage to 11,200 sheets of electrolytic tin free steel.

Petitioner engaged the services of an independent adjuster/surveyor. The adjuster noted that out of the reported twelve (12) damaged skids, nine (9) of them were rejected and three (3) skids were accepted by the consignee's representative as good order. The total loss was computed to be P431,592.14.

The petitioner, as insurer of the said cargo, paid the consignee the amount of P431,592.14 for the damage caused to the shipment, as evidenced by the Subrogation Receipt Thereafter, petitioner, formally demanded reparation against respondent. As respondent failed to satisfy its demand, petitioner filed an action for damages with the RTC of Makati City.

Although the trial court found the subrogation proper, the trial court dismissed the complaint on the ground that the petitioner's claim was already barred by the statute of limitations. It held that COGSA, embodied in Commonwealth Act (CA) No. 65, applies to this case, since the goods were shipped from a foreign port to the Philippines. The trial court stated that under the said law, particularly paragraph 4, Section 3 (6) thereof, the shipper has the right to bring a suit within one year after the delivery of the goods or the date when the goods should have been delivered, in respect of loss or damage thereto. According to the trial court, the petitioner waited for three (3) years within which to pay the claim of San Miguel.

Petitioner directly filed a petition for review before the Supreme Court.

ISSUE:

Whether or not the one-year prescriptive period for filing a suit under the COGSA applies to respondent arrastre operator.

RULING:

No. The COGSA does not mention that an arrastre operator may invoke the prescriptive period of one year; hence, it does not cover the arrastre operator. Prescinding from Section 6 of the COGSA, only the carrier and the ship may put up the defense of prescription if the action for damages is not brought within one year after the delivery of the goods or the date when the goods should have been delivered. It has been held that not only the shipper. Additionally, the consignee or legal holder of the bill may invoke the prescriptive period.

2. **Concept of loss or damage**

- Domingo Ang vs. American Steamship Agencies, Inc., G.R. No. L-22491, January 27, 1967

DOMINGO ANG, *Plaintiff-Appellant*, v. AMERICAN STEAMSHIP AGENCIES, INC., *Defendant-Appellee*.
G.R. NO. L-22491, EN BANC, JANUARY 27, 1967, BENGZON, J.P., *J.*

Where the suit is predicated not upon loss or damage but on alleged misdelivery (or conversion) of the goods as in the case at bar, the applicable rule on prescription is not the one-year period provided for in Section 3(6), paragraph 4 of the Carriage of Goods by Sea Act, which short period is designed merely to meet the exigencies of maritime hazards but that found in the Civil Code, namely, either ten years for breach of a written contract or four years for quasi- delict. (Arts. 1144 [1] 1146, Civil Code)

FACTS:

Yau Yae Commerical Bank of Hongkong represented by Yau Yae agreed to sell 140 packages of galvanized steel sheets to one Herminio G Teves. Said agreement was subject to the terms and arrangements.

Pursuant to said terms and arrangements, Yau Yae shipped the articles at Yakata, Japan and later to Manila which was processed by American Staemship Agencies INC. in which under a shipping agreement or bill of lading it consigned to order of the shipper with Mr. Teves.

On May 9, 1961 the article arrived in Manila, and under the bill of lading of the arrival of the goods and requested payments of the demand draft representing the purchased price of the article, however, Mr Teves did not pay the demand draft to Hongkong and Shanghai Bank where it was to be processed the payments. Prompting the bank to make corresponding protest and the bank likewise returned the bill of lading and demand draft to Yau Yae which later endorsed the bill of lading to Domingo Ang.

Meanwhile, despite his non-payments of the purchase price of the articles. Teves was able to obtain a bank guaranty in favor of American Steamship agencies INC. as carriers agent to the effect that he would surrender the negotiable bill of lading duly endorsed by Yau Yae on the strength of this guaranty. Teves succeeded in securing a permit to deliver imported goods from the carriers agent, which he presented to Bureau of Customs which in turn release to him the articles covered by the bill of lading.

Subsequently, Domingo Ang claimed for the articles from the American steamship agencies Inc. by presenting the indorsed bill of lading, but he was informed by the latter that the articled he claimed was already delivered to Mr. Teves.

ISSUE:

Whether or not the American Steamship Agencies Inc. may be held liable under Carriage of Goods by Sea Act for misdelivery of goods?

RULING:

YES. American Steamship Agencies Inc. may be held liable for misdelivery of goods but under the Civil Code of the Philippines.

When the delivery of articles carried by American Steamship Agencies on May 9, 1961 to Herminio Teves but supposedly to Mr Domingo Ang ,plaintiff-appellant and upon knowing by the plaintiff-appellant that the articles intended to him was misdelivered to other person, he filed his claim on October 30, 1963 against American Steamship agencies Inc for allegedly wrongful delivery of goods belonging to him.

The defendant-appellee filed motion to dismissed with the contention that the ground of the plaitiff's caused of action is prescribed under the Carriage of Goods by Sea Act particular Section 3(6) paragraph 4, which provides that; "In any event, the carrier and the ship shall be discharge from all liability in respect to loss or damage unless suit is brought within one year, after delivery of the goods or date when the goods should have been delivered"

As defined in the Civil Code and as applied to Section 3(6), paragraph 4 of the Carriage of Goods by Sea Act, "loss" contemplates merely a situation where no delivery at all was made by the shipper of the goods because the same had perished, gone out of commerce, or disappeared in such a way that their existence is unknown or they cannot be recovered. It does not include a situation where there was indeed delivery — but delivery to the wrong person, or a misdelivery.

Therefore it clearly shows that the defendant violates the provision of Civil Code of the Philppines particular in Article 1144, which provides; the following actions must be brought within ten (10) years from the time the right of the action accrues, paragraph (1) upon a written contract and Article 1146, the following action must be instituted within four(4) years, paragraph (2) quasi delict, wherein it supplies the deficiency provided in article 18 of the same code. To read" in matters which are governed by the code of commerce and special laws, their deficiency shall be supplied by the provision of this code."

Where the suit is predicated not upon loss or damage but on alleged misdelivery (or conversion) of the goods as in the case at bar, the applicable rule on prescription is not the one-year period provided for in Section 3(6), paragraph 4 of the Carriage of Goods by Sea Act, which short period is designed merely to meet the exigencies of maritime hazards but that found in the Civil Code, namely, either ten years for breach of a written contract or four years for quasi- delict. (Arts. 1144 [1] 1146, Civil Code)

- Mitsui O.S.K. Lines Ltd. vs. Court of Appeals, G.R. No. 119571, March 11, 1998

MITSUI O.S.K. LINES LTD., represented by MAGSAYSAY AGENCIES, INC., Petitioner, vs. COURT OF APPEALS and LAVINE LOUNGEWEAR MFG. CORP., Respondents.

G.R. NO. 119571, SECOND DIVISION, MARCH 11, 1998, MENDOZA, J.

Conformably with the concept of what constitutes "loss" or "damage," the deterioration of goods due to delay in their transportation constitutes "loss" or "damage" within the meaning of Section 3(6), so that as suit was not brought within one year the action was barred. Whatever damage or injury is suffered by the goods while in transit would result in loss or damage to either the shipper or the consignee. As long as it is claimed, therefore, that the losses or damages suffered by the shipper or consignee were due to the arrival of the goods in damaged or deteriorated condition, the action is still basically one for damage to the goods, and must be filed within the period of one year from delivery or receipt, under the provision of the Carriage of Goods by Sea Act.

FACTS:

Mitsui O.S.K. Lines Ltd. is a foreign corporation represented in the Philippines by its agent, Magsaysay Agencies. It entered into a contract of carriage through Meister Transport, Inc., an international freight forwarder, with Lavine Loungewear Manufacturing Corporation to transport goods of the latter from Manila to Le Havre, France. Mitsui undertook to deliver the goods to France 28 days from initial loading.

On 24 July 1991, Mitsui's vessel loaded Lavine's container van for carriage at the said port of origin. However, in Kaoshiung, Taiwan the goods were not transshipped immediately, with the result that the shipment arrived in Le Havre only on 14 November 1991. The consignee allegedly paid only half the value of the said goods on the ground that they did not arrive in France until the "off season" in that country. The remaining half was allegedly charged to the account of Lavine which in turn demanded payment from Mitsui through its agent.

As Mitsui denied Lavine's claim, the latter filed a case in the RTC on 14 April 1992. In the original complaint, Lavine impleaded as defendants Meister Transport, Inc. and Magsaysay Agencies, Inc., the latter as agent of Mitsui O.S.K. Lines Ltd. On 20 May 1993, it amended its complaint by impleading Mitsui as defendant in lieu of its agent. The parties to the case thus became Lavine as plaintiff, on one side, and Meister and Mitsui as represented by Magsaysay Agencies, Inc., as defendants on the other. Mitsui filed a motion to dismiss alleging that the claim against it had prescribed under the Carriage of Goods by Sea Act.

ISSUE:

Whether or not Mitsui is liable for the damages for the breach of its contract of carriage

with Lavine.

RULING:

YES. Mitsui is liable for the damages for the breach of its contract of carriage with Lavine.

The suit is not for "loss or damage" to goods contemplated in §3(6), the question of prescription of action is governed not by the COGSA but by Article 1144 of the Civil Code which provides for a prescriptive period of ten years.

Section 3 (6) of the Carriage of Goods by Sea Act (COGSA) provides "unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery. Said notice of loss or damage may be endorsed upon the receipt for the goods given by the person taking delivery thereof. The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, that, if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered. In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods."

In Ang v. American Steamship Agencies, Inc., the question was whether an action for the value of goods which had been delivered to a party other than the consignee is for "loss or damage" within the meaning of §3(6) of the COGSA. It was held that there was no loss because the goods had simply been misdelivered. "Loss" refers to the deterioration or disappearance of goods.

As defined in the Civil Code and as applied to Section 3(6), paragraph 4 of the Carriage of Goods by Sea Act, "loss" contemplates merely a situation where no delivery at all was made by the shipper of the goods because the same had perished, gone out of commerce, or disappeared in such a way that their existence is unknown or they cannot be recovered.

Conformably with the concept of what constitutes "loss" or "damage," the deterioration of goods due to delay in their transportation constitutes "loss" or "damage" within the meaning of Section 3(6), so that as suit was not brought within one year the action was barred. Whatever damage or injury is suffered by the goods while in transit would result in loss or damage to either the shipper or the consignee. As long as it is claimed, therefore, that the losses or damages suffered by the shipper or consignee were due to the arrival of the goods in damaged or deteriorated condition, the action is still basically one for damage to the goods, and must be filed within the period of one year from delivery or receipt, under the provision of the Carriage of Goods by Sea Act.

The one-year period of limitation is designed to meet the exigencies of maritime hazards.

In a case where the goods shipped were neither lost nor damaged in transit but were, on the contrary, delivered in port to someone who claimed to be entitled thereto, the situation is different, and the special need for the short period of limitation in cases of loss or damage caused by maritime perils does not obtain.

Damages suffered by him as a result of the delay in the shipment of his cargo are not covered by the prescriptive provision of the Carriage of Goods by Sea Act, if such damages were due, not to the deterioration and decay of the goods while in transit, but to other causes independent of the condition of the cargo upon arrival, like a drop in their market value. Herein, there is neither deterioration nor disappearance nor destruction of goods caused by the carrier's breach of contract. Whatever reduction there may have been in the value of the goods is not due to their deterioration or disappearance because they had been damaged in transit.

What is in issue in the petition is not the liability of Mistui for its handling of goods as provided by 3(6) of the COGSA, but its liability under its contract of carriage with Lavine as covered by laws of more general application. The question before the trial court is not the particular sense of "damages" as it refers to the physical loss or damage of a shipper's goods as specifically covered by §3(6) of COGSA but Mitsui's potential liability for the damages it has caused in the general sense and, as such, the matter is governed by the Civil Code, the Code of Commerce and COGSA, for the breach of its contract of carriage with Lavine.

5. Conditions for filing of claim in case of loss or damage

a. Notice of Loss or Damage

- Belgian Overseas Chartering and Shipping N.V. vs. Philippine First Insurance Co., Inc., G.R. No. 143133, June 5, 2002

BELGIAN OVERSEAS CHARTERING AND SHIPPING N.V. and JARDINE DAVIES TRANSPORT SERVICES, INC., Petitioners, v. PHILIPPINE FIRST INSURANCE CO., INC., Respondent.

G.R. NO. 143133, THIRD DIVISION, JUNE 5, 2002, PANGANIBAN, J.:

Section 3, paragraph 6 of COGSA provides that the notice of claim need not be given if the state of the goods, at the time of their receipt, has been the subject of a joint inspection or survey. Herein, prior to unloading the cargo, an Inspection Report as to the condition of the goods was prepared and signed by representatives of both parties.

FACTS:

On 13 June 1990, CMC Trading A.G. shipped on board the M/V 'Anangel Sky' at Hamburg, Germany 242 coils of various Prime Cold Rolled Steel sheets for transportation to Manila consigned to the Philippine Steel Trading Corporation.

On 28 July 1990, M/V Anangel Sky arrived at the Port of Manila and, within the subsequent days, discharged the subject cargo.

Four coils were found to be in bad order. Finding the 4 coils in their damaged state to be unfit for the intended purpose, the consignee Philippine Steel Trading Corporation declared the same as total loss. Despite receipt of a formal demand, Belgian Overseas Chartering and Shipping

NV (BOCSNV) and Jardine Davies Transport Services Inc. (JDTSI) refused to submit to the consignee's claim. Consequently, Philippine First Insurance Co. Inc. (PFIC) paid the consignee P506,086.50, and was subrogated to the latter's rights and causes of action against BOCSNV and JDTSI. PFCI instituted a complaint for recovery of the amount paid by them, to the consignee as insured.

ISSUE:

Whether or not the petitioners may be held liable for the loss.

RULING:

YES. The petitioners may be held liable for the loss.

Well-settled is the rule that common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence and vigilance with respect to the safety of the goods and the passengers they transport. Thus, common carriers are required to render service with the greatest skill and foresight and "to use all reasonable means to ascertain the nature and characteristics of the goods tendered for shipment, and to exercise due care in the handling and stowage, including such methods as their nature requires." The extraordinary responsibility lasts from the time the goods are unconditionally placed in the possession of and received for transportation by the carrier until they are delivered, actually or constructively, to the consignee or to the person who has a right to receive them.

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 diligence.

The presumption of fault or negligence will not arise if the loss is due to any of the following causes: (1) flood, storm, earthquake, lightning, or other natural disaster or calamity; (2) an act of the public enemy in war, whether international or civil; (3) an act or omission of the shipper or owner of the goods; (4) the character of the goods or defects in the packing or the container; or (5) an order or act of competent public authority. This is a closed list. If the cause of destruction, loss or deterioration is other than the enumerated circumstances, then the carrier is liable therefor.

Mere proof of delivery of the goods in good order to a common carrier and of their arrival in bad order at their destination constitutes a prima facie case of fault or negligence against the carrier. If no adequate explanation is given as to how the deterioration, the loss or the destruction of the goods happened, the transporter shall be held responsible. Herein, (1) as stated in the Bill of Lading, BOCSNV and JDTSI received the subject shipment in good order and condition in Hamburg, Germany; (2) prior to the unloading of the cargo, an Inspection Report prepared and signed by representatives of both parties showed the steel bands broken, the metal envelopes rust-stained and heavily buckled, and the contents thereof exposed and rusty; (3) Bad Order Tally Sheet issued by JDTSI, stated that 4 coils were in bad order and condition. Normally, a request for a bad order survey is made in case there is an apparent or a presumed loss or damage; (4) the Certificate of Analysis stated that, based on the sample submitted and tested, the steel sheets found in bad order were wet with fresh water; (5) BOCSNV and JDTSI — in a letter addressed to the Philippine Steel

Coating Corporation admitted that they were aware of the condition of the 4 coils found in bad order and condition. All these conclusively prove the fact of shipment in good order and condition and the consequent damage to the 4 coils while in the possession of petitioner, who notably failed to explain why.

Even if the fact of improper packing was known to the carrier or its crew or was apparent upon ordinary observation, it is not relieved of liability for loss or injury resulting therefrom, once it accepts the goods notwithstanding such condition. Thus, BOCSNV and JDTSI have not successfully proven the application of any of the exceptions in the present case.

Section 3, paragraph 6 of COGSA provides that the notice of claim need not be given if the state of the goods, at the time of their receipt, has been the subject of a joint inspection or survey. Herein, prior to unloading the cargo, an Inspection Report as to the condition of the goods was prepared and signed by representatives of both parties.

A failure to file a notice of claim within three days will not bar recovery if it is nonetheless filed within 1 year. This one-year prescriptive period also applies to the shipper, the consignee, the insurer of the goods or any legal holder of the bill of lading.

In Loadstar Shipping Co., Inc. v. Court of Appeals, the Court ruled that a claim is not barred by prescription as long as the one-year period has not lapsed. Inasmuch as neither the Civil Code nor the Code of Commerce states a specific prescriptive period on the matter, COGSA — which provides for a one-year period of limitation on claims for loss of, or damage to, cargoes sustained during transit — may be applied suppletorily.

- Wallem Philippines Shipping vs. SR Farms, GR No. 161849, July 9, 2010

WALLEM PHILIPPINES SHIPPING, INC., Petitioner, v. S.R. FARMS, INC., Respondent.

G.R. NO. 161849, SECOND DIVISION, JULY 9, 2010, PERALTA, J.

Under Section 3 (6) of the COGSA, notice of loss or damages must be filed within three days of delivery. Admittedly, respondent did not comply with this provision.

Under the same provision, however, a failure to file a notice of claim within three days will not bar recovery if a suit is nonetheless filed within one year from delivery of the goods or from the date when the goods should have been delivered.

FACTS:

Continental Enterprises, Ltd. loaded on board the vessel M/V "Hui Yang," at Bedi Bunder, India, a shipment of Indian Soya Bean Meal, for transportation and delivery to Manila, with plaintiff [herein respondent] as consignee/notify party. The said shipment is said to weigh 1,100 metric tons and covered by Bill of Lading. The vessel is owned and operated by defendant Conti-Feed, with defendant [herein petitioner] Wallem as its ship agent.

On April 11, 1992, the said vessel, M/V "Hui Yang" arrived at the port of Manila, Pier 7 South Harbor. Thereafter, the shipment was discharged and transferred into the custody of the receiving barges, the NorthFront-333 and NorthFront-444. The offloading of the shipment went on until April 15, 1992 and was handled by [Ocean Terminal Services, Inc.] OTSI using its own manpower and

equipment and without the participation of the crew members of the vessel. All throughout the entire period of unloading operation, good and fair weather condition prevailed.

At the instance of the plaintiff, a cargo check of the subject shipment was made by one Lorenzo Bituin of Erne Maritime and Allied Services, Co. Inc., who noted a shortage in the shipment which was placed at 80.467 metric tons based on draft survey made on the NorthFront-33 and NorthFront-444 showing that the quantity of cargo unloaded from the vessel was only 1019.53 metric tons. Thus, per the bill of lading, there was an estimated shortage of 80.467.

Upon discovery thereof, the vessel chief officer was immediately notified of the said short shipment by the cargo surveyor, who accordingly issued the corresponding Certificate of Discharge dated April 15, 1992. The survey conducted and the resultant findings thereon are embodied in the Report of Superintendence and in the Barge Survey Report both submitted by Lorenzo Bituin.

Petitioner then filed a Complaint for damages against Conti-Feed & Maritime Pvt. Ltd., a foreign corporation doing business in the Philippines and the owner of M/V "Hui Yang"; RCS Shipping Agencies, Inc., the ship agent of Conti-Feed; Ocean Terminal Services, Inc. (OTSI), the arrastre operator at Anchorage No. 7, South Harbor, Manila; and Cargo Trade, the customs broker.

On June 7, 1993, respondent filed an Amended Complaint impleading herein petitioner as defendant alleging that the latter, and not RCS, was the one which, in fact, acted as Conti-Feed's ship agent.

Meanwhile, defendant OTSI filed its Answer with Counterclaim and Crossclaim denying the material allegations of the Complaint and alleging that it exercised due care and diligence in the handling of the shipment from the carrying vessel unto the lighters; no damage or loss whatsoever was sustained by the cargo in question while being discharged by OTSI; petitioner's claim had been waived, abandoned or barred by laches or estoppels; liability, if any, is attributable to its co-defendants.

ISSUE:

Whether or not there is waiver when the written notice of loss was not given within three (3) days from discharge of the subject shipment as provided in Section 3 (6) of the COGSA.

RULING:

NO. There is no waiver although the written notice of loss was not given within three (3) days from discharge of the subject shipment as provided in Section 3 (6) of the COGSA. Nonetheless, the complaint of respondent against petitioner was not timely filed.

With respect to the prescriptive period involving claims arising from shortage, loss of or damage to cargoes sustained during transit, the law that governs the instant case is the Carriage of Goods by Sea Act (COGSA), Section 3 (6) of which provides:

Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of delivery.

Said notice of loss or damage may be endorsed upon the receipt for the goods given by the person taking delivery thereof.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event, the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered; Provided, That, if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

Under Section 3 (6) of the COGSA, notice of loss or damages must be filed within three days of delivery. Admittedly, respondent did not comply with this provision.

Under the same provision, however, a failure to file a notice of claim within three days will not bar recovery if a suit is nonetheless filed within one year from delivery of the goods or from the date when the goods should have been delivered.

In Loadstar Shipping Co., Inc. v. Court of Appeals, the Court ruled that a claim is not barred by prescription as long as the one-year period has not lapsed.

In the instant case, the Court is not persuaded by respondent's claim that the complaint against petitioner was timely filed. Respondent argues that the suit for damages was filed on March 11, 1993, which is within one year from the time the vessel carrying the subject cargo arrived at the Port of Manila on April 11, 1993, or from the time the shipment was completely discharged from the vessel on April 15, 1992.

There is no dispute that the vessel carrying the shipment arrived at the Port of Manila on April 11, 1992 and that the cargo was completely discharged therefrom on April 15, 1992. However, respondent erred in arguing that the complaint for damages, insofar as the petitioner is concerned, was filed on March 11, 1993.

As the records would show, petitioner was not impleaded as a defendant in the original complaint filed on March 11, 1993. It was only on June 7, 1993 that the Amended Complaint, impleading petitioner as defendant, was filed.

Respondent cannot argue that the filing of the Amended Complaint against petitioner should retroact to the date of the filing of the original complaint.

The settled rule is that the filing of an amended pleading does not retroact to the date of the filing of the original; hence, the statute of limitation runs until the submission of the amendment. It is true that, as an exception, this Court has held that an amendment which merely supplements and amplifies facts originally alleged in the complaint relates back to the date of the commencement of the action and is not barred by the statute of limitations which expired after the service of the original complaint. The exception, however, would not apply to the party impleaded for the first time in the amended complaint.

- Asian Terminals Inc. vs. Philam Insurance Co. G.R. No. 181262 , July 24, 2013

ASIAN TERMINALS, INC. vs. PHILAM INSURANCE CO., INC. (NOW CHARTIS PHILIPPINE INSURANCE)/ PHILAM INSURANCE CO., INC. vs. WESTWIND SHIPPING CORPORATION AND ASIAN TERMINALS, INC./ WESTWIND SHIPPING CORPORATION vs. PHILAM INSURANCE CO., INC. AND ASIAN TERMINALS, INC.

G.R. NOS. 181163/181262/181319, FIRST DIVISION, JULY 24, 2013 J. VILLARAMA, JR.

(1)Payment by the insurer to the insured operates as an equitable assignment to the insurer of all the remedies that the insured may have against the third party whose negligence or wrongful act caused the loss. (2)Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance of goods transported. 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. (3)The prescriptive period for filing an action for the loss or damage of the goods under the COGSA is found in paragraph (6), Section 3.

FACTS:

On April 15, 1995, Nichimen Corporation shipped to Universal Motors Corporation 219 packages containing 120 units of brand new Nissan Pickup Truck Double Cab 4x2 model, without engine, tires and batteries, on board the vessel S/S "Calayan Iris" from Japan to Manila. The shipment was insured with Philam against all risks under Marine Policy No. 708-8006717-4. The carrying vessel arrived at the port of Manila on April 20, 1995, and when the shipment was unloaded by the staff of ATI, it was found that the package marked as 03-245-42K/1 was in bad order being dented and broken.

The shipment was withdrawn by R.F. Revilla Customs Brokerage, Inc., the authorized broker of Universal Motors, and delivered to the latter's warehouse in Mandaluyong City. Upon the request of Universal Motors, a bad order survey was conducted on the cargoes and it was found that one Frame Axle Sub without LWR was deeply dented while six Frame Assembly with Bush were deformed and misaligned. Universal Motors declared them a total loss. Universal Motors filed a formal claim for damages in the amount of P643,963.84 against Westwind, ATI and R.F. Revilla Customs Brokerage, Inc. The demands remained unheeded hence it sought reparation from and was compensated in the sum of P633,957.15 by Philam. Accordingly, Universal Motors issued a Subrogation Receipt in favor of Philam. Philam, as subrogee filed a Complaint for damages against Westwind, ATI and R.F. Revilla Customs Brokerage, Inc. before the RTC. The RTC rendered judgment in favor of Philam and ordered Westwind and ATI to pay Philam, jointly and severally, the sum of P633,957.15 with interest. On appeal, the CA affirmed with modification the ruling of the RTC. The appellate court directed Westwind and ATI to pay Philam, jointly and severally, the amount of P190,684.48 with interest. The amount was limited only to (1) unit of Frame Axle Sub.

ISSUES:

(1) Who between Westwind and ATI should be held liable for the damaged cargoes;

(2) What is the extent of their liability? and

(3) Has Philam's action for damages prescribed?

RULING:

Westwind and ATI are both liable to Philam, the subrogee of Universal Motors

As to Westwind's liability, the Court agreed with ATI's contention that Steel Case No. 03-245-42K/1 was partly torn and crumpled on one side while it was being unloaded from the carrying vessel. Clearly the contents were damaged while in the custody of Westwind. Further it was proven that Westwind's duty officer exercised full supervision and control over the entire process of unloading.

This is a clear violation of the extraordinary diligence required for common carriers in the vigilance of goods transported by them. It must be noted that 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. As to ATI's liability the Court held it solidarily liable with Westwind. Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession. Handling cargo is mainly the arrastre operator's principal work so its drivers/operators or employees should observe the standards and measures necessary to prevent losses and damage to shipments under its custody. While it is true that an arrastre operator and a carrier may not be held solidarily liable at all times, the facts of these cases show that apart from ATI's stevedores being directly in charge of the physical unloading of the cargo, its foreman picked the cable sling that was used to hoist the packages for transfer to the dock. Moreover, the fact that 218 of the 219 packages were unloaded with the same sling unharmed is telling of the inadequate care with which ATI's stevedore handled and discharged the goods. The Court also agreed with the CA that the liability should be confined to the value of the one piece Frame Axle Sub without Lower since there is nothing in the records to show conclusively that the six Frame Assembly with Bush were likewise contained in and damaged inside. Lastly, the Court held that petitioner Philam has adequately established the basis of its claim against petitioners ATI and Westwind. Philam, as insurer, was subrogated to the rights of the consignee, Universal Motors Corporation, pursuant to the Subrogation Receipt executed by the latter in favor of the former.

Philam's action has not prescribed

Moreover, paragraph (6), Section 3 of the COGSA clearly states that failure to comply with the notice requirement shall not affect or prejudice the right of the shipper to bring suit within one year after delivery of the goods. Petitioner Philam, as subrogee of Universal Motors, filed the Complaint for damages on January 18, 1996, just eight months after all the packages were delivered to its possession on May 17, 1995. Evidently, petitioner Philam's action against petitioners Westwind and ATI was seasonably filed.

b. Period of Prescription

- Union Carbide Philippines, Inc. vs. Manila Railroad Co., G.R. No. L-27798, June 15, 1977

UNION CARBIDE PHILIPPINES, INC. (formerly National Carbon Philippines, Inc.), plaintiff-appellant, vs. MANILA RAILROAD CO., substituted by the PHILIPPINE NATIONAL RAILWAYS, MANILA PORT SERVICE and AMERICAN STEAMSHIP AGENCIES, INC., defendants- appellees.

G.R. NO. L-27798, SECOND DIVISION, JUNE 15, 1977, AQUINO, J.

In other words, the claimant or consignee has a two-year prescriptive period, counted from the date of the discharge of the goods, within which to file the action in the event that the arrastre contractor, as in this case, has not rejected nor admitted liability.

FACTS:

On December 18, 1961 the vessel Daishin Maru arrived in Manila with a cargo of 1,000 bags of synthetic resin consigned to General Base Metals, Inc. which later sold the cargo to Union Carbide Philippines, Inc.

On the following day, that cargo was delivered to the Manila Port Service in good order and condition except for twenty- five bags which were in bad order.

On January 20 and February 6 and 8, 1962 eight hundred ninety-eight (898) bags of resin (out of the 1,000 bags) were delivered by the customs broker to the consignee. One hundred two bags were missing. The contents of twenty-five bags were damaged or pilfered while they were in the custody of the arrastre operator.

The 152 bags of resin (102 missing and 50 damaged) were valued at $12.65 a bag or a total value of $1,992.80, which amount at the prevailing rate of exchange of P3.85 to the American dollar, is equivalent to P7,402.78.

The consignee, through the customs broker, filed on January 3, 1962 with the Manila Port Service, as arrastre operator, and the American Steamship Agencies, Inc., as agent of the carrier, a provisional claim advising them that the shipment in question was "shorthanded, short delivered and/or landed in bad order".

Formal claims dated June 11, 1962 were made by the consignee with the arrastre operator and the agent of the carrier.

As the claims were not paid, Union Carbide Philippines, Inc. filed a complaint on December 21, 1962 in the Court of First Instance of Manila against the Manila Railroad Company, the Manila Port Service and the American Steamship Agencies, Inc. for the recovery of damages amounting to P7,402.78 as the value of the undelivered 102 bags of resin and the damaged 50 bags plus legal rate of interest from the filing of the complaint and P1,000 as attorney's fees.

Union Carbide contends that "delivery" does not mean the discharge of goods or the delivery thereof to the arrastre operator but the actual delivery of the goods to the consignee by the customs broker.

The carrier contends that delivery means discharge from the vessel into the custody of the customs arrastre operator because under sections 1201 and 1206 of the Tariff and Customs Code merchandise cannot be directly delivered by the carrier to the consignee but should first pass through the customhouse at a port of entry for the collection of customs duties.

ISSUE:

Whether or not the cause of action has prescribed.

RULING:

No, the claim was timely filed.

The sensible and practical interpretation is that delivery within the meaning of section 3(6) of the Carriage of Goods by Sea Law means delivery to the arrastre operator. That delivery is evidenced by tally sheets which show whether the goods were landed in good order or in bad order, a fact which the consignee or shipper can easily ascertain through the customs broker.

To use as basis for computing the one-year period the delivery to the consignee would be unrealistic and might generate confusion between the loss or damage sustained by the goods while in the carrier's custody and the loss or damage caused to the goods while in the arrastre operator's possession.

Apparently, section 3(6) adheres to the common-law rule that the duty imposed water carriers was merely to transport from wharf to wharf and that the carrier was not bound to deliver the goods at the warehouse of the consignee.

In the Tan Hi case, it was held that a requirement of Philippine law that all cargo unloaded at Manila be delivered to the consignee through the arrastre operator acting as customs' agent was not unreasonable. The common-law requirements as to the proper delivery of goods by water carrier apply only when customs regulations at the port of destination do not otherwise provide. The delivery must be in accordance with the usages of the port in order that such delivery would discharge the carrier of responsibility.

Under the facts of this case, the Court held that the one-year period was correctly reckoned by the trial court from December 19, 1961, when, as agreed upon by the parties and as shown in the tally sheets, the cargo was discharged from the carrying vessel and delivered to the Manila Port Service. That one-year period expired on December 19, 1962. Inasmuch as the action was filed on December 21, 1962, it was barred by the statute of limitations.

Defendant American Steamship Agencies, Inc., as agent of the carrier, has no more liability to the consignee's assignee, Union Carbide Philippines, Inc., in connection with the damaged twenty-five bags of resin.

Under contractual provisions, the action against the arrastre operator to enforce liability for loss of the cargo or damage thereto should be filed within one year from the date of the discharge of the goods or from the date when the claim for the value of such goods has been rejected or denied by the arrastre operator.

However, before such action can be filed a condition precedent should be complied with and that is, that a claim (provisional or final) shall have been previously filed with the arrastre operator within fifteen days from the date of the discharge of the last package from the carrying vessel.

In this case, the consignee's customs broker filed with the Manila Port Service as provisional claim advising the latter that the cargo was "short, short delivered and/or landed in bad order". That claim was filed on January 3, 1962 or on the fifteenth day following December 19, 1961, the

date of the discharge of the last package from the carrying vessel. That claim was never formally rejected or denied by the Manila Port Service.

Having complied with the condition precedent for the filing of a claim within the fifteen- day period, Union Carbide could file the court action within one year, either from December 19, 1961 or from December 19, 1962. This second date is regarded as the expiration of the period within which the Manila Port Service should have acted on the claim.

In other words, the claimant or consignee has a two-year prescriptive period, counted from the date of the discharge of the goods, within which to file the action in the event that the arrastre contractor, as in this case, has not rejected nor admitted liability.

Since the action in this case against the arrastre operator was filed on December 21, 1962, or within the two-year period expiring on December 19, 1963, that action was filed on time. The trial court erred in dismissing the action against the Manila Port Service and its principal, the Manila Railroad Company.

As shown in the statement of facts, the arrastre operator is responsible for the value of 102 bags of resin which were not delivered, and twenty-five bags, which were damaged, or a total of one hundred twenty-seven bags valued at P6,185.22.

- Ang vs. Compañia Maritima, 133 SCRA 600 (1984)

DOMINGO ANG, plaintiff-appellant, vs. COMPANIA MARITIMA, MARITIME COMPANY OF THE PHILIPPINES and C.L. DIOKNO, defendants-appellees.

G.R. NO. L-30805, SECOND DIVISION, DECEMBER 26, 1984, AQUINO, J.:

As Ang filed the action less than three years from the date of the alleged misdelivery of the cargo, it has not yet prescribed. Ang, as indorsee of the bill of lading, is a real party in interest with a cause of action for damages.

FACTS:

Domingo Ang on September 26, 1963, as the assignee of a bill of lading held by Yau Yue Commercial Bank, Ltd. of Hongkong, sued Compania Maritima, Maritime Company of the Philippines and C.L. Diokno. He prayed that the defendants be ordered to pay him solidarily the sum with interest from February 9, 1963 plus attorney's fees and damages.

Ang alleged that Yau Yue Commercial Bank agreed to sell to Herminio G. Teves under certain conditions 559 packages of galvanized steel, Durzinc sheets. The merchandise was loaded on May 25, 1961 at Yawata, Japan in the M/S Luzon a vessel owned and operated by the defendants, to be transported to Manila and consigned "to order" of the shipper, Tokyo Boeki, Ltd., which indorsed the bill of lading issued by Compania Maritima to the order of Yau Yue Commercial Bank.

Ang further alleged that the defendants, by means of a permit to deliver imported articles, authorized the delivery of the cargo to Teves who obtained delivery from the Bureau of Customs without the surrender of the bill of lading and in violation of the terms thereof. Teves dishonored the draft drawn by Yau Yue against him.

The Hongkong and Shanghai Banking Corporation made the corresponding protest for the draft's dishonor and returned the bill of lading to Yau Yue. The bill of lading was indorsed to Ang.

The defendants filed a motion to dismiss Ang's complaint on the ground of lack of cause of action. Ang opposed the motion. As already stated, the trial court on May 22, 1964 dismissed the complaint on the grounds of lack of cause of action and prescription since the action was filed beyond the one-year period provided in the Carriage of Goods by Sea Act.

ISSUE:

Whether or not the action has prescribed.

RULING:

NO. The action has not yet prescribed.

As Ang filed the action less than three years from the date of the alleged misdelivery of the cargo, it has not yet prescribed. Ang, as indorsee of the bill of lading, is a real party in interest with a cause of action for damages.

In the American Steamship Agencies cases, it was held that the action of Ang is based on misdelivery of the cargo which should be distinguished from loss thereof. The one-year period provided for in section 3 (6) of the Carriage of Goods by Sea Act refers to loss of the cargo. What is applicable is the four-year period of prescription for quasi-delicts prescribed in article 1146 (2) of the Civil Code or ten years for violation of a written contract as provided for in article 1144 (1) of the same Code.

- Dole Philippines, Inc. vs. Maritime Company of the Philippines, G.R. No. L-61352, February 27, 1987

DOLE PHILIPPINES, INC., Plaintiff-Appellant, v. MARITIME COMPANY OF THE PHILIPPINES, Defendant-Appellee.

G.R. NO. L-61352, FIRST DIVISION, FEBRUARY 27, 1987, NARVASA, J.

Similarly, the Court now holds that in such a case the general provisions of the new Civil Code (Art. 1155) cannot be made to apply, as such application would have the effect of extending the one-year period of prescription fixed in the law. It is desirable that matters affecting transportation of goods by sea be decided in as short a time as possible; the application of the provisions of Article 1155 of the new Civil Code would unnecessarily extend the period and permit delays in the settlement of questions affecting transportation, contrary to the clear intent and purpose of the law.

FACTS:

The cargo subject of the instant case was discharged unto the custody of the consignee, appellant Dole Philippines, Inc. (hereinafter called Dole) on December 18, 1971;

The corresponding claim for loss and/or damage to a shipment of machine parts sought to be enforced by the against the carrier, Maritime Company of the Philippines (hereinafter called Maritime) on May 4, 1972;

On June 11, 1973 the plaintiff filed a complaint in the Court of First Instance of Manila, embodying three (3) causes of action involving three (3) separate and different shipments. The third cause of action therein involved the cargo now subject of this present litigation;

To the complaint in the subsequent action Maritime filed an answer pleading inter alia the affirmative defense of prescription under the provisions of the Carriage of Goods by Sea Act.

ISSUE:

Whether or not Article 1155 of the Civil Code providing that the prescription of actions is interrupted by the making of an extra-judicial written demand by the creditor is applicable to actions brought under the Carriage of Goods by Sea Act.

RULING:

NO. The prescription of actions is not interrupted by the making of an extra-judicial written demand by the creditor, under the Carriage of Goods by Sea Act.

Carriage of Goods by Sea Act which, in its Section 3, paragraph 6, provides that: ". . . the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered; Provided, That, if a notice of loss or damage, either apparent or conceded, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.

Dole concedes that its action is subject to the one-year period of limitation prescribed in the above-cited provision. The substance of its argument is that since the provisions of the Civil Code are, by express mandate of said Code, suppletory of deficiencies in the Code of Commerce and special laws in matters governed by the latter, and there being." . . a patent deficiency . . . with respect to the tolling of the prescriptive period . . ." provided for in the Carriage of Goods by Sea Act, prescription under said Act is subject to the provisions of Article 1155 of the Civil Code on tolling; and because Dole's claim for loss or damage made on May 4, 1972 amounted to a written extrajudicial demand which would toll or interrupt prescription under Article 1155, it operated to toll prescription also in actions under the Carriage of Goods by Sea Act. To much the same effect is the further argument based on Article 1176 of the Civil Code which provides that the rights and obligations of common carriers shall be governed by the Code of Commerce and by special laws in all matters not regulated by the Civil Code.

These arguments might merit weightier consideration were it not for the fact that the question has already received a definitive answer, adverse to the position taken by Dole, in The Yek Tong Lin Fire & Marine Insurance Co., Ltd. v. American President Lines, Inc. There, in a parallel factual situation, where suit to recover for damage to cargo shipped by vessel from Tokyo to Manila was filed more than two years after the consignee's receipt of the cargo, this Court rejected the contention that an extrajudicial demand tolled the prescriptive period provided for in the Carriage of Goods by Sea Act.

Similarly, the Court now holds that in such a case the general provisions of the new Civil Code (Art. 1155) cannot be made to apply, as such application would have the effect of extending the one-year period of prescription fixed in the law. It is desirable that matters affecting

transportation of goods by sea be decided in as short a time as possible; the application of the provisions of Article 1155 of the new Civil Code would unnecessarily extend the period and permit delays in the settlement of questions affecting transportation, contrary to the clear intent and purpose of the law. . . ."

Moreover, no different result would obtain even if the Court were to accept the proposition that a written extrajudicial demand does toll prescription under the Carriage of Goods by Sea Act. The demand in this instance would be the claim for damage filed by Dole with Maritime on May 4, 1972. The effect of that demand would have been to renew the one-year prescriptive period from the date of its making Stated otherwise, under Dole's theory, when its claim was received by Maritime, the one-year prescriptive period was interrupted — "tolled" would be the more precise term — and began to run anew from May 4, 1972, affording Dole another period of one (1) year counted from that date within which to institute action on its claim for damage. Unfortunately, Dole let the new period lapse without filing action.

- Loadstar Shipping Co., Inc. vs. Court of Appeals, G.R. No. 131621 September 28, 1999

LOADSTAR SHIPPING CO., INC., Petitioner, v. COURT OF APPEALS and THE MANILA INSURANCE CO., INC., Respondents.

G.R. NO. 131621, FIRST DIVISION, SEPTEMBER 28, 1999, DAVIDE, JR., C.J.

Herein, MIC's cause of action had not yet prescribed at the time it was concerned. Inasmuch as neither the Civil Code nor the Code of Commerce states a specific prescriptive period on the matter, the Carriage of Goods by Sea Act (COGSA) — which provides for a one-year period of limitation on claims for loss of, or damage to, cargoes sustained during transit — may be applied suppletorily to the present case. This one-year prescriptive period also applies to the insurer of the goods. Herein, the period for filing the action for recovery has not yet elapsed. Moreover, a stipulation reducing the one-year period is null and void; it must, accordingly, be struck down.

FACTS:

On 19 November 1984, Loadstar Shipping Co. Inc. received on board its M/V "Cherokee" (a) 705 bales of lawanit hardwood; (b) 27 boxes and crates of tilewood assemblies and others; and (c) 49 bundles of mouldings R & W (3) Apitong Bolidenized for shipment. The goods, amounting to P6,067,178, were insured for the same amount with the Manila Insurance Co. (MIC) against various risks including "total loss by total loss of the vessel." The vessel, in turn, was insured by Prudential Guarantee & Assurance, Inc. (PGAI) for P4 million.

On 20 November 1984, on its way to Manila from the port of Nasipit, Agusan del Norte, the vessel, along with its cargo, sank off Limasawa Island. As a result of the total loss of its shipment, the consignee made a claim with Loadstar which, however, ignored the same. As the insurer, MIC paid P6,075,000 to the insured in full settlement of its claim, and the latter executed a subrogation receipt therefor.

On 4 February 1985, MIC filed a complaint against Loadstar and PGAI, alleging that the sinking of the vessel was due to the fault and negligence of Loadstar and its employees. It also prayed that PGAI be ordered to pay the insurance proceeds from the loss of the vessel directly to MIC, said amount to be deducted from MIC's claim from Loadstar.

In its answer, Loadstar denied any liability for the loss of the shipper's goods and claimed that the sinking of its vessel was due to force majeure. PGAI, on the other hand, averred that MIC had no cause of action against it, Loadstar being the party insured. In any event, PGAI was later dropped as a party defendant after it paid the insurance proceeds to Loadstar.

On 4 October 1991, the trial court rendered judgment in favor of MIC, ordering Loadstar to pay MIC. Loadstar elevated the matter to the Court of Appeals, which, however agreed with the trial court and affirmed its decision in toto.

ISSUE:

Whether or not MIC's cause of action had not yet prescribed.

RULING:

YES. The cause of action had not yet prescribed.

In the 1968 case of Home Insurance Co. v. American Steamship Agencies, Inc., the Court held that a common carrier transporting special cargo or chartering the vessel to a special person becomes a private carrier that is not subject to the provisions of the Civil Code. Any stipulation in the charter party absolving the owner from liability for loss due to the negligence of its agent is void only if the strict policy governing common carriers is upheld. Such policy has no force where the public at large is not involved, as in the case of a ship totally chartered for the use of a single party. The cases of Valenzuela Hardwood and Industrial Supply, Inc. v. Court of Appeals and National Steel Corp. v. Court of Appeals, upheld the Home Insurance doctrine.

These cases are not applicable in the present case as the factual settings are different. The records do not disclose that the M/V "Cherokee" undertook to carry a special cargo or was chartered to a special person only. There was no charter party. The bills of lading failed to show any special arrangement, but only a general provision to the effect that the M/V "Cherokee" was a "general cargo carrier." Further, the bare fact that the vessel was carrying a particular type of cargo for one shipper, which appears to be purely coincidental, is not reason enough to convert the vessel from a common to a private carrier, especially where it was shown that the vessel was also carrying passengers.

Article 1732 of the Civil Code defines "common carriers" as "Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air for compensation, offering their services to the public."

Article 1732 makes no distinction between one whose principal business activity is the carrying of persons or goods or both, and one who does such carrying only as an ancillary activity (in local idiom, as "a sideline"'. Article 1732 also carefully avoids making any distinction between a person or enterprise offering transportation service on a regular or scheduled basis and one offering such service on an occasional, episodic or unscheduled basis. Neither does Article 1732 distinguish between a carrier offering its services to the "general public," i.e., the general community or population, and one who offers services or solicits business only from a narrow segment of the general population. Article 1733 deliberately refrained from making such distinctions.

The M/V "Cherokee" was not seaworthy when it embarked on its voyage on 19 November 1984. The vessel was not even sufficiently manned at the time. "For a vessel to be seaworthy, it

must be adequately equipped for the voyage and manned with a sufficient number of competent officers and crew. The failure of a common carrier to maintain in seaworthy condition its vessel involved in a contract of carriage is a clear breach of its duty prescribed in Article 1755 of the Civil Code."

The doctrine of limited liability does not apply where there was negligence on the part of the vessel owner or agent. Herein, Loadstar was at fault or negligent in not maintaining a seaworthy vessel and in having allowed its vessel to sail despite knowledge of an approaching typhoon. In any event, it did not sink because of any storm that may be deemed as force majeure, inasmuch as the wind condition in the area where it sank was determined to be moderate. Since it was remiss in the performance of its duties, Loadstar cannot hide behind the "limited liability" doctrine to escape responsibility for the loss of the vessel and its cargo.

In the cases of St. Paul Fire & Marine Ins. Co. v. Macondray & Co., Inc., and National Union Fire Insurance v. Stolt-Nielsen Phils., Inc., it was ruled that after paying the claim of the insured for damages under the insurance policy, the insurer is subrogated merely to the rights of the assured, i.e. it can recover only the amount that may, in turn, be recovered by the latter. Since the right of the assured in case of loss or damage to the goods is limited or restricted by the provisions in the bills of lading, a suit by the insurer as subrogee is necessarily subject to the same limitations and restrictions. These cases involved a limitation on the carrier's liability to an amount fixed in the bill of lading which the parties may enter into, provided that the same was freely and fairly agreed upon (Articles 1749-1750). On the other hand, the stipulation in the present case effectively reduces the common carrier's liability for the loss or destruction of the goods to a degree less than extraordinary (Articles 1744 and 1745), i.e. the carrier is not liable for any loss or damage to shipments made at "owner's risk." Such stipulation is obviously null and void for being contrary to public policy.

Three kinds of stipulations have often been made in a bill of lading. The first is one exempting the carrier from any and all liability for loss or damage occasioned by its own negligence. The second is one providing for an unqualified limitation of such liability to an agreed valuation. And the third is one limiting the liability of the carrier to an agreed valuation unless the shipper declares a higher value and pays a higher rate of freight. According to an almost uniform weight of authority, the first and second kinds of stipulations are invalid as being contrary to public policy, but the third is valid and enforceable.

Herein, MIC's cause of action had not yet prescribed at the time it was concerned. Inasmuch as neither the Civil Code nor the Code of Commerce states a specific prescriptive period on the matter, the Carriage of Goods by Sea Act (COGSA) — which provides for a one-year period of limitation on claims for loss of, or damage to, cargoes sustained during transit — may be applied suppletorily to the present case. This one-year prescriptive period also applies to the insurer of the goods. Herein, the period for filing the action for recovery has not yet elapsed. Moreover, a stipulation reducing the one-year period is null and void; it must, accordingly, be struck down.

- Mayer Steel Pipe Corporation vs. Court of Appeals, G.R. No. 124050 June 19, 1997

MAYER STEEL PIPE CORPORATION and HONGKONG GOVERNMENT SUPPLIES DEPARTMENT, Petitioners, v. COURT OF APPEALS, SOUTH SEA SURETY AND INSURANCE CO., INC. and the CHARTER INSURANCE CORPORATION, Respondents.

G.R. NO. 124050, SECOND DIVISION, JUNE 19, 1997, PUNO, J.

Section 3(6) of the Carriage of Goods by Sea Act states that the carrier and the ship shall be discharged from all liability for loss or damage to the goods if no suit is filed within one year after delivery of the goods or the date when they should have been delivered. Under this provision, only the carrier's liability is extinguished if no suit is brought within one year. But the liability of the insurer is not extinguished because the insurer's liability is based not on the contract of carriage but on the contract of insurance. A close reading of the law reveals that the Carriage of Goods by Sea Act governs the relationship between the carrier on the one hand and the shipper, the consignee and/or the insurer on the other hand. It defines the obligations of the carrier under the contract of carriage. It does not, however, affect the relationship between the shipper and the insurer. The latter case is governed by the Insurance Code.

FACTS:

In 1983, Hongkong Government Supplies Department (Hongkong) contracted Mayer Steel Pipe Corporation (Mayer) to manufacture and supply various steel pipes and fittings. From August to October 1983, Mayer shipped the pipes and fittings to Hongkong as evidenced by Invoice MSPC-1014, MSPC-1015, MSPC-1025, MSPC-1020, MSPC-1017 and MSPC-1022.

Prior to the shipping, Mayer insured the pipes and fittings against all risks with South Sea Surety and Insurance Co., Inc. (South Sea) and Charter Insurance Corp. (Charter). The pipes and fittings covered by Invoice MSPC-1014, 1015 and 1025 with a total amount of US$212,772.09 were insured with South Sea, while those covered by Invoice 1020, 1017 and 1022 with a total amount of US$149,470.00 were insured with Charter.

Mayer and Hongkong jointly appointed Industrial Inspection (International) Inc. as third-party inspector to examine whether the pipes and fittings are manufactured in accordance with the specifications in the contract. Industrial Inspection certified all the pipes and fittings to be in good order condition before they were loaded in the vessel.

Nonetheless, when the goods reached Hongkong, it was discovered that a substantial portion thereof was damaged. Hongkong and Mayer filed a claim against Sourth Sea and Charter for indemnity under the insurance contract. Charter paid Hongkong the amount of HK$64,904.75. Hongkong and Mayer demanded payment of the balance of HK$299,345.30 representing the cost of repair of the damaged pipes. South Sea and Charter refused to pay because the insurance surveyor's report allegedly showed that the damage is a factory defect. On 17 April 1986, Hongkong and Mayer filed an action against South Sea and Charter to recover the sum of HK$299,345.30.

The trial court ruled in favor of the former. It found that the damage to the goods is not due to manufacturing defects. It also noted that the insurance contracts executed by Mayer with South Sea and Charter are "all risks" policies which insure against all causes of conceivable loss or damage. The only exceptions are those excluded in the policy, or those sustained due to fraud or intentional misconduct on the part of the insured. Thus, the court ordered South Sea and Charter to pay in solidum the sum equivalent in Philippine currency of HK$299,345.30 with legal rate of interest as of the filing of the complaint; P100,000.00 as and for attorney's fees; and costs of suit.

South Sea and Charter elevated the case to the Court of Appeals. The appellate court affirmed the finding of the trial court that the damage is not due to factory defect and that it was covered by the "all risks" insurance policies issued by South Sea and Charter to Mayer. However, it set aside the decision of the trial court and dismissed the complaint on the ground of prescription. Hence, the petition for review on certiorari filed by Mayer and Hongkong.

ISSUE:

Whether or not the South Sea Surety and Insurance Co., Inc. and Charter Insurance Corporation may still be held liable.

RULING:

YES. The South Sea Surety and Insurance Co., Inc. and Charter Insurance Corporation may still be held liable.

Section 3(6) of the Carriage of Goods by Sea Act provides that "the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered."

Section 3(6) of the Carriage of Goods by Sea Act states that the carrier and the ship shall be discharged from all liability for loss or damage to the goods if no suit is filed within one year after delivery of the goods or the date when they should have been delivered. Under this provision, only the carrier's liability is extinguished if no suit is brought within one year. But the liability of the insurer is not extinguished because the insurer's liability is based not on the contract of carriage but on the contract of insurance. A close reading of the law reveals that the Carriage of Goods by Sea Act governs the relationship between the carrier on the one hand and the shipper, the consignee and/or the insurer on the other hand. It defines the obligations of the carrier under the contract of carriage. It does not, however, affect the relationship between the shipper and the insurer. The latter case is governed by the Insurance Code.

The Filipino Merchants case is different from the case at bar. In Filipino Merchants, it was the insurer which filed a claim against the carrier for reimbursement of the amount it paid to the shipper. In the case at bar, it was the shipper which filed a claim against the insurer. The basis of the shipper's claim is the "all risks" insurance policies issued by South Sea and Charter to Mayer.

The ruling in Filipino Merchants should apply only to suits against the carrier filed either by the shipper, the consignee or the insurer. When the court said in Filipino Merchants that Section 3(6) of the Carriage of Goods by Sea Act applies to the insurer, it meant that the insurer, like the shipper, may no longer file a claim against the carrier beyond the one-year period provided in the law. But it does not mean that the shipper may no longer file a claim against the insurer because the basis of the insurer's liability is the insurance contract. An insurance contract is a contract whereby one party, for a consideration known as the premium, agrees to indemnify another for loss or damage which he may suffer from a specified peril.

An "all risks" insurance policy covers all kinds of loss other than those due to willful and fraudulent act of the insured. Herein, South Sea and Charter issued the "all risks" policies to Mayer, they bound themselves to indemnify the latter in case of loss or damage to the goods insured. Such obligation prescribes in ten years, in accordance with Article 1144 of the New Civil Code.

- Mitsui O.S.K. Lines Ltd., represented by Magsaysay Agencies, Inc. vs. Court of Appeals, G.R. No. 119571, March 11, 1998

MITSUI O.S.K. LINES LTD., represented by MAGSAYSAY AGENCIES, INC., Petitioner, vs. COURT OF APPEALS and LAVINE LOUNGEWEAR MFG. CORP., Respondents.

G.R. NO. 119571, SECOND DIVISION, MARCH 11, 1998, MENDOZA, J.

The one-year period of limitation is designed to meet the exigencies of maritime hazards. In a case where the goods shipped were neither lost nor damaged in transit but were, on the contrary, delivered in port to someone who claimed to be entitled thereto, the situation is different, and the special need for the short period of limitation in cases of loss or damage caused by maritime perils does not obtain.

FACTS:

Mitsui O.S.K. Lines Ltd. is a foreign corporation represented in the Philippines by its agent, Magsaysay Agencies. It entered into a contract of carriage through Meister Transport, Inc., an international freight forwarder, with Lavine Loungewear Manufacturing Corporation to transport goods of the latter from Manila to Le Havre, France. Mitsui undertook to deliver the goods to France 28 days from initial loading.

On 24 July 1991, Mitsui's vessel loaded Lavine's container van for carriage at the said port of origin. However, in Kaoshiung, Taiwan the goods were not transshipped immediately, with the result that the shipment arrived in Le Havre only on 14 November 1991. The consignee allegedly paid only half the value of the said goods on the ground that they did not arrive in France until the "off season" in that country. The remaining half was allegedly charged to the account of Lavine which in turn demanded payment from Mitsui through its agent.

As Mitsui denied Lavine's claim, the latter filed a case in the RTC on 14 April 1992. In the original complaint, Lavine impleaded as defendants Meister Transport, Inc. and Magsaysay Agencies, Inc., the latter as agent of Mitsui O.S.K. Lines Ltd. On 20 May 1993, it amended its complaint by impleading Mitsui as defendant in lieu of its agent. The parties to the case thus became Lavine as plaintiff, on one side, and Meister and Mitsui as represented by Magsaysay Agencies, Inc., as defendants on the other. Mitsui filed a motion to dismiss alleging that the claim against it had prescribed under the Carriage of Goods by Sea Act.

ISSUE:

Whether or not Mitsui is liable for the damages for the breach of its contract of carriage with Lavine.

RULING:

YES. Mitsui is liable for the damages for the breach of its contract of carriage with Lavine.

The suit is not for "loss or damage" to goods contemplated in §3(6), the question of prescription of action is governed not by the COGSA but by Article 1144 of the Civil Code which provides for a prescriptive period of ten years.

Section 3 (6) of the Carriage of Goods by Sea Act (COGSA) provides "unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery. Said notice of loss or damage may be endorsed upon the receipt for the goods given by the person taking delivery thereof. The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, that, if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered. In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods."

In Ang v. American Steamship Agencies, Inc., the question was whether an action for the value of goods which had been delivered to a party other than the consignee is for "loss or damage" within the meaning of §3(6) of the COGSA. It was held that there was no loss because the goods had simply been misdelivered. "Loss" refers to the deterioration or disappearance of goods.

As defined in the Civil Code and as applied to Section 3(6), paragraph 4 of the Carriage of Goods by Sea Act, "loss" contemplates merely a situation where no delivery at all was made by the shipper of the goods because the same had perished, gone out of commerce, or disappeared in such a way that their existence is unknown or they cannot be recovered.

Conformably with the concept of what constitutes "loss" or "damage," the deterioration of goods due to delay in their transportation constitutes "loss" or "damage" within the meaning of Section 3(6), so that as suit was not brought within one year the action was barred. Whatever damage or injury is suffered by the goods while in transit would result in loss or damage to either the shipper or the consignee. As long as it is claimed, therefore, that the losses or damages suffered by the shipper or consignee were due to the arrival of the goods in damaged or deteriorated condition, the action is still basically one for damage to the goods, and must be filed within the period of one year from delivery or receipt, under the provision of the Carriage of Goods by Sea Act.

The one-year period of limitation is designed to meet the exigencies of maritime hazards. In a case where the goods shipped were neither lost nor damaged in transit but were, on the contrary, delivered in port to someone who claimed to be entitled thereto, the situation is different, and the special need for the short period of limitation in cases of loss or damage caused by maritime perils does not obtain.

Damages suffered by him as a result of the delay in the shipment of his cargo are not covered by the prescriptive provision of the Carriage of Goods by Sea Act, if such damages were due, not to the deterioration and decay of the goods while in transit, but to other causes independent of the condition of the cargo upon arrival, like a drop in their market value. Herein, there is neither deterioration nor disappearance nor destruction of goods caused by the carrier's breach of contract. Whatever reduction there may have been in the value of the goods is not due to their deterioration or disappearance because they had been damaged in transit.

What is in issue in the petition is not the liability of Mistui for its handling of goods as provided by 3(6) of the COGSA, but its liability under its contract of carriage with Lavine as covered by laws of more general application. The question before the trial court is not the particular sense of "damages" as it refers to the physical loss or damage of a shipper's goods as specifically covered by §3(6) of COGSA but Mitsui's potential liability for the damages it has caused in the general sense and, as such, the matter is governed by the Civil Code, the Code of Commerce and COGSA, for the breach of its contract of carriage with Lavine.

- New World International Development Corporation vs. NYK-FilJapan Shipping Corporation, GR No. 171468, August 24, 2011

NEW WORLD INTERNATIONAL DEVELOPMENT (PHILS.), INC. v. NYK-FILJAPAN SHIPPING CORP., et al. / NEW WORLD INTERNATIONAL DEVELOPMENT (PHILS.), INC. v. SEABOARD-EASTERN INSURANCE CO., INC.,

G.R. NOS. 171468/174241, THIRD DIVISION, 24 AUGUST 2011, (ABAD, J.)

The carrier and the ship shall be discharged from all liability in case of loss or damage unless the suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

FACTS:

New World International Development (Phils.), Inc. (New World) bought from DMT Corporation (DMT) through its agent, Advatech Industries, Inc. (Advatech) three emergency generator sets. DMT shipped the generator sets by truck from Wisconsin, United States, to LEP Profit International, Inc. (LEP Profit) in Chicago, Illinois. From there, the shipment went by train to Oakland, California, where it was loaded on S/S California Luna V59, owned and operated by NYK Fil-Japan Shipping Corporation (NYK) for delivery to petitioner New World in Manila. NYK issued a bill of lading, declaring that it received the goods in good condition. NYK unloaded the shipment in Hong Kong and transshipped it to S/S ACX Ruby V/72 that it also owned and operated. On its journey to Manila, however, ACX Ruby encountered typhoon Kadiang whose captain filed a sea protest on arrival at the Manila South Harbor on October 5, 1993 respecting the loss and damage that the goods on board his vessel suffered. Marina Port Services, Inc. (Marina), the Manila South Harbor arrastre or cargo-handling operator, received the shipment on October 7, 1993. Upon inspection of the three container vans separately carrying the generator sets, two vans bore signs of external damage while the third van appeared unscathed. The shipment remained at Pier 3s Container Yard under Marinas care pending clearance from the Bureau of Customs. Eventually, on October 20, 1993 customs authorities allowed petitioners customs broker, Serbros Carrier Corporation (Serbros), to withdraw the shipment and deliver the same to petitioner New Worlds job site in Makati City. An examination of the three generator sets in the presence of New World's representatives and surveyors of New World's insurer, Seaboard Eastern Insurance Company (Seaboard), revealed that all three sets suffered extensive damage and could no longer be repaired.

For these reasons, New World demanded recompense for its loss from respondents NYK, DMT, Advatech, LEP Profit, LEP International Philippines, Inc. (LEP), Marina, and Serbros.

While LEP and NYK acknowledged receipt of the demand, both denied liability for the loss. Since Seaboard covered the goods with a marine insurance policy, New World sent it a formal claim. Replying, Seaboard required New World to submit to it an itemized list of the damaged units, parts, and accessories, with corresponding values, for the processing of the claim. However, New World did not submit what was required of it, insisting that the insurance policy did not include the submission of such a list in connection with an insurance claim. Reacting to this, Seaboard refused to process the claim.

New World filed an action for specific performance and damages against all the respondents before the RTC of Makati City which rendered a decision absolving the various respondents from liability with the exception of NYK. On appeal, the Court of Appeals (CA) held that the submission of

the itemized listing was a reasonable requirement that Seaboard asked of New World. Further, the CA held that the one-year prescriptive period for maritime claims applied to Seaboard, as insurer and subrogee of New World's right against the vessel owner. New World's failure to comply promptly with what was required of it prejudiced such right.

ISSUE:

Whether New World can still recover from Seabord.

RULING:

YES. The record shows that petitioner New World complied with the documentary requirements evidencing damage to its generator sets.

The marine open policy that Seaboard issued to New World was an all-risk policy. Such a policy insured against all causes of conceivable loss or damage except when otherwise excluded or when the loss or damage was due to fraud or intentional misconduct committed by the insured. The policy covered all losses during the voyage whether or not arising from a marine peril. Here, the policy enumerated certain exceptions like unsuitable packaging, inherent vice, delay in voyage, or vessels unseaworthiness, among others. But Seaboard had been unable to show that petitioner New World's loss or damage fell within some or one of the enumerated exceptions.

What is more, Seaboard had been unable to explain how it could not verify the damage that New Worlds goods suffered going by the documents that it already submitted. Seaboard cannot pretend that the above documents are inadequate since they were precisely the documents listed in its insurance policy. Being a contract of adhesion, an insurance policy is construed strongly against the insurer who prepared it.

Regarding prescription of claims, Section 3(6) of the COGSA provides that the carrier and the ship shall be discharged from all liability in case of loss or damage unless the suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. The last day for filing such a suit fell on October 7, 1994. The record shows that petitioner New World filed its formal claim for its loss with Seaboard, its insurer, a remedy it had the right to take, as early as November 16, 1993 or about 11 months before the suit against NYK would have fallen due.

In the ordinary course, if Seaboard had processed that claim and paid the same, Seaboard would have been subrogated to petitioner New Worlds right to recover from NYK. And it could have then filed the suit as a subrogee. But, as discussed above, Seaboard made an unreasonable demand on February 14, 1994 for an itemized list of the damaged units, parts, and accessories, with corresponding values when it appeared settled that New World's loss was total and when the insurance policy did not require the production of such a list in the event of a claim.

- PIONEER INSURANCE and SURETY CORPORATION v. APL CO., PTE. LTD., G.R. No. 226345, August 2, 2017

PIONEER INSURANCE and SURETY CORPORATION *v.* APL CO., PTE. LTD.

G.R. NO. 226345, SECOND DIVISION, AUGUST 2, 2017, MENDOZA, J.:

Strictly applying the terms of the Bill of Lading, the one-year prescriptive period under the COGSA should govern because the present case involves loss of goods or cargo.

FACTS:

Chillies Export House Limited, turned over to respondent APL Co. Pte. Ltd. (*APL*) 250 bags of chili pepper for transport from the port of Chennai, India, to Manila. The shipment, with a total declared value of $12,272.50, was loaded on board M/V Wan Hai 262. In turn, BSFIL Technologies, Inc. (*BSFIL*), as consignee, insured the cargo with petitioner Pioneer Insurance and Surety Corporation.

The shipment arrived at the port of Manila and was temporarily stored at North Harbor, Manila. Later, the bags of chili were withdrawn and delivered to BSFIL. Upon receipt thereof, it discovered that 76 bags were wet and heavily infested with molds. The shipment was declared unfit for human consumption and was eventually declared as a total loss.

As a result, BSFIL made a formal claim against APL and Pioneer Insurance. Pioneer Insurance paid BSFIL ₱195,505.65 after evaluating the claim.Having been subrogated to all the rights and cause of action of BSFIL, Pioneer Insurance sought payment from APL, but the latter refused. This prompted Pioneer Insurance to file a complaint for sum of money against APL on February 1, 2013.

ISSUE:

Whether or not the one year prescriptive period under the Carriage of Goods by Sea Act (COGSA) applies.

RULING:

YES, the one year prescriptive period under COGSA applies in this case.

The cardinal rule in the interpretation of contracts is embodied in the first paragraph of Article 1370 of the Civil Code: "if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control." The stipulations in the Bill of Lading between the parties are clear and unequivocal.

It was categorically stated in the Bill of Lading that the carrier shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought in the proper forum within nine (9) months after delivery of the goods or the date when they should have been delivered. The same, however, is qualified in that when the said nine-month period is contrary to any law compulsory applicable, the period prescribed by the said law shall apply.

The present case involves lost or damaged cargo, wherein the one-year prescriptive period under the COGSA applies. A reading of the Bill of Lading between the parties reveals that the nine-month prescriptive period is not applicable in all actions or claims. As an exception, the nine-month period is inapplicable when there is a different period provided by a law for a particular claim or action. Thus, it is readily apparent that the exception under the Bill of Lading became operative because there was a compulsory law applicable which provides for a different prescriptive period. Hence, strictly applying the terms of the Bill of Lading, the one-year prescriptive period under the COGSA should govern because the present case involves loss of goods or cargo.

6. Limitation of Liability

- Eastern Shipping Lines, Inc. vs. Intermediate Appellate Court, G.R. No. L-69044, May 29, 1987

EASTERN SHIPPING LINES, INC. ***v.*** **INTERMEDIATE APPELLATE COURT and DEVELOPMENT INSURANCE & SURETY CORPORATION**
G.R. No. L-69044, May 29, 1987, FIRST DIVISION, ***Melencio- Herrera, J.***

The 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.

FACTS
In G.R. No. 69044, a vessel operated by Eastern Shipping Lines, Inc. *(Eastern Shipping),* loaded at Kobe, Japan for transportation to Manila, 5000 pieces of calorized lance pipes in 28 packages consigned to Philippine Blooming Mills Co., Inc., and 7 cases of spare parts consigned to Central Textile Mills, Inc.; Both sets of goods were insured with Development Insurance and Surety Corp *(Development Insurance).* In G.R. No. 71478, the same vessel took on board 128 cartons of garment fabrics and accessories, in 2 containers, consigned to Mariveles Apparel Corporation which was insured by Nisshin Fire and Marine Insurance Co. *(Nishin),* and two cases of surveying instruments consigned to Aman Enterprises and General Merchandise which was insured by Dow Fire and Marine Insurance Co., Ltd *(Dowa).* Enroute for Kobe, Japan, to Manila, the vessel caught fire and sank, resulting in the total loss of ship and cargo. Development Insurance, Nishin, and Dowa paid the corresponding marine insurance values to the consignees concerned and were thus subrogated unto the rights of the latter as the insured.

Development Insurance filed a suit against Eastern Shipping for the recovery of the amounts it had paid to the insured. The latter denied liability mainly on the ground that the loss was due to an extraordinary fortuitous event, hence, it is not liable under the law. Nishin and Dowa also filed suit against Eastern Shipping for the recovery of the insured value of the cargo lost imputing unseaworthiness of the ship and non- observance of extraordinary diligence by Eastern Shipping. The latter 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.

ISSUES

1. Which law shall govern- the Civil Code provisions on Common Carriers or the Carriage of goods by Sea
Act?
2. Who has the burden of proof to show negligence of the carrier?

RULING

1. 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. The liability of Eastern Shipping

is governed primarily by the Civil Code. 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. Thus, the Carriage of Goods by Sea Act, a special law, is suppletory to the provisions of the Civil Code.

2. The burden is upon Eastern Shipping Lines to prove that it has exercised the extraordinary diligence required by law. Under the Civil Code, *the 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.* Common carriers are responsible for the loss, destruction, or deterioration of the goods unless the same is found on any of the cases under Article 1734 of the Civil Code. Eastern Shipping claims that the loss of the vessel by fire exempts it from liability under the phrase "natural disaster or calamity in the said article. However, the Supreme Court is of the opinion that fire may not be considered a natural disaster or calamity as it arises almost invariably from some act of man or by human means. Pursuant to Article 1733, common carriers are bound to extraordinary diligence in the vigilance over the

- Belgian Overseas Chartering and Shipping N.V. vs. Philippine First Insurance Co., Inc., G.R. No. 143133, June 5, 2002

BELGIAN OVERSEAS CHARTERING AND SHIPPING N.V. vs. PHILIPPINE FIRST INSURANCE CO., INC.
G.R. No. 143133, 5 June 2002, THIRD DIVISION (Panganiban, J.)

Even if the fact of improper packaging was known to the carrier or its crew or was apparent upon ordinary observation, it is not relieved of liability for loss or injury resulting therefrom, once it accepts the goods notwithstanding such condition.

FACTS

CMC Trading shipped on board M/V Anangel Sky‟, 242 coils of various Prime Cold Rolled Steel sheets for transportation to Manila consigned to Philippine Steel Trading Corporation. The shipment arrived in Manila and it was discovered that four (4) coils were in bad condition. Philippine First Insurance Co., subrogated to the rights of the consignee, claimed damages against the shipper, Belgian Overseas Chartering and Shipping N.V. (Belgian).

Belgian denied liability imputing that the damage and/or loss was due to pre-shipment damage, to the inherent nature, vice or defect of the goods. It specifically point out to the notation on the Bill of Lading which states: "metal envelopes rust stained and slightly dented", and assume that the same is the proximate cause of the damage or destruction.
The trial court dismissed the complaint. On appeal the Court of Appeals ruled in favor of the insurance company.

ISSUE
Whether or not the notation in the Bill of Lading is sufficient to exempt the carrier from liability.

RULING
NO. 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. However, such presumption will not arise if

the loss was due to the character of the goods or defects in the packaging or the container (Art. 1733 par.4 Civil Code).

True, the words "metal envelopes rust stained and slightly dented" were noted on the Bill of Lading, however, there is no showing that Belgian exercised due diligence to forestall or lessen the loss (Art. 1742, Civil Code). Having been in the service for several years, the master of the vessel should have known at the outset that metal envelopes in the said state would eventually deteriorate when not properly stored while in transit. Equipped with the proper knowledge of the nature of steel sheets in coils and of the proper way of transporting them, the master of the vessel and his crew should have undertaken precautionary measures to avoid possible deterioration of the cargo. But none of these measures was taken. Having failed todischarge the burden of proving that they have exercised the extraordinary diligence required by law, Belgian cannot escape liability for the damage to the four coils.

Further, even if the fact of improper packing was known to the carrier or its crew or was apparent upon ordinary observation, it is not relieved of liability for loss or injury resulting therefrom, once it accepts the goods notwithstanding such condition. Thus, Belgian has not successfully proven the application of the exception in the present case.

WHEREFORE, the Petition is partly granted and the assailed Decision ***MODIFIED***. Petitioners' liability is reduced to US$2,000 plus interest at the legal rate of six percent from the time of the filing of the Complaint on July 25, 1991 until the finality of this Decision, and 12 percent thereafter until fully paid. No pronouncement as to costs.

- Philam Insurance Company vs. Heung Ah Shipping Corporation and Wallem Shipping Inc., G.R. No. 18771 and G.R. No. 187812, July 23, 2014

PHILAM INSURANCE COMPANY, INC. V. HEUNG-A SHIPPING CORPORATION G.R. No. 187701, 23 July 2014, FIRST DIVISION (Reyes, J.)

In a contract of affreightment, the voyage remains under the responsibility of the carrier and it is answerable for the loss of goods received for transportation. The charterer is free from liability to third persons in respect of the ship.

FACTS

Novartis Consumer Health Philippines Inc. (NOVARTIS) imported from Jinsuk Trading Co. Ltd. (JINSUK) in South Korea, 19 pallets of 200 rolls of Ovaltine Power 18 Glaminated plastic packaging material. In order to ship, JINSUK engaged the services of Protop Shipping Corporation (PROTOP), a freight forwarder. PROTOP shipped the cargo through DONGNAMA Shipping Co. Ltd. (DONGNAMA) which in turn loaded the same on M/V Heung-A Bangkok V-019, owned and operated by Heung-A Shipping Corporation (HEUNG-A), pursuant to a 'slot charter arrangement' whereby a space in the latter's vessel was reserved for the exclusive use of the former.

NOVARTIS insured the shipment with Philam Insurance Company Inc. (PHILAM). The shipment reached NOVARTIS, and upon inspection, the boxes of the shipment were wet and damp. The shipment is entirely damaged and was found out that the damage was caused by salt water. NOVARTIS rejected the shipment and filed an insurance claim with PHILAM and the latter was subrogated to all the rights and claims of NOVARTIS. PHILAM filed a complaint for damages against

the parties to the shipment. HEUNG- A denied liability by arguing that he is not the carrier in so far as NOVARTIS is concerned and asserted that its only obligation was to provide DONGNAMA a space on board his ship.

The trial court ruled declaring HEUNG-A as the common carrier and held it liable. The ruling was affirmed by the appellate court.

ISSUE
Whether or not HEUNG-A is the common carrier that should be liable to the damage sustained by the package while on transit.

RULING
YES, HEUNG-A is the common carrier. HEUNG-A's slot charter arrangement with DONGNAMA is a charter party arrangement.

A charter party is a contract whereby an entire ship or some principal part thereof, is let by the owner to another person for a specified time or use. It has two types. First it could be a **contract of** affreightment whereby the use of shipping space on vessels were leased in part or as a whole, to carry goods for others. The charter-party provides for the hire of vessel only, either for a definite period of time (time charter) of for a single or consecutive voyage (voyage charter). The shipowner supplies the ship's stores, pay for the wages of the master and the crew, and defray the expenses for the maintenance of the ship. The voyage remains under the responsibility of the carrier and it is answerable for the loss of goods received for transportation. The charterer is free from liability to third persons in respect to the ship.

Second, charter by demise or bareboat charter under which the whole vessel is let to the charterer with a transfer to him of its entire command and possession and consequent control over its navigation, including the master and the crew, who are his servants. The charterer mans the vessel with his own people and becomes, in effect, the owner for the voyage or service stipulated and hence liable for damages or loss sustained by the goods transported.

Clearly, the 'slot charter arrangement' between HEUNG-A and DONGNAMA, where the latter is reserved a space in the vessel is a contract of affreightment. The arrangement did not divest HEUNG-A its character as the common carrier nor relieve it of any accountability for the shipment.

As a common carrier, it is presumed to have been at fault or negligent if the goods they transported deteriorated or got lost or destroyed, unless they prove that they exercise extraordinary diligence in transporting the same. HEUNG-A failed to rebut this prima facie presumption; hence, it is answerable for the damages incurred by the goods received for transportation.

WHEREFORE, all the foregoing considered, the Decision dated January 30, 2009 of the Court of Appeals in CA-G.R. CV No. 89482 is hereby AFFIRMED with MODIFICATION in that the interest rate on the award of US$8,500.00 shall be six percent (6%) per annum from the date of finality of this judgment until fully paid.

U. Air Transportation

1. The nature of an airline's contract of carriage

- British Airways vs. Court of Appeals, G.R. No. 121824, January 29, 1998

BRITISH AIRWAYS, petitioner, vs. **COURT OF APPEALS, GOP MAHTANI, and PHILIPPINE AIRLINES,** respondents.
G.R. No. 121824 January 29, 1998 THIRD DIVISION **ROMERO, *J.:***

The contract of air transportation was exclusive between Mahtani and BA. It is undisputed that PAL, in transporting Mahtani from Manila to HK, acted as the agent of BA. It is a well-settled rule that an agent is also responsible for any negligence in the performance of its function and is liable for damages which the principal may suffer by reason of its negligent act. Since the instant petition was based on breach of contract of carriage, Mahtani can only sue BA and not PAL, since the latter was not a party to the contract. However, this is not to say that PAL is relieved from any liability due to any of its negligent act.

FACTS
Mahtani decided to visit his relatives in Bombay, India. He obtained services of Mr. Gumar to prepare his travel plans. The latter purchased a ticket from British Airways (BA). Since BA had no direct flights from Manila to Bombay, Mahtani had to take a flight to HongKong via PAL, and upon arrival in HK he had to take a connecting flight to Bombay on board BA. Mahtani checked in at the PAL counter in Manila his 2 pieces of luggage containing his clothing and personal effects, confident that upon reaching HK, the same would be transferred to the BA flight bound for Bombay. When Mahtani arrived in Bombay, he discovered that his luggage was missing and that upon inquiry from the BA representatives, he was told that the same might be diverted to London. After one week, BA finally advised him to file a claim by accomplishing the Property Irregularity Report. Back in the Philippines, Mahtani filed his claim for damages against BA and Mr. Gumar. BA contended that Mahtani did not have cause of action against it. BA also filed a third party complaint against PAL alleging that the reason for the non-transfer of the luggage was due to the latter's late arrival in HK, thus leaving hardly any time for the proper transfer of Mahtani's luggage to the BA aircraft bound for Bombay. PAL disclaimed liability arguing that there was adequate time to transfer the luggage to BA facilities in HK.

Trial court rendered its decision in favor of Mahtani. The third party complaint against PAL was dismissed for lack of cause of action. CA affirmed in toto.

ISSUES:
1. Whether or not BA is liable for compensatory damages and attorney's fees.
2. Whether or not the dismissal of the third party complaint is correct.

RULING
1. Yes. In determining compensatory damages, it is vital that the claimant satisfactorily prove during the trial the existence of the factual basis of the damages and its causal connection to the defendant's acts. The benefits of limited liability are subject to waiver such as when the air carrier failed to raise timely objections during the trial when questions and answers regarding the actual claims and damages sustained by the passenger were asked. In the case at bar, BA had waived the defense of limited liability when it allowed Mahtani to testify as to the actual damages he incurred due to the misplacement of his luggage, without any objection.

2. No. The contract of air transportation was exclusive between Mahtani and BA. It is undisputed that PAL, in transporting Mahtani from Manila to HK, acted as the agent of BA. It is a well-settled rule that an agent is also responsible for any negligence in the performance of its function and is liable for damages which the principal may suffer by reason of its negligent act. Since the instant petition was based on breach of contract of carriage, Mahtani can only sue BA and not PAL, since the latter was not a party to the contract. However, this is not to say that PAL is relieved from any liability due to any of its negligent act.

- Collin A. Morris vs. Court of Appeals, G.R. No. 127957, February 21, 2001

COLLIN A. MORRIS and THOMAS P. WHITTIER, petitioner, vs. COURT OF APPEALS (Tenth Division) and SCANDINAVIAN AIRLINES SYSTEM, respondents.
G.R. No. 127957, February 21, 2001, SECOND DIVISION, PARDO, *J.*

To begin with, it must be emphasized that a contract to transport passengers is quite different kind and degree from any other contractual relations, and this is because relation, which an air carrier sustains with the public. Its business is mainly with the travelling public. It invites people business is mainly with the traveling public. It invites people to avail [themselves] of the comforts and advantages it offers. The contract of air carriage, therefore, generates a relation attended with a pubic duty. Neglect or malfeasance of the carrier's employees naturally could give ground for an action for damages."

FACTS

On February 14, 1978, petitioners filed with the Regional Trial Court, Makati branch 143 an action for damages for breach of contract of air carriage against respondent airline because they were bumped off from SAS Flight SK 893, Manila-Tokyo, on February 14, 1978, despite a confirmed booking in the first class section of the flight.

Petitioners Collin A. Morris and Thomas P. Whittier were American citizens; the vice-president for technical service and the director for quality assurance, respectively, of Sterling Asia, a foreign corporation with regional headquarters at No. 8741 Paseo de Roxas, Makati City.
Respondent Scandinavian Airline System (SAS for brevity) is and at times material hereto has been engaged in the commercial air transport of passengers globally

Petitioner Morris and co-petitioner Whittier had a series of business meetings with Japanese businessmen in Japan from February 14 to February 22, 1978. They requested their travel agent, Staats Travel Service. Inc. to book them as first-class passengers in SAS.

At the airport, they were informed that there were no more seats on the plane for which reason they could not be accommodated on the flight. Staats Travel Service called and confirmed their booking. Thereafter, petitioner Morris and Whittier returned to respondent's check-in counter anticipating that they would be allowed to check-in. However, the check-in counter was closed. When they informed Ms. Ponce, in charge at the check-in counter that arrangements had been made with respondents office, she ignored them. Even respondent's supervisor, Raul Basa, ignored them and refused to answer their question why they could not be accommodated in the flight despite their confirmed booking.

Ms. Erlinda Ponce, SAS employee on duty at the check-in counter on February 14, 1978 testified that they were not accommodated on the flight because they checked-in after the flight manifest had been closed forty (40) minutes prior to the plane's departure. Their names were crossed out and the symbols "NOSH", meaning NO SHOW, written after their names. The "NO SHOW" notation could mean either that the booked passengers of his travel documents were not at the counter at the time of the closing of the flight manifest.

ISSUE
Whether or not petitioners' complaint for damages against respondent for breach of contract of air carriage be granted.

RULING
The petition has no merit.
"To begin with, it must be emphasized that a contract to transport passengers is quite different kind and degree from any other contractual relations, and this is because relation, which an air carrier sustains with the public. Its business is mainly with the travelling public. It invites people business is mainly with the traveling public. It invites people to avail [themselves] of the comforts and advantages it offers. The contract of air carriage, therefore, generates a relation attended wit h a pubic duty. Neglect or malfeasance of the carrier's employees naturally could give ground for an action for damages."

"In awarding moral damages for breach of contract of carriage, the breach must be wanton and deliberately injurious or the one responsible acted fraudulently or with malice or bad faith."[17] "Where in breaching the contract of carriage the defendant airline is not shown to have acted fraudulently or in bad faith, liability for damages is limited to the natural and probable consequences of the breach of obligation which the parties had foreseen or could have reasonably foreseen. In that case, such liability does not include moral and exemplary damages."[18]"Moral damages are generally not recoverable in culpa contractual except when bad faith had been proven. However, the same damages may be recovered when reach of contract of carriage results in the death of a passenger."
In the instant case, assuming *arguendo* that breach of contract of carriage may be attributed to respondent, petitioners' travails were directly traceable to their failure to check-in on time, which lewd to respondent's refusal to accommodate them on the flight.

"The rule is that moral damages are recoverable in a damage suit predicated upon a breach of contract of carriage only where (a) the mishap result in the death of a passenger and (b) it is proved that the carrier was guilty of fraud and bad faith even if death does not result.

For having arrived at the airport after the closure of the flight manifest, respondent's employee could not be faulted for not entertaining petitioners' tickets and travel documents for processing, as the checking in of passengers for SAS Flight SK 893 was finished, there was no fraud or bad faith as would justify the court's award or normal damages.

As we find petitioners not entitled to moral damages, "an award of exemplary damages is likewise baseless."[23]"Where the award of moral and exemplary damages is eliminated, so must the award for attorney's fees be deleted."

2. **Cases of liability of air carrier**

- Philippine Airlines, Inc. vs. Ramos, 207 SCRA 461 (1992)

PHILIPPINE AIRLINES, INC., petitioner, vs. JAIME M. RAMOS, NILDA RAMOS, ERLINDA ILANO, MILAGROS ILANO, DANIEL ILANO AND FELIPA JAVALERA, respondents.
G.R. No. 92740 March 23, 1992 FIRST DIVISION MEDIALDEA, *J.*

When the private respondents purchased their tickets, they were instantaneously bound by the conditions of the contract of carriage particularly the check-in time requirement. The terms of the contract are clear. Their failure to come on time for check-in should not militate against PAL. Their non-accommodation on that flight was the result of their own action or inaction and the ensuing cancellation of their tickets by PAL is only proper.

FACTS

Plaintiffs complained that they were not allowed to board their PAL(Philippines Air Lines) flight, despite the fact that they went to the check-in counter one hour before departure. They alleged that when they arrived there no one was at the counter. They testified that the PAL clerk arrived 30 minutes before departure. PAL however, presented as evidence the plaintiffs' tickets with notation "late 4:04" and the passenger manifest which showed that two other passengers who arrived earlier than plaintiffs, were not accommodated.

ISSUE

Whether or not the private respondents were late in checking-in for their flight from Naga City to Manila on September 24. 1985?

RULING

YES. It is an admitted fact that the private respondents knew of the required check-in time for passengers. The time requirement is prominently printed as one of the conditions of carriage on their tickets, *i.e.*, that the airport passenger should check-in *at least one hour* before published departure time of his flight and PAL shall consider his accommodation forfeited in favor of waitlisted passengers if he fails to check-in at least 30 minutes.

We note that while the aforequoted condition has always been applied strictly and without exception , the station manager, however, may exercise his discretion to allow passengers who checked-in late to board *provided* the flight is not fully booked and seats are available. On September 24, 1985, flight 264 from Naga to Manila was fully booked owing to the Peñafrancia Festival. In addition, PAL morning flights 261 and 262 were canceled resulting in a big number of waitlisted passengers.
The private respondents claim that they were on time in checking-in for their flight; that no PAL personnel attended to them until much later which accounted for their late check-in; that PAL advanced the check-in time and the departure of their flight resulting in their non-accommodation; and that they suffered physical difficulties, anxieties and business losses.

The evidence on record does not support the above contentions. We note that there were two other confirmed passengers who came ahead of the private respondents but were refused

accommodation because they were late. The private respondents submitted no controverting evidence. As clearly manifested above, the intervening time between Capati and Go and the private respondents took only a mere second. If indeed, the private respondents were at the check-in counter at 3:30 p.m., they could have been the first ones to be attended to by Araquel than Capati and Go. They cold have also protested if they were the earliest passengers at the counter but were ignored by Araquel in favor of Go and Capati. They did not.

It is likewise improbable that not a single PAL personnel was in attendance at the counter when the check-in counter was supposed to be opened at 3:25 p.m. It mist be remembered that the morning flight to Manila was canceled and hence, it is not farfetched for Us to believe that the PAL personnel then have their hands full in dealing with the passengers of the morning flight who became waitlisted passengers. Ilano's declaration becomes even more patently unreliable in the face of the Daily Station Report of PAL dated September 24, 1985 which contained the working hours of its personnel from 0600 to 1700 and their respective assignments,

It is significant to note that there were no other passenger who checked-in late after the private respondents. In the absence of any controverting evidence, the documentary evidence presented to corroborate the testimonies of PAL's witnesses are *prima facie* evidence of the truth of their allegations. The plane tickets of the private respondents,(with emphasis on the printed condition of the contract of carriage regarding check-in time as well as on the notation "late 4:02" stamped on the flight coupon by the check-in clerk immediately upon the check-in of private respondents) and the passenger Manifest of Flight PR 264, (which showed the non-accommodation of Capati and Go an the private respondents)are entries made in the regular course of business which the private respondents failed to overcome with substantial and convincing evidence other than their testimonies. Consequently, they carry more weight and credence. A writing or document made contemporaneously with a transaction in which are evidenced facts pertinent to an issue, when admitted as proof of those facts, is ordinarily regarded as more reliable proof and of greater probative force than the oral testimony of a witness as to such facts based upon memory and recollection. Spoken words could be notoriously unreliable as against a written document that speaks a uniform language.

This dictum is amply demonstrated by the diverse allegations of the private respondents in their complaint (where they claimed that no one was at the counter until thirty (30) minutes before the published departure time and that *the employee* who finally attended to them marked them late, and in their testimonies (where they contended that there were *two different PAL personnel* who attended to them at the check-in counter. Private respondents' only objection to these documents is that they are self-serving cannot be sustained. The hearsay rule will not apply in this case as statements, acts or conduct accompanying or so nearly connected with the main transaction as to form a part of it, and which illustrate, elucidate, qualify or characterize the act, are admissible as a part of the *res gestae.*

Based on these circumstances, We are inclined to believe the version of PAL. When the private respondents purchased their tickets, they were instantaneously bound by the conditions of the contract of carriage particularly the check-in time requirement. The terms of the contract are clear. Their failure to come on time for check-in should not militate against PAL. Their non-accommodation on that flight was the result of their own action or inaction and the ensuing cancellation of their tickets by PAL is only proper.

Furthermore, We do not find anything suspicious in the fact that PAL flight 264 departed at 4:13 p.m. instead of 4:25 p.m. Apart from their verbal assertions, the private respondents did not show any evidence of irregularity. It being clear that all the passengers have already boarded, there was no sense in keeping them waiting for the scheduled time of departure before the plane could take flight.

- Sarreal, Sr. vs. Japan Airlines Co. Ltd., 207 SCRA 359 (1992)

LOPE SARREAL, SR., vs. **JAPAN AIRLINES CO., LTD., and HON. INTERMEDIATE APPELATE COURT,** respondents.
G.R. No. 75308 March 23, 1992 THIRD DIVISION **GUTIERREZ, JR., *J.***

Certainly, a man of such stature was aware of the restrictions carried by his ticket and the usual procedure that goes with traveling. The petitioner ought to know that it was still necessary to verify first from Thai International if they would honor the endorsement of his JAL ticket or confirm with the airline if he had a seat in the July 2 flight. JAL cannot now be faulted for the petitioner's omission or negligence.

FACTS
The petitioner alleged in his complaint that the is a prominent international boxing matchmaker and business manager of world champion boxers which require him to take frequent international trips. On September 14, 1979, the petitioner purchased in Bangkok from private respondent Japan Air Lines (JAL) ticket having various foreign destinations from Bangkok and back to Bangkok. On or about June 23, 1980, he was in Los Angleles, USA with his business representative. They were negotiating a possible match between the latter and the winner of the " Netrnoi Vorasing - Brigildo Cañada" main event fight which was scheduled on July 4, 1980 in Manila. This agreement was to be confirmed by the petitioner through overseas call in Manila on or before July 2, 1980.

The petitioner then flew from Los Angeles to Tokyo arriving thereat on June 26, 1980. At the Narita Airport Office, the petitioner inquired if there was a JAL flight from Bangkok to Manila on July 2, 1980. He explained to a lady employee of JAL that he had a very important business in Manila on July 2, 1980. He also told her that if he could not take a flight from Bangkok to Manila on that date, he would not be going to Bangkok anymore. The JAL lady employee looked into her scheduled book put a stamp on the petitioner's ticket and told him not to worry because she has endorsed his JAL ticket to Thai International leaving Bangkok on July 2, 1980 for Manila. Relying on the assurance of the lady employee, the petitioner then proceeded to Bangkok.

However, in the morning of July 2, 1980, when the petitioner was about to board the said Thai International, he was not allowed to board the said plane through it had available seats because he was told that his ticket was not endorsable. Due to failure to reach Manila, Espada cancelled his transaction with the petitioner and decided to have the champion fight in Japan instead.

Had the petitioner been able to reach Manila on July 2, 1980, he could have confirmed the world championship match between the winner Vorasing and the champion Zapata from which Vorasing and the champion Zapata from which Vorasing could have earned at least US$20,000.00, twenty percent (20%) of which was equivalent to US$4,000.00 or approximately P30,000.00 which could have received by him and had the said world title fight been realized, petitioner would have earned

around $120,000.00 net or approximately P900,000.00. Hence, the petitioner file an action for damages against private respondent JAL premised on the breach of contract of carriage.

ISSUE
Whether the private respondent JAL should be held liable? (NO)

RULING
The evidence on record, reveals that the ticket bears no endorsement at all nor an assurance that petitioner would get a seat in Thai International flight from Bangkok to Manila on July 2.
The ticket purchased by the petitioner was a discounted one and as testified by the JAL Traffic Supervisor, it was not endorseable. The petitioner also testified that it was not his intention to have his ticket endorsed.

We agree with the respondent court that the assurance made by the lady employee to the petitioner was merely the latter's chances of getting a seat in Thai International flight from Bangkok to Manila considering that from the data gathered by said lady employee, Thai International on the average runs about half full on its flight from Bangkok to Manila. It was from this reliable information that petitioner decided to make the side trip to Bangkok. There was no assurance from the lady employee nor from Thai International that the petitioner's ticket would be honored by the airline.

The stub that the lady employee put on the petitioner's ticket showed among other coded items, under the column "status" the letters "RQ" — which was understood to mean "Request". Clearly, this does not mean a confirmation but only a request. JAL Traffic Supervisor explained that it would have been different if what was written on the stub were the letters "ok" in which case the petitioner would have been assured of a seat on said flight. But in this case, the petitioner was more of a wait-listed passenger than a regularly booked passenger.

The petitioner is said to be a well-traveled person who average two long trips to Europe and two trips to Bangkok every month since 1945. He claims to have used practically all the airlines but mostly Philippine Airlines whenever he travels abroad in connection with his occupation as international boxing matchmaker and manager of world-champion boxers. Certainly, a man of such stature was aware of the restrictions carried by his ticket and the usual procedure that goes with traveling. The petitioner ought to know that it was still necessary to verify first from Thai International if they would honor the endorsement of his JAL ticket or confirm with the airline if he had a seat in the July 2 flight. The petitioner left Narita on June 26, 1980. He was scheduled to leave for Manila on July 2, 1980. It is standard procedure for any passenger with a two day stopover in a foreign city to confirm the validity of his ticket and the availability of a seat on his next flight out of that city. Unfortunately, the petitioner failed to take these standard precautions. JAL cannot now be faulted for the petitioner's omission or negligence.

- Pan American World Airways, Inc. vs. Intermediate Appellate Court, G.R. No. 68988, June 21, 1990

PAN AMERICAN WORLD AIRWAYS, INC., petitioners, vs. **INTERMEDIATE APPELLATE COURT, and EDMUNDO P. ONGSIAKO,** respondents.
G.R. No. L-68988 June 21, 1990 FIRST DIVISION **NARVASA, *J.:***

Article 2220 of the Civil Code says that moral damages may be awarded in "breaches of contract where the defendant acted fraudulently or in bad faith." So, proof of infringement of an agreement by a party, standing alone, will not justify an award of moral damages. There must, in addition, as the law points out, be competent evidence of fraud of bad faith by that party. If the plaintiff, for instance, fails to take the witness stand and testify as to his social humiliation, wounded feelings, anxiety, etc., moral damages cannot be recovered. The rule applies, of course, to common carriers.

FACTS

The private respondent Edmundo P. Ongsiako, with one piece of checked-in luggage, was a paying passenger on the PAN AM Flight 842 that left Manila for Honolulu, Hawaii, U.S.A., at about 12:30 p.m. on June 8, 1978, with Los Angeles, California, as his ultimate destination. In Honolulu, Ongsiako "discovered that his luggage was not carried on board and that it was left at PAN AM's airport office in Manila where it was found a week later. A PAN AM employee in Honolulu, instead of helping him search for his bag, arrogantly threatened to bump him off in Honolulu should he persist in looking for his bag. PAN AM, latter offers to forward the luggage to Ongsiako in Los Angeles or San Francisco but were refused, because, by the time it was found, Ongsiako was about to leave Los Angeles, and secondly, Ongsiako was not sure where he would be staying in San Francisco. A verbal complaint was made first at PAN AM's Honolulu airport office, then at Los Angeles, but written complaint was made on July 20, 1978; and the overtures towards settlement were rejected for being too inconsequential.

ISSUE

Whether the private respondent is entitled to moral damages? (YES)

RULING

Article 2220 of the Civil Code says that moral damages may be awarded in "breaches of contract where the defendant acted fraudulently or in bad faith." So, proof of infringement of an agreement by a party, standing alone, will not justify an award of moral damages. There must, in addition, as the law points out, be competent evidence of fraud of bad faith by that party. If the plaintiff, for instance, fails to take the witness stand and testify as to his social humiliation, wounded feelings, anxiety, etc., moral damages cannot be recovered. The rule applies, of course, to common carriers.

This Court finds that these basic legal principles have been correctly applied by both the Trial Court and the Intermediate Appellate Court, in light of the proven facts. Said the latter, on this precise matter:

In the present case, men of reasonable perceptions will not disagree with the conclusion that plaintiff suffered mental anguish, anxiety and shock when he found that his luggage did not travel with him. What traveller would not suffer from such feelings if he found himself in a foreign land without any article of clothing other than what he had on? The injury thus suffered by plaintiff is one that would arise generally, in the special circumstances of this case; it follows as a matter of course. PAN AM breach of the contract was the substantial cause in bringing about the harm or injury to the plaintiff. We adopt here the ruling of the court *a quo*:

"The Court believes and so holds that there is sufficient evidence of gross and reckless negligence amounting to bad faith on the part of defendant. If defendant was not sure that it could transport plaintiff and his luggage to Los Angeles, it should not have accepted plaintiff who was a waitlisted passenger. It is not a valid excuse on its part to claim that plaintiff checked in at the last minute and

that there was insufficient time to load his bag in the plane. In fact, that makes the position of defendant even more untenable, because in accepting and holding on to plaintiff as its passenger, probably to fill in cancelled bookings, although it knew or must have known that the bag of plaintiff might not be loaded on time, it was guilty of conduct amounting to bad faith. ... Accepting last minute passengers and their baggage with no definite assurance that the carrier can comply with its obligation due to lack of time amounts to "negligence so gross and reckless as to amount to malice or bad faith.

PAN AM assails this award of moral damages as without evidentiary foundation, or at the very least, excessive. It argues that no such arrogance or boorishness was displayed by the PAN AM people at the Honolulu Airport, that what simply happened was, citing Ongsiako's own testimony, that when Ongsiako could not find his luggage and asked for help, showing them his baggage tag and ticket, one of the PAN AM employees there, "instead of helping ... (him) looked at their watch and said, you better get up or you will be late on your flight, I am sorry I cannot help you, there are so many people waiting for their turn. ..." It claims, too, that even the Court of Appeals itself declared that it was "not satisfied with the adequacy of the evidence related to the ill-treatment suffered by the plaintiff at the hands of PAN AM Honolulu airport office employees. ..." The quotations from the transcript and judgment of the Appellate Court are out of context. The record of Ongsiako's testimony reveals that he did say that "the PAN AM employee embarrassed ... (him) in Honolulu by shouting at x x (him)," a statement that he reaffirmed twice, and that employee even refused to look at his baggage tag.

As regards the Intermediate Appellate Court, it also did say that it was sustaining "the fun award of moral damages,' but that it did not find that the evidence was adequate to establish that the conduct of PAN AM was so "wanton, reckless, oppressive or malevolent" as to justify an award of exemplary damages, a ruling that is not essentially inconsistent with Ongsiako's version of the occurrence. In any event, even accepting PAN AM's version of the occurrence at face value, it is clear that none of the PAN AM employees exerted the least effort to assist Ongsiako in his predicament, despite his appeal for help; that not one of them even deigned to look at Ongsiako's baggage tag, or listen to his problem, or give assurances that something would be done about his difficulties, or otherwise show any sign of sympathy or commiseration; that instead, they looked at their watches-an impolite and dismaying gesture of impatience, to be sure, considering the circumstances-and told him he could not be helped because there were other people waiting for their turn-to be served, of course, like Ongsiako, as they had a right to expect as paying passengers-and that it was best if he just went to his plane so as not to miss his flight. Surely, these acts of callous indifference to the plight of a person in a foreign land could not be less distressing, depressing or disheartening to the latter, or judged less harshly, simply because not attended by any shouted remarks.

- British Airways vs. Court of Appeals, 258 SCRA 450 (1993)

British Airways, Inc. v. Court of Appeals 12th Division, First International Trading and General Services
G.R. No. 92288 February 9, 1993, SECOND DIVISION, *Nocon, J.*

In dealing with the contract of common carriage of passengers for purpose of accuracy, there are two (2) aspects of the same, namely: (a) the contract "to carry (at some future time)," which contract is consensual and is necessarily perfected by mere consent (See Article 1356, Civil Code of the Philippines), and (b) the contract "of carriage" or "of common carriage" itself which should be

considered as a real contract for not until the carrier is actually used can the carrier be said to have already assumed the obligation of a carrier. (Paras, Civil Code Annotated, Vol. V, p. 429, Eleventh Ed.) In the instant case, the contract "to carry" is the one involved which is consensual and is perfected by the mere consent of the parties.

FACTS

First International Trading and General Services Co. – duly licensed domestic recruitment and placement agency; it received a telex message from its principal ROLACO Engineering and Contracting Services in Jeddah, Saudi Arabia to recruit Filipino contract workers in behalf of said principal

ROLACO paid to the Jeddah branch of petitioner British Airways, Inc. airfare tickets for 93 contract workers with specific instruction to transport said workers to Jeddah on or before March 30, 1981
March 1981: First International was informed by British Airways that ROLACO had forwarded 93 prepaid tickets; First International instructed its travel agent, ADB Travel and Tours. Inc., to book the 93 workers with petitioner but the latter failed to fly said workers, thereby compelling private respondent to borrow money in the amount of P304,416.00 in order to purchase airline tickets from the other airlines for the 93 workers it had recruited who must leave immediately since the visas of said workers are valid only for 45 days and the Bureau of Employment Services mandates that contract workers must be sent to the job site within a period of 30 days

June 1981: First International was again informed by British Airways that it had received a prepaid ticket advice from its Jeddah branch for the transportation of 27 contract workers; First International instructed its travel agent to book the 27 contract workers with the petitioner but the latter was only able to book and confirm 16 seats on its June 9, 1981 flight; on the date of the scheduled flight only 9 workers were able to board said flight while the remaining 7 workers were rebooked to June 30, 1981 which bookings were again cancelled by the petitioner without any prior notice to either private respondent or the workers; thereafter, the 7 workers were rebooked to the July 4,1981 flight of petitioner with 6 more workers booked for said flight; but the confirmed bookings of the 13 workers were again cancelled and rebooked to July 7, 1981

First International paid the travel tax of the said workers as required by British Airways but when the receipt of the tax payments was submitted, the latter informed First International that it can only confirm the seats of the 12 workers on its July 7, 1981 flight; but the confirmed seats of said workers were again cancelled without any prior notice either to First International or said workers; the 12 workers were finally able to leave for Jeddah after First International had bought tickets from the other airlines

July 1981: First International sent a letter to petitioner demanding compensation for the damages in the amount of P350,000.00 it had incurred by the latter's repeated failure to transport its contract workers despite confirmed bookings and payment of the corresponding travel taxes
British Airways' narration:

it received a telex message from Jeddah advising that ROLACO had prepaid the airfares of 100 persons to transport First International's contract workers from Manila to Jeddah on or before March 30, 1981; however, due to the unavailability of space and limited time, it had to return to its sponsor in Jeddah the prepaid ticket advice consequently not even one of the alleged 93 contract workers were booked in any of its flights

June 1981: British Airways received another prepaid ticket advice to transport 16 contract workers of First International to Jeddah but the travel agent of First International booked only 10 contract workers for British Airways' June 9, 1981 flight; however, only 9 contract workers boarded the scheduled flight with 1 passenger not showing up as evidenced by the Philippine Airlines' passenger manifest

First International's travel agent booked seats for 5 contract workers on British Airways' July 4, 1981 flight but said travel agent cancelled the booking of 2 passengers while the other 3 passengers did not show up on said flight

July 1981: the travel agent of First International booked 7 more contract workers in addition to the previous 5 contract workers who were not able to board the July 4, 1981 flight with British Airways' July 7, 1981 flight which was accepted by British Airways subject to reconfirmation

July 1981: British Airways' computer system broke down which resulted to its failure to get a reconfirmation from Saudi Arabia Airlines causing the automatic cancellation of the bookings of First International's 12 contract workers; the computer system of the petitioner was reinstalled the next day and immediately British Airways tried to reinstate the bookings of the 12 workers with either Gulf Air or Saudi Arabia Airlines but both airlines replied that no seat was available on that date and had to place the 12 workers on the wait list; said information was duly relayed to the First International and the 12 workers before the scheduled flight

ISSUE
Whether or Not the British Airways is liable?

RULING
Yes. Its repeated failures to transport First International's workers in its flight despite confirmed booking of said workers clearly constitutes breach of contract and bad faith on its part.

Two aspects of contract of common carriage of passengers:
a. **contract to carry at some future time** –consensual and is necessarily perfected by mere consent
b. **contract of carriage** or of **common carriage itself** –real contract for not until the carrier is actually used can the carrier be said to have already assumed the obligation of a carrier contract to carry was involved in the case; its elements are consent, consideration and object certain

CONSENT: British Airways consent to the contract was manifested by its acceptance of the PTA or prepaid ticket advice that ROLACO has prepaid the airfares of the First International's contract workers advising the appellant that it must transport the contract workers on or before the end of March, 1981 and the other batch in June, 1981

CONSIDERATION: the fare paid for the passengers by the principal of First International

OBJECT CERTAIN: the transport of the passengers from the place of departure to the place of destination

First International has fully complied with the obligation, namely, the payment of the fare and its willingness for its contract workers to leave for their place of destination.
On the other hand, British Airways was remiss in its obligation to transport the contract workers on their flight despite confirmation and bookings made by First International's travelling agent. British Airways should have refused acceptance of the PTA from by First International's principal or to at least inform by First International that it could not accommodate the contract workers.

V. The Warsaw Convention

1. Applicability

- Philippine Airlines Inc. vs. Hon. Adriano Savillo, et. al., G.R. No. 149547, July 4, 2008

PHILIPPINE AIRLINES, INC., petitioner, vs. **HON. ADRIANO SAVILLO, Presiding Judge of RTC Branch 30 , Iloilo City, and SIMPLICIO GRIÑO,** respondents.
G.R. No. 149547, July 4, 2008, THIRD DIVISION **CHICO-NAZARIO, *J.***

Article 19 of the Warsaw Convention provides for the liability on the part of a carrier for "damages occasioned by delay in the transportation by air of passengers, baggage or goods." Article 24 excludes other remedies by further providing that "(1) in the other cases covered by Articles 18 and 19, any action for damages, however founded, can only be brought subject to the conditions and limits set out in the convention." Therefore, a claim covered by the Warsaw Convention can no longer be recovered under local law, if the statute of limitations of two years has already lapsed. Nevertheless, the Court notes that jurisprudence in the Philippines and the United States also recognizes that the Warsaw Convention does not "exclusively regulate" the relationship between passenger and carrier on an international flight. The Court finds that the present case is substantially similar to cases in which the damages sought were considered to be outside the coverage of the Warsaw Convention.

FACTS:
Grino, who was about to participate in a golf tournament in Jakarta, purchased tickets from PAL with the following points of passage: Manila-Singapore-Jakarta-Singapore-Manila.

PAL: Manila to Singapore

Singapore Airlines: Singapore to Jakarta

3 October 1993: In Singapore, however, Singapore Airlines rejected the tickets of Grino and his group because they were NOT endorsed by PAL – Grino tried to contact PAL's airport office, but it was closed.

Eventually, Grino, et al had to purchase tickets from another airline.

Because of the ordeal, Grino got sick and was unable to participate in the golf tournament.

15 August 1997: When PAL and Singapore Airlines both disowned liability and instead blamed the other – Grino filed a complaint for damages against PAL, seeking compensation for moral damages.

PAL: filed a Motion to Dismiss – arguing that the complaint was barred by prescription under the Warsaw Convention. (Art. 29: 2 year prescriptive period)

PAL had received the demand letter on 25 January 1994 – more than 3 years prior to the filing of the complaint.

RTC: DENIED the MtD – NCC and other pertinent laws of the Philippines – NOT the Warsaw Convention – was applicable.

CA: DISMISSED the petition for certiorari filed by PAL – held that Art. 1144 of the NCC (10 year prescriptive period) was applicable.

ISSUE

1. Was the complaint barred?

RULING

1. **NO.** The 2 year prescriptive period under the Warsaw Convention does NOT apply – instead, what applies is the 4 year prescriptive period under the NCC (for actions based on torts).

The Warsaw Convention applies to "all international transportation of persons, baggage or goods performed by any aircraft for hire" – its cardinal purpose is to provide uniformity of rules governing claims arising from international air travel, thus, it precludes a passenger from maintaining an action for personal injury damages under local law when his or her claim does not satisfy the conditions of liability under the Convention.

The Warsaw Convention applies to "all international transportation of persons, baggage or goods performed by any aircraft for hire" – its cardinal purpose is to provide uniformity of rules governing claims arising from international air travel, thus, it precludes a passenger from maintaining an action for personal injury damages under local law when his or her claim does not satisfy the conditions of liability under the Convention.

Article 19 of the Warsaw Convention provides for the liability on the part of a carrier for "damages occasioned by delay in the transportation by air of passengers, baggage or goods." Article 24 excludes other remedies by further providing that "(1) in the other cases covered by Articles 18 and 19, any action for damages, however founded, can only be brought subject to the conditions and limits set out in the convention." Therefore, a claim covered by the Warsaw Convention can no longer be recovered under local law, if the statute of limitations of two years has already lapsed. Nevertheless, the Court notes that jurisprudence in the Philippines and the United States also recognizes that the Warsaw Convention does not "exclusively regulate" the relationship between passenger and carrier on an international flight. The Court finds that the present case is substantially similar to cases in which the damages sought were considered to be outside the coverage of the Warsaw Convention.

In United Airlines v. Uy, the Court Distinguished between the (1) damage to the passenger's baggage and (2) the humiliation he suffered at the hands of the airline's employees. The first cause

of action was covered by the Warsaw Convention which prescribes in two years, while the second was covered by the provisions of the Civil Code on torts, which prescribes in four years. Had the present case merely constituted of claims incidental to the airline's delay in transporting their passengers, Grino's Complaint would have been time-barred under Article 29 of the Warsaw Convention.

In this case, Grino's complaint alleged that both PAL and Singapore Airlines were guilty of gross negligence, which resulted in his being subjected to "humiliation, embarrassment, mental anguish, serious anxiety, fear and distress."
The emotional harm suffered by the private respondent as a result of having been unreasonably and unjustly prevented from boarding the plane SHOULD BE DISTINGUISHED FROM the actual damages which resulted from the same incident.
Under NCC (Torts): emotional harm gives rise to compensation where gross negligence or malice is proven.
Singapore Airlines allegedly barred Grino from boarding the Singapore Airlines flight because PAL allegedly failed to endorse the tickets of private respondent and his companions, despite PAL's assurances to respondent that Singapore Airlines had already confirmed their passage.
An action based on these allegations will not fall under the Warsaw Convention, since the purported negligence on the part of PAL did not occur during the performance of the contract of carriage but days before the scheduled flight – THUS, the 2 year prescriptive period under the Warsaw Convention does NOT apply.
Covered by NCC provisions on Tort: applicable prescriptive period is 4 years (Art. 1146).
NOTE: Had the present case merely consisted of claims incidental to the airlines' delay in transporting their passengers, the private respondent's Complaint would have been time-barred under Article 29 of the Warsaw Convention.

2. Non-applicability

- KLM Royal Dutch Airlines vs. Court of Appeals, 65 SCRA 237 (1975)

KONINKLIJKE LUCHTVAART MAATSHAPPIJ N.V., otherwise known as KLM ROYAL DUTCH AIRLINES, petitioner, vs. **THE HONORABLE COURT OF APPEALS, CONSUELO T. MENDOZA and RUFINO T. MENDOZA,** respondents.
G.R. No. L-31150 July 22, 1975 FIRST DIVISION CASTRO, J.

The applicability of Art. 30 of the Warsaw Convention cannot be sustained. The article presupposes the occurrence of delay or accident. What is manifest here is that the Aer Lingus refused to transport the spouses Mendozas to their planned and contracted destination.

FACTS
Spouses Mendoza approached Mr. Reyes, the branch manager of Philippine Travel Bureau, for consultation about a world tour which they were intending to make with their daughter and niece. Three segments of the trip, the longest, was via KLM. Respondents decided that one of the routes they will take was a Barcelona-Lourdes route with knowledge that only one airline, Aer Lingus, served it. Reyes made the necessary reservations. To this, KLM secured seat reservations for the Mendoza's and their companions from the carriers which would ferry them throughout their trip, which the exception of Aer Lingus. When the Mendoza's left the Philippines, they were issued KLM tickets for the entire trip. However, their coupon for Aer Lingus was marked "on request".

When they were in Germany, they went to the KLM office and obtained a confirmation from Aer Lingus. At the airport in Barcelona, the Mendozas and their companions checked in for their flight to Lourdes. However, although their daughter and niece were allowed to take the flight, the spouses Mendozas were off loaded on orders of the Aer Lingus manager, who brusquely shoved them aside and shouted at them. So the spouses Mendozas took a train ride to Lourdes instead.

Thus, they filed a complaint for damages against KLM for breach of contract of carriage. The trial court decided in favor of the Mendozas. On appeal, the CA affirmed the decision. Hence, KLM brings this petition to the Supreme Court. KLM cites Art 30 of the Warsaw Convention, which states: the passenger or his representatives can take action only against the carrier who performed the transportation during which the accident or delay occurred. Also, KLM avers that the front cover of each ticket reads: that liability of the carrier for damages shall be limited to occurrences on its own line.

ISSUE:

Whether or not KLM is liable for breach of contract of carriage?

RULING:

The applicability of Art. 30 of the Warsaw Convention cannot be sustained. The article presupposes the occurrence of delay or accident. What is manifest here is that the Aer Lingus refused to transport the spouses Mendoza to their planned and contracted destination.

As noted by the Court of Appeals that condition was printed in letters so small that one would have to use a magnifying glass to read the words. Under the circumstances, it would be unfair and inequitable to charge the respondents with automatic knowledge or notice of the said condition so as to preclude any doubt that it was fairly and freely agreed upon by the respondents when they accepted the passage tickets issued to them by the KLM. As the airline which issued those tickets with the knowledge that the respondents would be flown on the various legs of their journey by different air carriers, the KLM was chargeable with the duty and responsibility of specifically informing the respondents of conditions prescribed in their tickets or, in the very least, to ascertain that the respondents read them before they accepted their passage tickets.

The Supreme Court held that KLM cannot be merely assumed as a ticket-issuing agent for other airlines and limit its liability to untoward occurrences on its own line.

The court found, that the passage tickets provide that the carriage to be performed therein by several successive carriers is to be regarded as a "single operation".

- Alitalia vs. Intermediate Appellate Court, G.R. No. 71929, December 4, 1990

ALITALIA, *Petitioner, vs.* INTERMEDIATE APPELLATE COURT and FELIPA E. PABLO, *Respondents.*
G.R. No. 71929, December 4, 1990, FIRST DIVISION, NARVASA, *J.*

The Warsaw Convention however denies to the carrier availment "of the provisions which exclude or limit his liability, if the damage is caused by his willful misconduct or by such default on his part as, in accordance with the law of the court seized of the case, is considered to be equivalent to willful misconduct," or "if the damage is (similarly) caused . . by any agent of the carrier acting within the

scope of his employment."

FACTS:
Dr. Felipa Pablo — an associate professor in the University of the Philippines, and a research grantee of the Philippine Atomic Energy Agency — was invited to take part at a meeting of the Department of Research and Isotopes of the United Nations in Ispra, Italy. To fulfill this engagement, Dr. Pablo booked passage on petitioner airline, ALITALIA.

She arrived in Milan on the day before the meeting. She was however told by the ALITALIA personnel there at Milan that her luggage was "delayed inasmuch as the same . . . (was) in one of the succeeding flights from Rome to Milan." Her luggage consisted of two (2) suitcases: one contained her clothing and other personal items; the other, her scientific papers, slides and other research material. But the other flights arriving from Rome did not have her baggage on board. By then feeling desperate, she went to Rome to try to locate her bags herself. However, her baggage could not be found. Completely distraught and discouraged, she returned to Manila without attending the meeting in Ispra, Italy.

Once back in Manila she demanded that ALITALIA make reparation for the damages thus suffered by her. She rejected Alitalia's offer of free airline tickets and commenced an action for damages. As it turned out, the luggage was actually forwarded to Ispra, but only a day after the scheduled appearance. It was returned to her after 11 months. The trial court ruled in favor of Dr. Pablo awarding P20,000 as nominal damages, the Appellate Court not only affirmed the Trial Court's decision but also increased the award of nominal damages payable by ALITALIA to P40,000.

ISSUE:
1. Whether or not the Warsaw Convention should have been applied to limit ALITALIA'S liability.
2. Whether or not Dr. Pablo is entitled to nominal damages.

RULING:
1. NO. Under the Warsaw Convention, an air carrier is made liable for damages for:

a. The death, wounding or other bodily injury of a passenger if the accident causing it took place on board the aircraft or I the course of its operations of embarking or disembarking;
b. The destruction or loss of, or damage to, any registered luggage or goods, if the occurrence causing it took place during the carriage by air; and
c. Delay in the transportation by air of passengers, luggage or goods.

The Convention also purports to limit the liability of the carriers in the following manner:

1. In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 250,000 francs . . . Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.
2. (a) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 250 francs per kilogram, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that sum is greater than the actual value to the consignor at delivery. (b)In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned.

Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air way bill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5000 francs per passenger.
4. The limits prescribed . . shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

The Warsaw Convention however denies to the carrier availment "of the provisions which exclude or limit his liability, if the damage is caused by his willful misconduct or by such default on his part as, in accordance with the law of the court seized of the case, is considered to be equivalent to willful misconduct," or "if the damage is (similarly) caused . . by any agent of the carrier acting within the scope of his employment."

The Hague Protocol amended the Warsaw Convention by removing the provision that if the airline took all necessary steps to avoid the damage, it could exculpate itself completely, and declaring the stated limits of liability not applicable "if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result." The same deletion was effected by the Montreal Agreement of 1966, with the result that a passenger could recover unlimited damages upon proof of willful misconduct.

The Convention's provisions, in short, do not "regulate or exclude liability for other breaches of contract by the carrier" or misconduct of its officers and employees, or for some particular or exceptional type of damage. On the other hand, the Warsaw Convention has invariably been held inapplicable, or as not restrictive of the carrier's liability, where there was satisfactory evidence of malice or bad faith attributable to its officers and employees.

In the case at bar, no bad faith or otherwise improper conduct may be ascribed to the employees of petitioner airline; and Dr. Pablo's luggage was eventually returned to her, belatedly, it is true, but without appreciable damage. The fact is, nevertheless, that some species of injury was caused to Dr. Pablo because petitioner ALITALIA misplaced her baggage and failed to deliver it to her at the time appointed - a breach of its contract of carriage. Certainly, the compensation for the injury suffered by Dr. Pablo cannot under the circumstances be restricted to that prescribed by the Warsaw Convention for delay in the transport of baggage.

2. YES. The opportunity to claim this honor or distinction was irretrievably lost to Dr. Pablo because of Alitalia's breach of its contract.
Apart from this, there can be no doubt that Dr. Pablo underwent profound distress and anxiety, which gradually turned to panic and finally despair, from the time she learned that her suitcases were missing up to the time when, having gone to Rome, she finally realized that she would no longer be able to take part in the conference. As she herself put it, she "was really shocked and distraught and confused."

Certainly, the compensation for the injury suffered by Dr. Pablo cannot under the circumstances be restricted to that prescribed by the Warsaw Convention for delay in the transport of baggage.

3. Limitation of Liability

6. Jurisdictional rules

- Lhuillier vs. British Airways, G.R. No. 171092, March 15, 2010

EDNA DIAGO LHUILLIER, Petitioner, vs. BRITISH AIRWAYS, Respondent.
G.R. No. 171092, March 15, 2010, SECOND DIVISION, DEL CASTILLO, *J.:*

Art. 28(1) of the Warsaw Convention provides that: "An action for damages must be brought at the option of the plaintiff, either before the court of domicile of the carrier or his principal place of business, or where he has a place of business through which the contract has been made, or before the court of the place of destination."

FACTS

Lhuillier took British Airway flight 548 from London to Rome. She requested a flight attendant to assist her in placing her hand-carried luggage in the overhead bin but the latter allegedly remarked that "If I were to help all 300 passengers in this flight, I would have a broken back!". Lhuillier further alleged that when the plane was about to land in Rome, another flight attendant singled her out from all the passengers in the business class section to lecture on plane safety. Upon arrival in Rome, Lhuillier complained to British Airways' ground manager and demanded an apology. But the latter declared that the flight stewards were only doing their job so Lhuillier filed a complaint for damages against British Airways before the Regional Trial Court (RTC) of Makati City. British Airways filed a MTD on grounds of lack of jurisdiction because only the courts of London, United Kingdom or Rome, Italy, have jurisdiction over the complaint for damages pursuant to the Warsaw Convention, Article 28(1). The RTC dismissed the case recognizing that it does not have jurisdiction because the Philippines a signatory to the Warsaw Convention and is thus bound by its provisions.

ISSUE

Whether or Not the Philippine courts have jurisdiction over a tortious conduct committed against a Filipino citizen and resident by an airline personnel of a foreign carrier? (NO)

RULING

The Warsaw Convention has the force and effect of law in this country

a. In *Santos III v. NOA* we held that: The Republic of the Philippines is a party to the Convention for the Unification of Certain Rules Relating to International Transportation by Air, otherwise known as the Warsaw Convention. It took effect on February 13, 1933. The Convention was concurred in by the Senate, through its Resolution No. 19, on May 16, 1950. The Philippine instrument of accession was signed by Pres. Elpidio Quirino on October 13, 1950 and was deposited with the Polish government on November 9, 1950.

The Convention became applicable to the Philippines on February 9, 1951. On September 23, 1955, President Ramon Magsaysay issued Proclamation No. 201, declaring our formal adherence thereto, "to the end that the same and every article and clause thereof may be observed and fulfilled in good faith by the Republic of the Philippines and the citizens thereof."

b. The Convention is thus a treaty commitment voluntarily assumed by the Philippine government and, as such, has the force and effect of law in this country. The Warsaw Convention applies because the air travel, where the alleged tortious conduct occurred, was between the United Kingdom and Italy, which are both signatories to the Warsaw Convention. Article 1 of the Warsaw Convention provides:
    i. This Convention applies to all international carriage of persons, luggage or goods performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.
    ii. For the purposes of this Convention the expression "international carriage" means any carriage in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to this Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purposes of this Convention.

c. Thus, when the place of departure and the place of destination in a contract of carriage are situated within the territories of two High Contracting Parties, said carriage is deemed an "international carriage". The High Contracting Parties referred to herein (UK and Italy) were the signatories to the Warsaw Convention and those which subsequently adhered to it.

d. Under **Article 28(1) of the Warsaw Convention**, the plaintiff may bring the action for damages before:
    i. the court where the carrier is domiciled;
    ii. the court where the carrier has its principal place of business;
    iii. the court where the carrier has an establishment by which the contract has been made; or
    iv. the court of the place of destination.

e. In this case, it is not disputed that respondent is a British corporation domiciled in London, United Kingdom with London as its principal place of business. Hence, under the first and second jurisdictional rules, the petitioner may bring her case before the courts of London in the United Kingdom.

f. In the passenger ticket and baggage check presented by both the petitioner and respondent, it appears that the ticket was issued in Rome, Italy. Consequently, under the third jurisdictional rule, the petitioner has the option to bring her case before the courts of Rome in Italy.

g. Finally, both the petitioner and respondent aver that the place of destination is Rome, Italy, which is properly designated given the routing presented in the said passenger ticket and baggage check. Accordingly, petitioner may bring her action before the courts of Rome, Italy.

h. We thus find that the RTC of Makati correctly ruled that it does not have jurisdiction over the case filed by the petitioner.

a. Liability to Passengers

- Lufthansa German Airlines vs. Court of Appeals, G.R. No. 83612, November 24, 1994

LUFTHANSA GERMAN AIRLINES, petitioner, vs. COURT OF APPEALS and TIRSO V. ANTIPORDA, SR., respondents.
G.R. No. 83612 November 24, 1994 THIRD DIVISION ROMERO, *J.*

Although the contract of carriage was to be performed by several air carriers, the same is to be treated as a single operation conducted by Lufthansa because Antiporda dealt exclusively with it which issued him a Lufthansa ticket for the entire trip. By issuing a confirmed ticket, Lufthansa in effect guaranteed Antiporda a sure seat with Air Kenya.

FACTS
Tirso V. Antiporda, Sr. was, contracted by Sycip, Gorres, Velayo & Co. (SGV) to be the institutional financial specialist for the agricultural credit institution project of the Investment and Development Bank of Malawi in Africa. For the engagement, Antiporda would be provided one round-trip economy ticket from Manila to Blantyre and back with a maximum travel time of four days per round-trip. On September 17, 1984, Lufthansa, through SGV, issued the ticket for Antiporda's confirmed flights to Malawi, Africa. The ticket particularized his itinerary: Manila -Bombay-Nairobi- Lilongwe - Blantyre.

Thus, on September 25, 1984, Antiporda took the Lufthansa flight to Singapore from where he proceeded to Bombay on board the same airline. He arrived in Bombay ascheduled and waited at the transit area of the airport for his connecting flight to Nairobi which was, per schedule given him by Lufthansa, to leave Bombay. Lufthansa, informed Antiporda that his seat in Air Kenya Flight 203 to Nairobi had been given to a very important person of Bombay who was attending a religious function in Nairobi. Antiporda protested but Air Kenya Flight 203 left for Nairobi without him on board. Stranded in Bombay, Antiporda was booked for Nairobi via Addis Ababa only on September 27, 1984. He finally arrived in Blantyre at 9:00 o'clock in the evening of September 28, 1984, more than a couple of days late for his appointment with people from the institution he was to work with in Malawi.

Consequently, ,Antiporda's counsel wrote the general manager of Lufthansa in Manila demanding P1,000,000 in damages for the airline's "malicious, wanton, disregard of the contract of carriage." Apparently getting no positive action from Lufthansa, on January 21, 1985, Antiporda filed with the RTC of Quezon City a complaint against Lufthansa.

Lufthansa argued that it cannot be held liable for the acts committed by Air Kenya on the basis of

the following:

(a) it merely acted as a ticket-issuing agent in behalf of Air Kenya; consequently the contract of carriage entered into is between respondent Antiporda and Air Kenya, to the exclusion of petitioner Lufthansa;

(b) under sections (1) and (2) Article 30 of the Warsaw Convention, an airline carrier is liable only to untoward occurrences on its own line;

(c) the award of moral and exemplary damages in addition to attorney's fees by the trial court is without basis in fact and in law.

ISSUE
Was there a breach of obligation by the defendant in failing to transport the plaintiff from Manila to Blantyre, Malawi, Africa?

RULING
This case is one of a contract of carriage. And the ticket issued by the defendant to the plaintiff is the written agreement between the parties herein. From the ticket, therefore, it is indubitably clear that it was the duty and responsibility of the defendant Lufthansa to transport the plaintiff from Manila to Blantyre, on a trip of five legs.

SC rejected Lufthansa's theory that from the time another carrier was engaged to transport Antiporda on another segment of his trip, it merely acted as a ticket-issuing agent in behalf of said carrier. Although the contract of carriage was to be performed by several air carriers, the same is to be treated as a single operation conducted by Lufthansa because Antiporda dealt exclusively with it which issued him a Lufthansa ticket for the entire trip. By issuing a confirmed ticket, Lufthansa in effect guaranteed Antiporda a sure seat with Air Kenya. Private respondent Antiporda, maintained the Court of Appeals, had the right to expect that his ticket would be honored by Air Kenya which, in the legal sense, Lufthansa had endorsed and, in effect, guaranteed the performance of its principal engagement to carry out his five-leg trip. Lufthansa cannot claim that its liability thereon ceased at Bombay Airport and thence, shifted to the various carriers that assumed the actual task of transporting said private respondent.

The appellate court also ruled that Lufthansa cannot rely on Sections (1) and (2), Article 30 of the Warsaw Convention because the provisions thereof are not applicable under the circumstances of the case.

Sections (1) and (2), Article 30 of the Warsaw Convention provide:

(1) In the case of transportation to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article I, each carrier who accepts passengers, baggage, or goods shall be subject to the rules set out in the convention, and shall be deemed to be one of the contracting parties to the contract of transportation insofar as the contract deals with that part of the transportation which is performed under his supervision.

(2) In the case of transportation of this nature, the passenger or his representative can take action only against the carrier who performed the transportation during which the accident or the

delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

Antiporda's cause of action is not premised on the occurrence of an accident or delay as contemplated under Section 2 of said Article but on Air Kenya's refusal to transport him in order to accommodate another. The provision does not contemplate the instance of "bumping-off" but merely of simple delay,it cannot provide a handy excuse for Lufthansa as to exculpate it from any liability to Antiporda.

In justifying its award of moral and exemplary damages, the lower court emphasized that the breach of contract was "aggravated by the discourteous and highly arbitrary conduct of an official of petitioner Lufthansa in Bombay."

. . . . Bumped off from his connecting flight to Nairobi and stranded in the Bombay Airport for 32 hours, not even Lufthansa office in Bombay, after learning plaintiff's being stranded in Bombay and his accommodation problem, provided any relief to plaintiff's sordid situation. It was a pathetic sight that he, tasked to perform consultancy work in a World Bank found himself stranded in a foreign land where nobody was expected to help him in his predicament except the defendant, who displayed utter lack of concern of its obligation to the plaintiff and left plaintiff alone in his misery at the Bombay airport.

b. Liability for Checked Baggage

- Philippine Airlines Inc. vs. Court of Appeals, G.R. No. 119706, March 14, 1996

PHILIPPINE AIRLINES, INC., *Petitioner*, v. COURT OF APPEALS and GILDA C. MEJIA, *Respondents*.
G.R. No. 119706, March 14, 1996, SECOND DIVISION REGALADO, *J.*

Contracts of adhesion are not invalid per se. The Court has on numerous occasions upheld the binding effect thereof. The peculiar nature of such contracts behooves the Court to closely scrutinize the factual milieu to which the provisions are intended to apply. Thus, just as consistently and unhesitatingly, but without categorically invalidating such contracts, the Court has construed obscurities and ambiguities in the restrictive provisions of contracts of adhesion strictly albeit not unreasonably against the drafter thereof when justified in light of the operative facts and surrounding circumstances. The validity of provisions limiting the liability of carriers contained in bills of lading have been consistently upheld for the following reason: ". . . The stipulation in the bill of lading limiting the common carrier's liability to the value of goods appearing in the bill, unless the shipper or owner declares a greater value, is valid and binding. The limitation of the carrier's liability is sanctioned by the freedom of the contracting parties to establish such stipulations, clauses, terms, or conditions as they may deem convenient, provided they are not contrary to law, morals, good customs and public policy. . . .." However, the Court has likewise cautioned against blind reliance on adhesion contracts where the facts and circumstances warrant that they should be disregarded.

FACTS

This is definitely not a case of first impression. The incident, which eventuated in the present controversy, is a drama of common contentious occurrence between passengers and carriers whenever loss is sustained by the former. Withal, the exposition of the factual ambience and the

legal precepts in this adjudication may hopefully channel the assertiveness of passengers and the intransigence of carriers into the realization that at times a bad extrajudicial compromise could be better than a good judicial victory.

Assailed in this petition for review is the decision of respondent Court of Appeals which affirmed the decision of the lower court finding petitioner Philippine Air Lines, Inc. (PAL) liable to pay plaintiff Gilda C. Mejia actual, moral, exemplary damages as well as attorney's fee and the cost of the suit.

Mejia shipped through PAL 1 microwave oven from San Francisco to Manila. Upon arrival, she discovered that the front glass door was broken and the oven could not be used. Mejia filed action against PAL. PAL denied liability and alleged that it acted in conformity with the Warsaw Convention

ISSUE
Whether or not the air waybill should be strictly construed against petitioner?

RULING

Although the airway bill is binding between the parties, the liability of Pal is not limited on the provisions of the airway bill. While the Warsaw Convention is law in the Philippines, the Philippines being a signatory thereto, it does not operate as an exclusive enumeration of the instances when a carrier shall be liable for breach of contract or as an absolute limit of the extent of liability nor does it preclude the operation of the Civil Code or other pertinent laws.

Also, the willful misconduct and insensitivity of the officers of PAL in not attempting to explain the damage despite due demand and the unexplained delay in acting on her claim amounted to bad faith and renders unquestionable its liability for damages

Contracts of adhesion are not invalid per se. The Court has on numerous occasions upheld the binding effect thereof. The peculiar nature of such contracts behooves the Court to closely scrutinize the factual milieu to which the provisions are intended to apply. Thus, just as consistently and unhesitatingly, but without categorically invalidating such contracts, the Court has construed obscurities and ambiguities in the restrictive provisions of contracts of adhesion strictly albeit not unreasonably against the drafter thereof when justified in light of the operative facts and surrounding circumstances. The validity of provisions limiting the liability of carriers contained in bills of lading have been consistently upheld for the following reason: ". . . The stipulation in the bill of lading limiting the common carrier's liability to the value of goods appearing in the bill, unless the shipper or owner declares a greater value, is valid and binding. The limitation of the carrier's liability is sanctioned by the freedom of the contracting parties to establish such stipulations, clauses, terms, or conditions as they may deem convenient, provided they are not contrary to law, morals, good customs and public policy. . . .." However, the Court has likewise cautioned against blind reliance on adhesion contracts where the facts and circumstances warrant that they should be disregarded.

7. **Willful Misconduct**

- Sabena World Airlines vs. Court of Appeals, G.R. No. 104685, March 14, 1996

SABENA BELGIAN WORLD AIRLINES, *Petitioner*, v. HON. COURT OF APPEALS and MA. PAULA SAN AGUSTIN, *Respondents*.
G.R. No. 104685. March 14, 1996 FIRST DIVISION VITUG, *J.*

Art. 1733 of the [Civil] Code provides that from the very nature of their business and by reasons of public policy, common carriers are bound to observe extraordinary diligence in the vigilance over the goods transported by them.

Art. 1735 establishes the presumption that if the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they had observed extraordinary diligence as required in Article 1733.

The Warsaw Convention denies to the carrier availment 'of the provisions which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court seized of the case, is considered to be equivalent to wilful misconduct,' or 'if the damage is (similarly) caused x x x by any agent of the carrier acting within the scope of his employment.'

FACTS

Plaintiff Ma. Paula San Agustin, herein private respondent, was a passenger on board Flight SN 284 of defendant airline originating from Casablanca to Brussels, Belgium on her way back to Manila. She checked in her luggage which contained her valuables, namely: jewelries valued at $2,350.00; clothes $1,500.00; shoes/bag $150; accessories $75; luggage itself $10.00; or a total of $4,265.00, for which she was issued Tag No. 71423. She stayed overnight in Brussels and her luggage was left on board Flight SN 284.

She arrived at Manila International Airport and immediately submitted her Tag No. 71423 but her luggage was missing. She was advised to accomplish and submit a property Irregularity Report which she submitted and filed on the same day but when her luggage could not be found, she filed a formal complaint with defendant's Local Manager.

Subsequently, plaintiff was furnished copies of telexes of defendant's Brussel's Office that the latter found her luggage and that they have broken the locks for identification. Plaintiff was assured by the defendant that it has notified its Manila Office that the luggage will be shipped to Manila. But unfortunately plaintiff was informed that the luggage was lost for the second time.

Plaintiff demanded from the defendant the money value of the luggage and its contents or its exchange value, but defendant refused to settle the claim. Defendant asserts in its Answer and its

evidence tend to show that while it admits that the plaintiff was a passenger with a piece of checked in luggage, the loss of the luggage was due to plaintiff's sole if not contributory negligence.

Petitioner airline company, in contending that the alleged negligence of private respondent should be considered the primary cause for the loss of her luggage, avers that, despite her awareness that the flight ticket had been confirmed only for Casablanca and Brussels, and that her flight from Brussels to Manila had yet to be confirmed, she did not retrieve the luggage upon arrival in Brussels. Petitioner insists that private respondent, being a seasoned international traveler, must have likewise been familiar with the standard provisions contained in her flight ticket that items of value are required to be hand-carried by the passenger and that the liability of the airline or loss, delay or damage to baggage would be limited, in any event, to only US$20.00 per kilo unless a higher value is declared in advance and corresponding additional charges are paid thereon. At the Casablanca International Airport, private respondent, in checking in her luggage, evidently did not declare its contents or value, pursuant to Section 5(c), Article IX, of the General Conditions of Carriage, which states that: "Passengers shall not include in his checked baggage, and the carrier may refuse to carry as checked baggage, fragile or perishable articles, money, jewelry, precious metals, negotiable papers, securities or other valuables."

ISSUE
Whether the airline is liable for the lost luggage? (YES)

RULING
Fault or negligence consists in the omission of that diligence which is demanded by the nature of an obligation and corresponds with the circumstances of the person, of the time, and of the place. When the source of an obligation is derived from a contract, the mere breach or non-fulfillment of the prestation gives rise to the presumption of fault on the part of the obligor. This rule is not different in the case of common carriers in the carriage of goods which, indeed, are bound to observe not just the due diligence of a good father of a family but that of "extraordinary" care in the vigilance over the goods.

The only exceptions to the foregoing extraordinary responsibility of the common carrier is when the loss, destruction, or deterioration of the goods is due to any of the following causes:

(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.'

Not one of the above excepted causes obtains in this case.

The airline cannot invoke the tort doctrine of proximate cause because the private respondent's luggage was lost while it was in the custody of petitioner. The "loss of said baggage not only once by twice," said the appellate court, "underscores the wanton negligence and lack of care" on the part of

the carrier. The above findings foreclose whatever rights petitioner might have had to the possible limitation of liabilities enjoyed by international air carriers under the Warsaw Convention.

In Alitalia *vs.* Intermediate Appellate Court, the Court held that "the Warsaw Convention however denies to the carrier availment 'of the provisions which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court seized of the case, is considered to be equivalent to wilful misconduct,' or 'if the damage is (similarly) caused x x x by any agent of the carrier acting within the scope of his employment.'
The Hague Protocol amended the Warsaw Convention by removing the provision that if the airline took all necessary steps to avoid the damage, it could exculpate itself completely, and declaring the stated limits of liability not applicable 'if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result.' The same deletion was effected by the Montreal Agreement of 1966, with the result that a passenger could recover unlimited damages upon proof of willful misconduct.

The Convention does not thus operate as an exclusive enumeration of the instances of an airline's liability, or as an absolute limit of the extent of that liability. It should be deemed a limit of liability only in those cases where the cause of the death or injury to person, or destruction, loss or damage to property or delay in its transport is not attributable to or attended by any willful misconduct, bad faith, recklessness or otherwise improper conduct on the part of any official or employee for which the carrier is responsible, and there is otherwise no special or extraordinary form of resulting injury. Decision appealed from AFFIRMED.

W. Miscellaneous Topics

1. Motor Vehicles

- Tiu vs. Arriesgado, 437 SCRA 426 (2004)

WILLIAM TIU, doing business under the name and style of "D' Rough Riders," and VIRGILIO TE LAS PIÑAS petitioners, vs. PEDRO A. ARRIESGADO, BENJAMIN CONDOR, SERGIO PEDRANO and PHILIPPINE PHOENIX SURETY AND INSURANCE, INC., respondents.
G.R. No. 138060, September 1, 2004, SECOND DIVISION, CALLEJO, SR., *J.*

This is because under the said contract of carriage, the petitioners assumed the express obligation to transport the respondent and his wife to their destination safely and to observe extraordinary diligence with due regard for all circumstances. Any injury suffered by the passengers in the course thereof is immediately attributable to the negligence of the carrier. Upon the happening of the accident, the presumption of negligence at once arises, and it becomes the duty of a common carrier to prove that he observed extraordinary diligence in the care of his passengers.

FACTS
On March 15, 1987, a Truck marked "Condor Hollow Blocks and General Merchandise" was on its way to Cebu when it's rear tire exploded. The driver Sergio Pedrano then parked the truck on the side of the National Highway, left the rear lights on, and instructed his helper, Jose Mitante, to watch over the truck and place a spare tire on the road a few meters away from the tire to serve as a warning device as he went and had the faulty tire vulcanized.

After Pedrano left, D' Rough Riders passenger bus carrying the respondent, passed by the same route and hit the truck. The petitioner was injured in the collision and his wife, Felissa Arriesgado eventually died after sustaining injuries from the same. Hence, he filed a complaint against the petitioner for breach of contract of carriage, damages and for attorneys fees against the petitioner, the owner of the bus, William Tiu and his driver, Laspinas.

However, the petitioner filed a third-party complaint alleging that the said truck was parked in a slanted manner and did not have any early warning devices displayed while it was left by the driver which resulted to the collision and would therefore make, Benjamin Condor, the owner of the truck liable as well.

Also, the petitioner included that he was covered by Philippine Phoenix Surety and Insurance (PPSI) at the time of the incident which would therefore make the same liable for part of the damages that may arise as well.

PPSI, however argued that it already attended to and settled claims of those who were injured in the collision and that it could not accede to the claim of Arriesgado because it was beyond that of the terms of the insurance.

The trial court found that the contention of the petitioner was invalid because the said truck had left it's tail lights open and that the said road was well lit at the time of the accident. Hence, it was the fault of the bus, for traveling at a fast pace, that the collision happened. The Petitioner, Tiu, appealed to the CA but was denied which prompted him to seek another reconsideration.

ISSUE

Whether or Not the owner and driver of the Truck, Benjamin Condor and Sergio Pedrano, was liable due to their negligence in the lack of an early warning device and hence liable to the respondent as well. (Violation of Sec 34 of LTO Land traffic code.)

Whether or Not Petitioner was negligent

Whether or Not PPSI is also liable.

RULING

The court found that indeed, the petitioner, was liable for being negligent while being engaged in the business of common carriage. The SC could no longer change the facts that were sustained in the trial court and court of appeals hence, since it was deemed that the bus was moving in a very fast speed which was the cause of the accident, the SC will have to sustain that ruling and hold that indeed, there was negligence on the part of the petitioner.

The rules which common carriers should observe as to the safety of their passengers are set forth in the Civil Code, Articles 1733, 1755and 1756. It is undisputed that the respondent and his wife were not safely transported to the destination agreed upon. In actions for breach of contract, only the existence of such contract, and the fact that the obligor, in this case the common carrier, failed to transport his passenger safely to his destination are the matters that need to be proved. This is because under the said contract of carriage, the petitioners assumed the express obligation to transport the respondent and his wife to their destination safely and to observe extraordinary

diligence with due regard for all circumstances. Any injury suffered by the passengers in the course thereof is immediately attributable to the negligence of the carrier. Upon the happening of the accident, the presumption of negligence at once arises, and it becomes the duty of a common carrier to prove that he observed extraordinary diligence in the care of his passengers.

It must be stressed that in requiring the highest possible degree of diligence from common carriers and in creating a presumption of negligence against them, the law compels them to curb the recklessness of their drivers. While evidence may be submitted to overcome such presumption of negligence, it must be shown that the carrier observed the required extraordinary diligence, which means that the carrier must show the utmost diligence of very cautious persons as far as human care and foresight can provide, or that the accident was caused by fortuitous event. As correctly found by the trial court, petitioner Tiu failed to conclusively rebut such presumption. The negligence of petitioner Laspiñas as driver of the passenger bus is, thus, binding against petitioner Tiu, as the owner of the passenger bus engaged as a common carrier.

Also, the doctrine of "Last Clear Chance" is inapplicable to the case because it could only apply to a controversy between two colliding vehicles. In this case, it was the passenger and not another driver who was injured and thus, the said doctrine could not be applied.

However, the respondents Pedrano and Condor was found by the court to be negligent as well. The court found that there was merit in the contention of the petitioner that the said truck violated Section 34 or RA 4136, wherein they did not have proper warning devices in accordance with the said law.

Lastly, with regard to PPSI, the court held that since it admitted to being bound by a contract with the petitioner, it would be liable as well. However, the said liability would only fall within the amount settled in the said contract.

- Villanueva vs. Domingo, 438 SCRA 485 (2004)

NOSTRADAMUS VILLANUEVA, *Petitioner*, *v.***PRISCILLA R. DOMINGO and LEANDRO LUIS R. DOMINGO,** *Respondents*.
G.R. NO. 144274, September 20, 2004, THIRD DIVISION, **CORONA, *J.***

Under the same principle the registered owner of any vehicle, even if not used for a public service, should primarily be responsible to the public or to third persons for injuries caused the latter while the vehicle is being driven on the highways or streets. The members of the Court are in agreement that the defendant-appellant should be held liable to plaintiff-appellee for the injuries occasioned to the latter because of the negligence of the driver, even if the defendant-appellant was no longer the owner of the vehicle at the time of the damage because he had previously sold it to another.

FACTS

Priscilla Domingo is the registered owner of a silver Mitsubishi Lancer Car model 1980 with Plate No. NDW 781 with co-respondent Leandro Luis Domingo as authorized driver. Petitioner Nostradamus Villanueva was then the registered "owner" of a green Mitsubishi Lancer bearing Plate No. PHK 201.

On Oct. 22, 1991, 9:45 PM, following a green traffic light, Priscilla Domingo silver Lancer then driven by Leandro Domingo was cruising the middle lane of South Superhighway at moderate speed when suddenly, a green Mitsubishi Lancer with Plate No. PHK 201 driven by Renato Dela Cruz Ocfemia darted from Vito Cruz St. towards the South Superhighway directly into the path of Domingo's car thereby hitting and bumping its left front portion. As a result of the impact, NDW 781 hit two parked vehicles at the roadside, the second hitting another car parked in front of it.

Traffic accident report found Ocfemia driving with expired license and positive for alcoholic breath. Manila Asst. Prosecutor Pascua recommended filing of information for reckless imprudence resulting to damage to property and physical injuries. The original complaint was amended twice: first impleading Auto Palace Car Exchange as commercial agent and/or buyer-seller and second, impleading Albert Jaucian as principal defendant doing business under the name and style of Auto Palace Car Exchange. Except Ocfemia, all defendants filed separate answers to the complaint.

Petitioner Nostradamus Villanueva claimed that he was no longer the owner of the car at the time of the mishap because it was swapped with a Pajero owned by Albert Jaucian/Auto Palace Car Exchange. Linda Gonzales declared that her presence at the scene of the accident was upon the request of the actual owner of the Mitsubishi Lancer PHK 201, Albert Jaucian for whom she had been working as agent/seller. Auto Palace Car Exchange represented by Albert Jaucian claimed that he was not the registered owner of the car. Moreover, it could not be held subsidiarily liable as employer of Ocfemia because the latter was off-duty as utility employee at the time of the incident. Neither was Ocfemia performing a duty related to his employment.

RTC found petitioner Villanueva liable and ordered him to pay respondent actual, moral and exemplary damages plus appearance and attorney's fees. In conformity with equity and the ruling in First Malayan Lending and Finance Corp. vs CA, Albert Jaucian is hereby ordered to indemnify Villanueva for whatever amount the latter is hereby ordered to pay under the judgment.

ISSUE

May the registered owner of a motor vehicle be held liable for damages arising from a vehicular accident involving his motor vehicle while being operated by the employee of its buyer without the latter's consent and knowledge?

RULING

YES, the registered owner of any vehicle is directly and primarily responsible for the public and third persons while it is being operated. The rationale behind such doctrine was explained way back in 1957 in *Erezo vs. Jepte.*

The principle upon which this doctrine is based is that in dealing with vehicles registered under the Public Service Law, the public has the right to assume or presume that the registered owner is the actual owner thereof, for it would be difficult for the public to enforce the actions that they may have for injuries caused to them by the vehicles being negligently operated if the public should be required to prove who the actual owner is. How would the public or third persons know against whom to enforce their rights in case of subsequent transfers of the vehicles? We do not imply by his doctrine, however, that the registered owner may not recover whatever amount he had paid by virtue of his liability to third persons from the person to whom he had actually sold, assigned or conveyed the vehicle.

Under the same principle the registered owner of any vehicle, even if not used for a public service, should primarily be responsible to the public or to third persons for injuries caused the latter while the vehicle is being driven on the highways or streets. The members of the Court are in agreement that the defendant-appellant should be held liable to plaintiff-appellee for the injuries occasioned to the latter because of the negligence of the driver, even if the defendant-appellant was no longer the owner of the vehicle at the time of the damage because he had previously sold it to another.

A registered owner who has already sold or transferred a vehicle has the recourse to a third-party complaint, in the same action brought against him to recover for the damage or injury done, against the vendee or transferee of the vehicle. The inconvenience of the suit is no justification for relieving him of liability; said inconvenience is the price he pays for failure to comply with the registration that the law demands and requires.

In synthesis, we hold that the registered owner, the defendant-appellant herein, is primarily responsible for the damage caused to the vehicle of the plaintiff-appellee, but he (defendant-appellant) has a right to be indemnified by the real or actual owner of the amount that he may be required to pay as damage for the injury caused to the plaintiff-appellant.

- PCI Leasing & Finance Inc. vs. UCPB General Insurance Co. Inc., 557 SCRA 141 (2008)

PCI LEASING AND FINANCE, INC., vs. UCPB GENERAL INSURANCE CO., INC.
G.R. No. 162267, July 4, 2008, THIRD DIVISION, AUSTRIA-MARTINEZ, *J*

Registration is required not to make said registration the operative act by which ownership in vehicles is transferred, as in land registration cases, because the administrative proceeding of registration does not bear any essential relation to the contract of sale between the parties, but to permit the use and operation of the vehicle upon any public highway (section 5 [a], Act No. 3992, as amended.) The main aim of motor vehicle registration is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicle on the public highways, responsibility therefor can be fixed on a definite individual, the registered owner.

FACTS

A Mitsubishi Lancer car owned by UCPB, insured with UCPB General Insurance Co., was traversing the Laurel Highway, Barangay Balintawak, LipaCity. It was driven by Flaviano Isaac with Conrado Geronimo (Asst. Manager of said bank), was hit and bumped by an 18-wheeler Fuso Tanker Truck, owned by defendants-appellants PCI Leasing & Finance, Inc. allegedly leased to and operated by defendant-appellant Superior Gas & Equitable Co., Inc. (SUGECO) and driven by its employee, defendant appellant Renato Gonzaga. The impact caused heavy damage to the Mitsubishi Lancer car resulting in an explosion of the rear part of the car. The driver and passenger suffered physical injuries. However, the driver defendant-appellant Gonzaga continued on its way to its destination and did not bother to bring his victims to the hospital.

As the 18-wheeler truck is registered under the name of PCI Leasing, repeated demands were made by plaintiff-appellee for the payment of the aforesaid amounts. However, no payment was made. PCI Leasing and Finance, Inc., (petitioner) interposed the defense that it could not be held liable for the collision, since the driver, Gonzaga, was not its employee, but that of its co-defendant SUGECO. In fact, it was SUGECO, that was the

actual operator of the truck, pursuant to a Contract of Lease signed by petitioner and SUGECO. Petitioner, however, admitted that it was the owner of the truck in question. RTC rendered judgment in favour of UCPB General Insurance and ordered PCI Leasing and Gonzaga, to pay jointly and severally the former. CA affirmed with the lower court's decision.

ISSUES
1) Whether petitioner, as registered owner of a motor vehicle that figured in a *quasi-delict* may be held liable, jointly and severally, with the driver thereof, for the damages caused to third parties.
2) Whether petitioner, as a financing company, is absolved from liability by the enactment of Republic Act (R.A.) No. 8556, or the Financing Company Act of 1998.

RULING
1) YES. The principle of holding the registered owner of a vehicle liable for *quasi-delicts* resulting from its use is well-established in jurisprudence. As explained in the case of *Erezo v. Jepte,* thus:

Registration is required not to make said registration the operative act by which ownership in vehicles is transferred, as in land registration cases, because the administrative proceeding of registration does not bear any essential relation to the contract of sale between the parties (Chinchilla vs. Rafael and Verdaguer, 39 Phil. 888), but to permit the use and operation of the vehicle upon any public highway (section 5 [a], Act No. 3992, as amended.) The main aim of motor vehicle registration is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicle on the public highways, responsibility therefor can be fixed on a definite individual, the registered owner. Instances are numerous where vehicles running on public highways caused accidents or injuries to pedestrians or other vehicles without positive identification of the owner or drivers, or with very scant means of identification. It is to forestall these circumstances, so inconvenient or prejudicial to the public, that the motor vehicle registration is primarily ordained, in the interest of the determination of persons responsible for damages or injuries caused on public highways.

2) NO. The new law, R.A. No. 8556, notwithstanding developments in foreign jurisdictions, do not supersede or repeal the law on compulsory motor vehicle registration. No part of the law expressly repeals Section 5(a) and (e) of R.A. No. 4136, as amended, otherwise known as the Land Transportation and Traffic Code. Thus, the rule remains the same: a sale, lease, or financial lease, for that matter, that is not registered with the Land Transportation Office, still does not bind third persons who are aggrieved in tortious incidents, for the latter need only to rely on the public registration of a motor vehicle as conclusive evidence of ownership. A lease such as the one involved in the instant case is an encumbrance in contemplation of law, which needs to be registered in order for it to bind third parties. Under this policy, the evil sought to be avoided is the exacerbation of the suffering of victims of tragic vehicular accidents in not being able to identify a guilty party. A contrary ruling will not serve the ends of justice. The failure to register a lease, sale, transfer or encumbrance, should not benefit the parties responsible, to the prejudice of innocent victims.

- Mercado AG. Cadiente vs. Bithuel Macas 571 SCRA 105 (2008)

MEDARDO AG. CADIENTE, *Petitioner*, *v.* **BITHUEL MACAS,** *Respondent*.
G.R. NO. 161946 November 14, 2008 SECOND DIVISION QUISUMBING, Acting *C.J.*

The registered owner of any vehicle, even if he had already sold it to someone else, is... primarily responsible to the public for whatever damage or injury the vehicle may cause. The policy behind vehicle registration is the easy identification of the owner who can be held responsible in case of accident, damage or injury caused by the vehicle. This is so as not to... inconvenience or prejudice a third party injured by one whose identity cannot be secured.

FACTS
Eyewitness Rosalinda Palero testified that on July 19, 1994, at about 4:00 p.m., at the intersection of Buhangin and San Vicente Streets in Davao City, 15-year old high school student Bithuel Macas, herein respondent, was standing on the shoulder of the road. She was about two... and a half meters away from the respondent when he was bumped and run over by a Ford Fiera, driven by Chona C. Cimafranca. Rosalinda and another unidentified person immediately came to the respondent's rescue and told Cimafranca to take the victim to the hospital. Cimafranca... rushed the respondent to the Davao Medical Center.

Cimafranca had since absconded and disappeared. Records showed that the Ford Fiera was registered in the name of herein petitioner, Atty. Medardo Ag. Cadiente. However, Cadiente claimed that when the accident happened, he was no longer the owner of the Ford Fiera. He alleged... that he sold the vehicle to Engr. Rogelio Jalipa on March 28, 1994,[5] and turned over the Certificate of Registration and Official Receipt to Jalipa, with the understanding that the latter would be the one to cause the transfer of the registration.

ISSUES
(1) Whether there was contributory negligence on the part of the victim; and
(2) whether the petitioner and third-party defendant Jalipa are jointly and severally liable to the victim.

RULING
The petitioner contends that the victim's negligence contributed to his own mishap. The petitioner theorizes that if witness Rosalinda Palero, who was only two and a half meters away from the victim, was not hit by the Ford Fiera, then the victim must have been so negligent as... to be bumped and run over by the said vehicle.

Article 2179 of the Civil Code provides:

When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

The underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full, but must proportionately bear the consequences of his own negligence. The defendant is thus held liable only for the damages actually caused by his negligence.

In this case, records show that when the accident happened, the victim was standing on the shoulder, which was the uncemented portion of the highway. As noted by the trial court, the shoulder was intended for pedestrian use alone. Only stationary vehicles, such as those loading or unloading passengers may use the shoulder. Running vehicles are not supposed to pass through the said uncemented portion of the highway. However, the Ford Fiera in this case, without so much as slowing down, took off from the cemented part of the highway, inexplicably swerved to the shoulder, and recklessly bumped and ran over an innocent victim. The victim was just where he should be when the unfortunate event transpired.

Cimafranca, on the other hand, had no rightful business driving as recklessly as she did. The respondent cannot be expected to have foreseen that the Ford Fiera, erstwhile speeding along the cemented part of the highway would suddenly swerve to the shoulder, then bump and run him over. Thus, we are unable to accept the petitioner's contention that the respondent was negligent.

Coming now to the second and third issues, this Court has recently reiterated in *PCI Leasing and Finance, Inc. v. UCPB General Insurance Co., Inc.*,[18] that the registered owner of any vehicle, even if he had already sold it to someone else, is primarily responsible to the public for whatever damage or injury the vehicle may cause. We explained,

'Were a registered owner allowed to evade responsibility by proving who the supposed transferee or owner is, it would be easy for him, by collusion with others or otherwise, to escape said responsibility and transfer the same to an indefinite person, or to one who possesses no property with which to respond financially for the damage or injury done. A victim of recklessness on the public highways is usually without means to discover or identify the person actually causing the injury or damage. He has no means other than by a recourse to the registration in the Motor Vehicles Office to determine who is the owner. The protection that the law aims to extend to him would become illusory were the registered owner given the opportunity to escape liability by disproving his ownership.[19]

In the case of *Villanueva v. Domingo*,[20] we said that the policy behind vehicle registration is the easy identification of the owner who can be held responsible in case of accident, damage or injury caused by the vehicle. This is so as not to inconvenience or prejudice a third party injured by one whose identity cannot be secured.[21]

Therefore, since the Ford Fiera was still registered in the petitioner's name at the time when the misfortune took place, the petitioner cannot escape liability for the permanent injury it caused the respondent, who had since stopped schooling and is now forced to face life with nary but two remaining limbs.

- Mariano C. Mendoza and Elvira Lim vs. Spouses Leonora J. Gomez and Gabriel V. Gomez, G.R. No. 160110, June 18, 2014

MARIANO C. MENDOZA AND ELVIRA LIM *vs.* SPOUSES LEONORA J. GOMEZ and GABRIEL V. GOMEZ
G.R. No. 160110, June 18, 2014, J. Perez

The operator of a bus company cannot renege on the obligation brought about by collision of vehicles by claiming that she is not the true owner of the bus. In case of collision of motor vehicles, the person whose name appears in the certificate of registration shall be considered the employer of the person driving the vehicle and shall be directly and primarily liable with the driver under the principle of vicarious liability.

FACTS

An Isuzu Elf truck (Isuzu truck) owned by Leonora J. Gomez (Leonora) and driven by Antenojenes Perez (Perez), was hit by a Mayamy Transportation bus (Mayamy bus) with registered under the name of Elvira Lim (Lim) and driven by Mariano C. Mendoza (Mendoza). Mendoza was charged

with reckless imprudence resulting in damage to property and multiple physical injuries, however, he eluded arrest, prompting the spouses Gomez to file a separate complaint for damages against Mendoza and Lim, seeking actual damages, compensation for lost income, moral damages, exemplary damages, attorney's fees and costs of the suit.

At the trial, it was found out that the Isuzu truck was on its right lane when the Mayamy bus intruded the lane which caused the collision. As a result, the helpers on board the truck sustained injuries necessitating medical treatment amounting to P11,267.35, which amount was shouldered by spouses Gomez. The spouses also contended that the collision deprived them the daily income of P1,000.00 as they were engaged in buying plastic scraps and delivering them to recycling plants, truck was vital in the furtherance of the business. Lastly, the spouses claimed that the Isuzu truck sustained extensive damages on its cowl, chassis, lights and steering wheel, amounting to P142,757.40.

Lim raised the issue of ownership of the bus in question that although the registered owner was Lim, the actual owner of the bus was one SPO1 Cirilo Enriquez, who had the bus attached with Mayamy Transportation Company under the so-called "kabit system."

The RTC found Mendoza liable for direct personal negligence under Article 2176 of the Civil Code, and it also found Lim vicariously liable under Article 2180 of the same Code. The RTC relied on the Certificate of Registration in concluding that she is the registered owner of the bus in question. Although actually owned by Enriquez, following the established principle in transportation law, Lim, as the registered owner, is the one who can be held liable. Mendoza and Lim were ordered to pay spouses Gomez 1) the costs of repair of the damaged vehicle in the amount of P142,757.40; 2) the amount ofP1,000.00 per day from March 7, 1997 up to November 1997 representing the unrealized income of the spouses Gomez when the incident transpired up to the time the damaged Isuzu truck was repaired; 3) P100,000.00 as moral damages, plus a separate amount of P50,000.00 as exemplary damages; 4) P50,000.00 as attorney's fees; and lastly 5) the costs of suit. Aggrieved, Mendoza appealed to the CA which affirmed the decision of the RTC with the exception of the award of unrealized income. Hence, the present petition.

ISSUE

Whether or not Lim is liable as the employer despite the fact that the original owner of the bus is Enriquez
2. Whether or not the award of moral and exemplary damages as well as attorney's fees and costs of suit is proper

RULING

1. Yes, Lim shall be vicariously liable with Mendoza.

In Filcar Transport Services v. Espinas, we held that the registered owner is deemed the employer of the negligent driver, and is thus vicariously liable under Article 2176, in relation to Article 2180, of the Civil Code. Citing Equitable Leasing Corporation v. Suyom, the Court ruled that in so far as third persons are concerned, the registered owner of the motor vehicle is the employer of the negligent driver, and the actual employer is considered merely as an agent of such owner. Thus, whether there is an employer-employee relationship between the registered owner and the driver

is irrelevant in determining the liability of the registered owner who the law holds primarily and directly responsible for any accident, injury or death caused by the operation of the vehicle in the streets and highways.

As early as Erezo v. Jepte, the Court, speaking through Justice Alejo Labrador summarized the justification for holding the registered owner directly liable, to wit:

x x x The main aim of motor vehicle registration is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicles on the

public highways, responsibility therefore can be fixed on a definite individual, the registered owner. Instances are numerous where vehicle running on public highways caused accidents or injuries to pedestrians or other vehicles without positive identification of the owner or drivers, or with very scant means of identification. It is to forestall these circumstances, so inconvenient or prejudicial to the public, that the motor vehicle registration is primarily ordained, in the interest of the determination of persons responsible for damages or injuries caused on public highways. As such, there can be no other conclusion but to hold Lim vicariously liable with Mendoza.

2. As to exemplary damages and costs of suit, yes but as to moral damages and attorney's fees, no.

Moral Damages. Moral damages are awarded to enable the injured party to obtain means, diversions or amusements that will serve to alleviate the moral suffering he has undergone, by reason of the defendant's culpable action. In fine, an award of moral damages calls for the presentation of 1) evidence of besmirched reputation or physical, mental or psychological suffering sustained by the claimant; 2)a culpable act or omission factually established; 3) proof that the wrongful act or omission of the defendant is the proximate cause of the damages sustained by the claimant; and 4) the proof that the act is predicated on any of the instances expressed or envisioned by Article 2219 and Article 2220 of the Civil Code.

A review of the complaint and the transcript of stenographic notes yields the pronouncement that respondents neither alleged nor offered any evidence of besmirched reputation or physical, mental or psychological suffering incurred by them.

Spouses Gomez cannot rely on Article 2219 (2) of the Civil Code which allows moral damages in quasi-delicts causing physical injuries because in physical injuries, moral damages are recoverable only by the injured party, and in the case at bar, herein respondents were not the ones who were actually injured. In B.F. Metal (Corp.) v. Sps. Lomotan, et al., the Court, in a claim for damages based on quasi-delict causing physical injuries, similarly disallowed an award of moral damages to the owners of the damaged vehicle, when neither of them figured in the accident and sustained injuries.

Neither can respondents rely on Article 21 of the Civil Code as the RTC erroneously did. Article 21 deals with acts contra bonus mores, and has the following elements: (1) There is an act which is legal; (2) but which is contrary to morals, good custom, public order, or public policy; (3) and it is done with intent to injure. In the present case, it can hardly be said that Mendoza's negligent driving and violation of traffic laws are legal acts. Moreover, it was not proven that Mendoza intended to injure Perez, et al. Thus, Article 21 finds no application to the case at bar. All in all, we find that the RTC and the CA erred in granting moral damages to respondents.

Exemplary Damages. Article 2229 of the Civil Code provides that exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages. Article 2231 of the same Code further states that in quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence. In motor vehicle accident cases, exemplary damages may be awarded where the defendant's misconduct is so flagrant as to transcend simple negligence and be tantamount to positive or affirmative misconduct rather than passive or negative misconduct. In characterizing the requisite positive misconduct which will support a claim for punitive damages, the courts have used such descriptive terms as willful, wanton, grossly negligent, reckless, or malicious, either alone or in combination.

Gross negligence is the absence of care or diligence as to amount to a reckless disregard of the safety of persons or property. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. In the case at bar, having established respondents' right to compensatory damages, exemplary damages are also in order, given the fact that Mendoza was grossly negligent in driving the Mayamy bus. His act of intruding or encroaching on the lane rightfully occupied by the Isuzu truck shows his reckless disregard for safety.

Attorney's Fees. Article 2208 of the Civil Code enumerates the instances when attorney's fees may be recovered:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's valid and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered;

In all cases, the attorney's fees and expenses of litigation must be reasonable.

In Spouses Agustin v. CA, we held that, the award of attorney's fees being an exception rather than the general rule, it is necessary for the court to make findings of facts and law that would bring the case within the exception and justify the grant of such award. Thus, the reason for the award of attorney's fees must be stated in the text of the court's decision; otherwise, if it is stated only in the dispositive portion of the decision, the same must be disallowed on appeal.

In the case at bar, the RTC Decision had nil discussion on the propriety of attorney's fees, and it merely awarded such in the dispositive portion. Following established jurisprudence, however, the CA should have disallowed on appeal said award of attorney's fees as the RTC failed to substantiate said award.

Costs of suit. The Rules of Court provide that, generally, costs shall be allowed to the prevailing party as a matter of course, thus:

Section 1. Costs ordinarily follow results of suit.- Unless otherwise provided in these rules, costs shall be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. No costs shall be allowed against the Republic of the Philippines, unless otherwise provided by law.

In the present case, the award of costs of suit to respondents, as the prevailing party, is in order.

2. Arrastre Services

- International Container Terminal Services, Inc. vs. Prudential Guarantee & Assurance Co., Inc., 320 SCRA 244 (1999)

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC., petitioner, vs. PRUDENTIAL GUARANTEE & ASSURANCE CO., INC., respondent. G.R. No. 134514 December 8, 1999 THIRD DIVISION PANGANIBAN, *J.*

The legal relationship between an arrastre operator and a consignee is akin to that between a warehouseman and a depositor. [9] *As to both the nature of the functions and the place of their performance, an arrastre operator's services are clearly not maritime in character*

This means that the shipper was solely responsible for the loading of the container, while the carrier was oblivious to the contents of the shipment. Protection against pilferage of the shipment was the consignee's lookout. The arrastre operator was, like any ordinary depositary, duty-bound to take good care of the goods received from the vessel and to turn the same over to the party entitled to their possession, subject to such qualifications as may have validly been imposed in the contract between the parties. [20] *The arrastre operator was not required to verify the contents of the container received and to compare them with those declared by the shipper because, as earlier stated, the cargo was at the shipper's load and count. The arrastre operator was expected to deliver to the consignee only the container received from the carrier.*

FACTS

On April 25, 1990, mother vessel "Tao He" loaded and received on board in San Francisco, California, a shipment of five (5) lots of canned foodstuff complete and in good order and condition for transport to Manila in favor of Duel Food Enterprises ("consignee"). China Ocean Shipping Company issued the corresponding bill of lading therefor.

Consignee insured the shipment with Prudential Guarantee and Assurance, Inc. against all risks for P1,921,827.00. On May 30, 1990, the shipment arrived at the Port of Manila and discharged by [the] vessel MS "Wei He" in favor of International Container Terminal Services, Inc. for safekeeping.
On June 1, 1990, A. D. Reyna Customs Brokerage ("defendant brokerage" for brevity) withdrew the shipment and delivered the same to [the] consignee. An inspection thereof revealed that 161 cartons were missing valued at P85,984.40.

Claim for indemnification of the loss having been denied by [ICTSI] and [the] brokerage, consignee sought payment from [Prudential] under the marine cargo policy. Consignee received a compromised sum of P66,730.12 in settlement thereof. As subrogee, [Prudential] instituted the instant complaint against said defendants [ICTSI and brokerage].

Traversing the complaint, [ICTSI] counters that it observed extraordinary diligence over the subject shipment while under its custody; that the loss is not attributable to its fault or its agent, representative or employee; that consignee failed to file a formal claim against it in accordance with PPA Administrative Order No. 10-81; and that the complaint states no cause of action. By way of crossclaim, it sought reimbursement from defendant brokerage in the event it is adjudged to pay the loss.

On May 19, 1993, the court *a quo* rendered a decision dismissing the complaint against defendant brokerage for lack of evidence.

ISSUE
1. Whether the arrastre operator is negligent?
2. Whether the CA erred in allowing the Complaint despite the failure of the consignee to file a formal claim within the period stated on the dorsal side of the arrastre and wharfage receipt?

RULING
1. The legal relationship between an arrastre operator and a consignee is akin to that between a warehouseman and a depositor. [9] As to both the nature of the functions and the place of their performance, an arrastre operator's services are clearly not maritime in character. [10]
In a claim for loss filed by a consignee, the burden of proof to show compliance with the obligation to deliver the goods to the appropriate party devolves upon the arrastre operator. [11] Since the safekeeping of the goods rests within its knowledge, it must prove that the losses were not due to its negligence or that of its employees. [12]

To discharge this burden, petitioner presented five Arrastre and Wharfage Bill/Receipts, which also doubled as container yard gate passes, covering the whole shipment in question. The short-landed shipment was covered by the gate pass marked "Exhibit 5." [13] The latter bore the signature of a representative of the consignee, acknowledging receipt of the shipment in good order and condition (Exh. "5-e"). Thus, we see no reason to dispute the finding of the trial court that "the evidence adduced by the parties will show that the consignee received the container vans . . . in good condition (Exhs. 1-6)." [14]

By its signature on the gate pass and by its failure to protest on time, the consignee is deemed to have acknowledged receipt of the goods in good order and condition.

Lamberto Cortez, petitioner's witness, testified that he personally examined the shipment and identified the gate pass which covered the delivery of the shipment and which was countersigned by the consignee's representative.

The assailed Decision ruled that the petitioner was negligent as evidenced by the loss of the original seal and padlock of the container, which were subsequently replaced with safety wire while the shipment was still stored at the ICTSI compound.

The appellate court cites, as proof of petitioner's negligence, the Survey/Final Report of the independent adjuster, Tan-Gatue Adjustment Company,

The adjuster insists that the shipment was complete when the customs examiner opened the sea vans for tax evaluation. However, the latter's report was not presented. Hence, there is no basis for comparing the cartons subjected to customs examination and those which were delivered to the consignee.

More important, the cosigned goods were shipped under "Shipper's Load and Count." This means that the shipper was solely responsible for the loading of the container, while the carrier was oblivious to the contents of the shipment. Protection against pilferage of the shipment was the consignee's lookout. The arrastre operator was, like any ordinary depositary, duty-bound to take good care of the goods received from the vessel and to turn the same over to the party entitled to their possession, subject to such qualifications as may have validly been imposed in the contract between the parties. [20] The arrastre operator was not required to verify the contents of the container received and to compare them with those declared by the shipper because, as earlier stated, the cargo was at the shipper's load and count. The arrastre operator was expected to deliver to the consignee only the container received from the carrier.

Petitioner claims that the absence of a request for a bad order survey belied the consignee's assertion that the shipment was filched while in ICTSI's custody, and that such absence did not stop the 15-day period from running. Normally, a request for a bad order survey is made in case there is an apparent or presumed loss or damage. The consignee made no such request despite being provided by the petitioner a form therefor.

The lack of a bad order survey does not toll the prescriptive period for filing a claim for loss, because the consignee can always file a provisional claim within 15 days from the time it discovers the loss or damage. Such a claim would place the arrastre operator on notice that the shipment sustained damage or loss, even if the exact amount thereof could not be specified at the moment. In this manner, the arrastre operator can immediately verify its culpability and liability. A provisional claim seasonably filed is sufficient compliance with the liability clause. [21]

From the foregoing discussion, it is clear that the appellate court erred in concluding that the shortage was due to the negligence of the arrastre operator.

2. In order to hold the arrastre operator liable for lost or damaged goods, the claimant should file with the operator a claim for the value of said goods "within fifteen (15) days from the date of discharge of the last package from the carrying vessel . . . ." [23] The filing of the claim for loss within the 15-day period is in the nature of a prescriptive period for bringing an action and is a condition precedent to holding the arrastre operator liable. This requirement is a defense made available to the arrastre operator, who may use or waive it as a matter of personal discretion. [24]

The said requirement is not an empty formality. It gives the arrastre contractor a reasonable opportunity to check the validity of the claim, while the facts are still fresh in the minds of the persons who took part in the transaction, and while the pertinent documents are still available. Such period is sufficient for the consignee to file a provisional claim after the discharge of the goods from the vessel. [25] For this reason, we believe that the 15-day limit is reasonable.

We should hasten to add that while a literal reading of the liability clause makes the time limit run from the moment the shipment is discharged from the carrying vessel, this Court has chosen to interpret this condition liberally in an endeavor to promote fairness, equity and justness. [26] A long line of cases has held that the 15-day period for filing claims should be counted from the date the consignee learns of the loss, damage or misdelivery of goods. [27]

In the case at bar, the consignee had all the time to make a formal claim from the day it discovered the shortage in the shipment, which was June 4, 1990, as shown by the records. According to the independent adjuster, the stripping or opening of the sea vans containing the shipped canned goods was made at the consignee's place upon receipt of the shipment. After discovering the loss, the consignee asked the adjuster to investigate the reason for the short-landing of the shipment. By the time the claim for loss was filed on October 2, 1990, four months had already elapsed from the date of delivery, June 4, 1990.

Prudential did not explain the delay. It did not even allege or prove that the discovery of the shortage was made by the consignee only 15-days before October 2, 1990. The latter had to wait for the independent adjuster's survey report dated September 7, 1990, before filing the claim with the former. By that time, however, it was clearly too late, as the 15-day period had expired.

In any event, within 15 days from the time the loss was discovered, the consignee could have filed a provisional claim, which would have constituted substantial compliance with the rule. [28] Its failure to do so relieved the arrastre operator of any liability for the nondelivery of the goods. [29] More specifically, the failure to file a provisional claim bars a subsequent action in court. [30] The rationale behind the time limit is that, without it, a consignee could too easily concoct or fabricate claims and deprive the arrastre operator of the best opportunity to probe immediately their veracity.

- Westwind Shipping Corporation vs. UCPB General Insurance Co., G.R. No. 200289, November 25, 2013

WESTWIND SHIPPING CORPORATION *v.* UCPB GENERAL INSURANCE CO., INC. and ASIAN TERMINALS INC

ORIENT FREIGHT INTERNATIONAL INC. *v.*
UCPB GENERAL INSURANCE CO., INC. and ASIAN TERMINALS INC.
G.R. No. 200314, **G.R. No. 200289, November 25, 2013** THIRD DIVISION **PERALTA, *J.***

Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

FACTS
Kinsho-Mataichi Corporation shipped from the port of Kobe, Japan, 197 metal containers/skids of tin-free steel for delivery to the consignee, San Miguel Corporation The shipment was loaded and received clean on board M/V Golden Harvest Voyage No. 66, a vessel owned and operated by Westwind Shipping Corporation. SMC insured the cargoes against all risks with UCPB General Insurance Co., Inc.

The shipment arrived in Manila and was discharged in the custody of the arrastre operator, Asian Terminals, Inc. During the unloading operation six containers/skids sustained dents and punctures from the forklift used by the stevedores of Ocean Terminal Services, Inc. in centering and shuttling the containers/skids. Orient Freight International, Inc., the customs broker of SMC, withdrew from ATI the 197 containers/skids and delivered the same at SMC's warehouse. It was discovered upon discharge that additional nine containers/skids were also damaged due to the forklift operations; thus, making the total number of 15 containers/skids in bad order.

SMC filed complaints. The RTC opined that Westwind is not liable, since the discharging of the cargoes were done by ATI personnel using forklifts. It likewise absolved OFII from any liability, reasoning that it never undertook the operation of the forklifts which caused the dents and punctures, and that it merely facilitated the release and delivery of the shipment as the customs broker and representative of SMC. On appeal by UCPB, the CA reversed and set aside the trial court. It concluded that the common carrier, not the arrastre operator, is responsible during the unloading of the cargoes and is still bound to exercise extraordinary diligence at the time. The CA also considered that OFII is liable, agreeing with UCPB's contention that OFII is a common carrier bound to observe extraordinary diligence and is presumed to be at fault or have acted negligently for such damage.

ISSUE
Whether Westwind and OFII are liable to exercise extraordinary diligence

RULING
YES. 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. 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.

In this case, since the discharging of the containers/skids, which were covered by only one bill of lading, had not yet been completed at the time the damage occurred, there is no reason to imply that there was already delivery, actual or constructive, of the cargoes to ATI.

The mere proof of delivery of goods in good order to the carrier, and their arrival in the place of destination in bad order, make out a prima facie case against the carrier, so that if no explanation is given as to how the injury occurred, the carrier must be held responsible. It is incumbent upon the carrier to prove that the loss was due to accident or some other circumstances inconsistent with its liability.[18]

The contention of OFII is likewise untenable. A customs broker has been regarded as a common carrier because transportation of goods is an integral part of its business. Article 1732 does not distinguish between one whose principal business activity is the carrying of goods and one who does such carrying only as an ancillary activity. The contention, therefore, of petitioner that it is not a common carrier but a customs broker whose principal function is to prepare the correct customs declaration and proper shipping documents as required by law is bereft of merit. It suffices that petitioner undertakes to deliver the goods for pecuniary consideration. As the transportation of goods is an integral part of a customs broker, the customs broker is also a common carrier. For to declare otherwise "would be to deprive those with whom [it] contracts the protection which the law affords them notwithstanding the fact that the obligation to carry goods for [its] customers, is part and parcel of petitioner's business."

- Asian Terminals Inc. vs. First Lepanto-Taisho Insurance Corporation, G.R. No. 185964, June 16, 2014

ASIAN TERMINALS, INC. *vs.* FIRST LEPANTO-TAISHO INSURANCE CORPORATION G.R. No. 185964, June 16, 2014, J. Reyes

The shipment received by the ATI from the vessel of COCSCO was found to have sustained loss and damages. An arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession. It must prove that the losses were not due to its negligence or to that of its employees. The Court held that ATI failed to discharge its burden of proof. ATI blamed COSCO but when the damages were discovered, the goods were already in ATI's custody for two weeks. Witnesses also testified that the shipment was left in an open area exposed to the elements, thieves and vandals.

FACTS

About 3,000 bags of sodium tripolyphosphate contained in 100 plain jumbo bags were loaded on M/V "Da Feng" owned by China Ocean Shipping Co. (COSCO) in favor of Grand Asian Sales, Inc. (GASI). It was insured by GASI with FIRST LEPANTO for P7,959,550.50 under Marine Open Policy No. 0123.

The shipment arrived in Manila and was discharged into the custody of ATI, which was engaged in arrastre business. It remained at ATI's storage area until withdrawen by broker, Proven Customs Brokerage Corporation (PROVEN) for delivery to GASI.

Upon receipt, GASI found that the goods incurred shortages of 8,600 kg. and spillages of 3,315 kg. for a total of loss valued at P166,722.41. GASI sought recompense from COSCO through its Philippine agent Smith Bell Shipping Lines, Inc. (SMITH BELL), ATI, and PROVEN, but was denied. Thus, FIRST LEPANTO paid P165,772.40 as insurance indemnity.

Then GASI executed a Release of Claim, discharging FIRST LEPANTO from any and all liabilities pertaining to the damaged shipment and subrogating it to all the rights of recovery and claims the former may have against any person or corporation in relation to the damaged shipment.

FIRST LEPANTO demanded reimbursement from COSCO through SMITH BELL, PROVEN, and ATI. When denied, it filed a Complaint for sum of money before the MeTC.

ATI denied liability and claimed it exercised due diligence and care in handling the goods. ATI alleged that upon arrival, it was discovered that one jumbo bag sustained loss/damage while in custody of COSCO as evidenced by Turn Over Survey of Bad Order Cargo No. 47890. During withdrawal of PROVEN, it was re-examined and the goods were found to be in the same condition as when it was turned over to ATI such that one jumbo bag was damaged. ATI also averred that even if it was liable, its contract for cargo handling service limits its liability to not more than P5,000 per package.

PROVEN also denied liability and claimed that the damages were sustained before they were withdrawn from ATI's custody under which the shipment was left in an open area exposed to the elements, thieves and vandals. Despite receipt of summons, COSCO and SMITH BELL failed to file an answer to the complaint.

MeTC dismissed the claim, absolving ATI and PROVEN of liability and finding COSCO to be liable but ruling that it had no jurisdiction over it since it was a foreign corporation and it was not established that SMITH BELL is its Philippine Agent. On appeal, the RTC reversed this decision, by which it held ATI liable. ATI challenged the RTC's decision before the Court of Appeals in which it argued that there was no valid subrogation because FIRST LEPANTO failed to present a valid and existing Marine Open Policy or insurance contract. The CA dismissed the appeal.

ISSUE
1. Is ATI liable for the damages of the shipment?
2. Whether or not the presentation of the insurance policy is indispensable in proving right of FIRST LEPANTO to be subrogated

RULING
1. Yes, ATI failed to prove that it exercised due care and diligence while shipment was under its custody, control and possession as arrastre operator.

Factual questions pertaining to ATI's liability has already been settled in the uniform factual findings of the RTC and the CA. Such findings are binding and conclusive upon the Supreme Court. Only questions of law are allowed in petitions for review on certiorari under Rule 45 of the Rules of Court.
The relationship between the consignee and the arrastre operator is akin to that existing between the consignee and/or the owner of the shipped goods and the common carrier, or that between a depositor and a warehouseman. Hence, in the performance of its obligations, an arrastre operator should observe the same degree of diligence as that required of a common carrier and a warehouseman. An arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession.

Since the safekeeping of the goods is its responsibility, it must prove that the losses were not due to its negligence or to that of its employees. ATI failed to discharge its burden of proof. Instead, it insisted on shifting the blame to COSCO on the basis of the Request for Bad Order Survey, purportedly showing that when ATI received the shipment, one jumbo bag thereof was already in damaged condition.

The Court affirmed the finding of the RTC and CA that ATI's contention was improbable and illogical. The date of the said document was too distant from the date when the shipment was actually received by ATI from COSCO. In fact, what the document established is that when the loss/damage was discovered, the shipment has been in ATI's custody for at least two weeks. This circumstance, coupled with the undisputed declaration of PROVEN's witnesses that while the shipment was in ATI's custody, it was left in an open area exposed to the elements, thieves and vandals, all generate the conclusion that ATI failed to exercise due care and diligence.

2. No, the non-presentation of the insurance contract is not fatal to FIRST LEPANTO's cause of action.
ATI put in issue the submission of the insurance contract for the first time before the CA. ATI also failed to allege the necessity of the insurance contract in its answer to the complaint before the MeTC. Neither was the same considered during pre-trial as one of the decisive matters in the case.

Since it was not agreed during the pre-trial proceedings that FIRST LEPANTO will have to prove its subrogation rights by presenting a copy of the insurance contract, ATI is barred from pleading the absence of such contract in its appeal. It is imperative for the parties to disclose during pre-trial all issues they intend to raise during the trial because they are bound by the delimitation of such issues. The determination of issues during the pre-trial conference bars the consideration of other questions, whether during trial or on appeal.

However, the Court ruled that the non-presentation of the insurance contract is not fatalto FIRST LEPANTO's right to collect reimbursement. Subrogation is the substitution of one person in the place of another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities.

As a general rule, the marine insurance policy needs to be presented in evidence before the insurer may recover the insured value of the lost/damaged cargo in the exercise of its subrogatory right. Presentation of the contract constitutive of the insurance relationship between the consignee and insurer is critical because it is the legal basis of the latter's right to subrogation.

But the Court held that there are exceptions to this rule. The right of subrogation accrues simply upon payment by the insurance company of the insurance claim. Hence, presentation in evidence of the marine insurance policy is not indispensable before the insurer may recover from the common carrier the insured value of the lost cargo in the exercise of its subrogatory right. The subrogation receipt, by itself, was held sufficient to establish not only the relationship between the insurer and consignee, but also the amount paid to settle the insurance claim.

It was held that the Certificate of Insurance and the Release of Claim presented as evidence sufficiently established FIRST LEPANTO's right to collect reimbursement as the subrogee of GASI.

3. Public Utilities

- Kilusang Mayo Uno Labor Center vs. Garcia, 239 SCRA 386 (1994)

KILUSANG MAYO UNO LABOR CENTER vs.HON. JESUS B. GARCIA, JR., the LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD, and the PROVINCIAL BUS OPERATORS ASSOCIATION OF THE PHILIPPINES

G.R. No. 115381 December 23, 1994 FIRST DIVISION KAPUNAN, J.

Public utilities are privately owned and operated businesses whose service are essential to the general public. They are enterprises which specially cater to the needs of the public and conduce to their comfort and convenience. As such, public utility services are impressed with public interest and concern. The same is true with respect to the business of common carrier which holds such a peculiar relation to the public interest that there is superinduced upon it the right of public regulation when private properties are affected with public interest, hence, they cease to be juris privati only. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect grants to the public an interest in that use, and must submit to the control by the public for the common good, to the extent of the interest he has thus created.[1]

An abdication of the licensing and regulatory government agencies of their functions as the instant petition seeks to show, is indeed lamentable. Not only is it an unsound administrative policy but it is inimical to public trust and public interest as well.

FACTS

Then Secretary of DOTC, Oscar M. Orbos, issued Memorandum Circular No. 90-395 to then LTFRB Chairman, Remedios A.S. Fernando allowing provincial bus operators to charge passengers rates within a range of 15% above and 15% below the LTFRB official rate for a period of one (1) year.

This range was later increased by LTFRB thru a Memorandum Circular No. 92-009 providing, among others, that "The existing authorized fare range system of plus or minus 15 per cent for provincial buses and jeepneys shall be widened to 20% and -25% limit in 1994 with the authorized fare to be replaced by an indicative or reference rate as the basis for the expanded fare range."

Sometime in March, 1994, private respondent PBOAP, availing itself of the deregulation policy of the DOTC allowing provincial bus operators to collect plus 20% and minus 25% of the prescribed fare without first having filed a petition for the purpose and without the benefit of a public hearing, announced a fare increase of twenty (20%) percent of the existing fares.

On March 16, 1994, petitioner KMU filed a petition before the LTFRB opposing the upward adjustment of bus fares, which the LTFRB dismissed for lack of merit.

ISSUE

Whether or not the authority given by respondent LTFRB to provincial bus operators to set a fare range of plus or minus fifteen (15%) percent, later increased to plus twenty (20%) and minus twenty-five (-25%) percent, over and above the existing authorized fare without having to file a petition for the purpose, is unconstitutional, invalid and illegal.

RULING

Yes. Public utilities are privately owned and operated businesses whose service are essential to the general public. They are enterprises which specially cater to the needs of the public and conduce to their comfort and convenience. As such, public utility services are impressed with public interest and concern. The same is true with respect to the business of common carrier which holds such a peculiar relation to the public interest that there is superinduced upon it the right of public regulation when private properties are affected with public interest, hence, they cease to be juris privati only. When, therefore, one devotes his property to a use in which the public has an interest,

he, in effect grants to the public an interest in that use, and must submit to the control by the public for the common good, to the extent of the interest he has thus created.[1]

An abdication of the licensing and regulatory government agencies of their functions as the instant petition seeks to show, is indeed lamentable. Not only is it an unsound administrative policy but it is inimical to public trust and public interest as well.

xxx Under section 16(c) of the Public Service Act, the Legislature delegated to the defunct Public Service Commission the power of fixing the rates of public services. Respondent LTFRB, the existing regulatory body today, is likewise vested with the same under Executive Order No. 202 dated June 19, 1987. x x x However, nowhere under the aforesaid provisions of law are the regulatory bodies, the PSC and LTFRB alike, authorized to delegate that power to a common carrier, a transport operator, or other public service.