Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PHILAM INSURANCE COMPANY, INC. (now CHARTIS PHILIPPINES INSURANCE, INC.*),
Petitioner,

- versus -

HEUNG-A SHIPPING CORPORATION and WALLEM PHILIPPINES SHIPPING, INC.,
Respondents.

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HEUNG-A SHIPPING CORPORATION and WALLEM PHILIPPINES SHIPPING, INC.,
Petitioners,

- versus -

PHILAM INSURANCE COMPANY, INC. (now CHARTIS PHILIPPINES INSURANCE, INC.),
Respondent.

G.R. No. 187701

G.R. No. 187812

Present:

SERENO, *C.J.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

Promulgated:

JUL 23 2014

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DECISION

REYES, *J.*:

At bar are consolidated petitions for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated January 30, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 89482 affirming with modifications the Decision[3] dated February 26, 2007 of the Regional Trial Court (RTC) of Makati City, Branch 148, in Civil Case No. 01-889.

The Factual Antecedents

On December 19, 2000, 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 G laminated plastic packaging material.

In order to ship the goods to the Philippines, JINSUK engaged the services of Protop Shipping Corporation (PROTOP), a freight forwarder likewise based in South Korea, to forward the goods to their consignee, NOVARTIS.

Based on Bill of Lading No. PROTAS 200387 issued by PROTOP, the cargo was on freight prepaid basis and on "shipper's load and count" which means that the "container [was] packed with cargo by one shipper where the quantity, description and condition of the cargo is the sole responsibility of the shipper."[4] Likewise stated in the bill of lading is the name Sagawa Express Phils., Inc., (SAGAWA) designated as the entity in the Philippines which will obtain the delivery contract.

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), a Korean corporation, pursuant to a 'slot charter agreement'

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* Per Court Resolution dated July 21, 2010 on the basis Motion for Substitution of Petitioner/Respondent's name as evidenced by Certificate of Filing of Amended Articles of Incorporation dated October 15, 2009, *see rollo* (G.R. No. 187701), pp. 148-151, 158-159; *rollo* (G.R. No. 187812), pp. 217-220, 222-223.

1 Per Court Resolution dated January 13, 2010, *rollo* (G.R. No. 187701), p. 137A; *rollo*, (G.R. No. 187812), p. 215.

2 Penned by Associate Justice (now Presiding Justice) Andres B. Reyes, Jr., with Associate Justices Rosalinda Asuncion-Vicente and Myrna Dimaranan Vidal, concurring; *rollo* (G.R. No. 187701), pp. 42-70; *rollo* (G.R. No. 187812), pp. 42-70.

3 Issued by Presiding Judge Oscar B. Pimentel; *rollo* (G.R. No. 187701), pp. 75-103.

4 Section II-24 of the Customs Administrative Order No. 8-75, id. at 77.

whereby a space in the latter's vessel was reserved for the exclusive use of the former. Wallem Philippines Shipping, Inc. (WALLEM) is the ship agent of HEUNG-A in the Philippines.

NOVARTIS insured the shipment with Philam Insurance Company, Inc. (PHILAM, now Chartis Philippines Insurance, Inc.) under All Risk Marine Open Insurance Policy No. MOP-0801011828 against all loss, damage, liability, or expense before, during transit and even after the discharge of the shipment from the carrying vessel until its complete delivery to the consignee's premises.

The vessel arrived at the port of Manila, South Harbor, on December 27, 2000 and the subject shipment contained in Sea Van Container No. DNAU 420280-9 was discharged without exception into the possession, custody and care of Asian Terminals, Inc. (ATI) as the customs arrastre operator.

The shipment was thereafter withdrawn on January 4, 2001, by NOVARTIS' appointed broker, Stephanie Customs Brokerage Corporation (STEPHANIE) from ATI's container yard.

The shipment reached NOVARTIS' premises on January 5, 2001 and was thereupon inspected by the company's Senior Laboratory Technician, Annie Rose Caparoso (Caparoso).[5]

Upon initial inspection, Caparoso found the container van locked with its load intact. After opening the same, she inspected its contents and discovered that the boxes of the shipment were wet and damp. The boxes on one side of the van were in disarray while others were opened or damaged due to the dampness. Caparoso further observed that parts of the container van were damaged and rusty. There were also water droplets on the walls and the floor was wet. Since the damaged packaging materials might contaminate the product they were meant to hold, Caparoso rejected the entire shipment.

Renato Layug and Mario Chin, duly certified adjusters of the Manila Adjusters and Surveyors Company were forthwith hailed to inspect and conduct a survey of the shipment.[6] Their Certificate of Survey[7] dated January 17, 2001 yielded results similar to the observations of Caparoso, thus:

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5 Id. at 86-87.
6 Id. at 83-86.
7 *Rollo* (G.R. No. 187812), pp. 77-81.

> [T]he sea van panels/sidings and roofing were noted with varying degrees of indentations and partly corroded/rusty. Internally, water bead clung along the roofs from rear to front section. The mid section dented/sagged with affected area was noted with minutes hole evidently due to thinning/corroded rusty metal plates. The shipment was noted with several palletized cartons already in collapsed condition due to wetting. The van's entire floor length was also observed wet.[8]

All 17 pallets of the 184 cartons/rolls contained in the sea van were found wet/water damaged. Sixteen (16) cartons/rolls supposedly contained in 2 pallets were unaccounted for although the surveyors remarked that this may be due to short shipment by the supplier considering that the sea van was fully loaded and can no longer accommodate the said unaccounted items. The survey report further stated that the "*wetting sustained by the shipment may have reasonably be attributed to the water seepage that gain entry into the sea van container damage roofs (minutes hole) during transit period* [sic]."[9]

Samples from the wet packing materials/boxes were submitted to the chemist of Precision Analytical Services, Inc. (PRECISION), Virgin Hernandez (Hernandez), and per Laboratory Report No. 042-07 dated January 16, 2001, the cause of wetting in the carton boxes and kraft paper/lining materials as well as the aluminum foil laminated plastic packaging material, was salt water.[10]

Aggrieved, NOVARTIS demanded indemnification for the lost/damaged shipment from PROTOP, SAGAWA, ATI and STEPHANIE but was denied. Insurance claims were, thus, filed with PHILAM which paid the insured value of the shipment in the adjusted amount of One Million Nine Hundred Four Thousand Six Hundred Thirteen Pesos and Twenty Centavos (□1,904,613.20).

Claiming that after such payment, it was subrogated to all the rights and claims of NOVARTIS against the parties liable for the lost/damaged shipment, PHILAM filed on June 4, 2001, a complaint for damages against PROTOP, as the issuer of Bill of Lading No. PROTAS 200387, its ship agent in the Philippines, SAGAWA, consignee, ATI and the broker, STEPHANIE.

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8 Id. at 79.
9 Id. at 81.
10 Id. at 80; *see* also *rollo* (G.R. No. 187701), p. 87.

On October 12, 2001, PHILAM sent a demand letter to WALLEM for reimbursement of the insurance claims paid to NOVARTIS.[11] When WALLEM ignored the demand, PHILAM impleaded it as additional defendant in an Amended Complaint duly admitted by the trial court on October 19, 2001.[12]

On December 11, 2001, PHILAM filed a Motion to Admit Second Amended Complaint this time designating PROTOP as the owner/operator of M/V Heung-A Bangkok V-019 and adding HEUNG-A as party defendant for being the registered owner of the vessel.[13] The motion was granted and the second amended complaint was admitted by the trial court on December 14, 2001.[14]

PROTOP, SAGAWA, ATI, STEPHANIE, WALLEM and HEUNG-A denied liability for the lost/damaged shipment.

SAGAWA refuted the allegation that it is the ship agent of PROTOP and argued that a ship agent represents the owner of the vessel and not a mere freight forwarder like PROTOP. SAGAWA averred that its only role with respect to the shipment was to inform NOVARTIS of its arrival in the Philippines and to facilitate the surrender of the original bill of lading issued by PROTOP.

SAGAWA further remarked that it was deprived an opportunity to examine and investigate the nature and extent of the damage while the matter was still fresh so as to safeguard itself from false/fraudulent claims because NOVARTIS failed to timely give notice about the loss/damage.[15]

SAGAWA admitted that it has a non-exclusive agency agreement with PROTOP to serve as the latter's delivery contact person in the Philippines with respect to the subject shipment. SAGAWA is also a freight forwarding company and that PROTOP was not charged any fee for the services rendered by SAGAWA with respect to the subject shipment and instead the latter was given US$10 as commission.[16] For having been dragged into court on a baseless cause, SAGAWA counterclaimed for damages in the form of attorney's fees.

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11 *Rollo* (G.R. No. 187812), pp. 82-83.
12 *Rollo* (G.R. No. 187701), p. 55.
13 Id. at 81.
14 Id. at 55.
15 Id. at 78-79.
16 Id. at 92-93.

ATI likewise interposed a counterclaim for damages against PHILAM for its allegedly baseless complaint. ATI averred that it exercised due care and diligence in handling the subject container. Also, NOVARTIS, through PHILAM, is now barred from filing any claim for indemnification because the latter failed to file the same within 15 days from receipt of the shipment.[17]

Meanwhile, STEPHANIE asserted that its only role with respect to the shipment was its physical retrieval from ATI and thereafter its delivery to NOVARTIS. That entire time, the seal was intact and not broken. Also, based on the Certificate of Survey, the damage to the shipment was due to salt water which means that it could not have occurred while STEPHANIE was in possession thereof during its delivery from ATI's container yard to NOVARTIS' premises. STEPHANIE counterclaimed for moral damages and attorney's fees.[18]

WALLEM alleged that the damage and shortages in the shipment were the responsibility of the shipper, JINSUK, because it was taken on board on a "shipper's load and count" basis which means that it was the shipper that packed, contained and stuffed the shipment in the container van without the carrier's participation. The container van was already sealed when it was loaded on the vessel and hence, the carrier was in no position to verify the condition and other particulars of the shipment.

WALLEM also asserted that the shipment was opened long after it was discharged from the vessel and that WALLEM or HEUNG-A were not present during the inspection, examination and survey.

WALLEM pointed the blame to PROTOP because its obligation to the shipper as freight forwarder carried the concomitant responsibility of ensuring the shipment's safety from the port of loading until the final place of delivery. WALLEM claimed to have exercised due care and diligence in handling the shipment.

In the alternative, WALLEM averred that any liability which may be imputed to it is limited only to US$8,500.00 pursuant to the Carriage of Goods by Sea Act (COGSA).[19]

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17 Id. at 79.
18 Id. at 77.
19 Id. at 80-81.

HEUNG-A argued that it is not the carrier insofar as NOVARTIS is concerned. The carrier was either PROTOP, a freight forwarder considered as a non-vessel operating common carrier or DONGNAMA which provided the container van to PROTOP.[20] HEUNG-A denied being the carrier of the subject shipment and asserted that its only obligation was to provide DONGNAMA a space on board M/V Heung-A Bangkok V-019.

PROTOP failed to file an answer to the complaint despite having been effectively served with alias summons. It was declared in default in the RTC Order dated June 6, 2002.[21]

Ruling of the RTC

In a Decision[22] dated February 26, 2007, the RTC ruled that the damage to the shipment occurred onboard the vessel while in transit from Korea to the Philippines.

HEUNG-A was adjudged as the common carrier of the subject shipment by virtue of the admissions of WALLEM's witness, Ronald Gonzales (Gonzales) that despite the slot charter agreement with DONGNAMA, it was still the obligation of HEUNG-A to transport the cargo from Busan, Korea to Manila and thus any damage to the shipment is the responsibility of the carrier to the consignee.

The RTC further observed that HEUNG-A failed to present evidence showing that it exercised the diligence required of a common carrier in ensuring the safety of the shipment.

The RTC discounted the slot charter agreement between HEUNG-A and DONGNAMA, and held that it did not bind the consignee who was not a party thereto. Further, it was HEUNG-A's duty to ensure that the container van was in good condition by taking an initiative to state in its contract and demand from the owner of the container van that it should be in a good condition all the time. Such initiative cannot be shifted to the shipper because it is in no position to demand the same from the owner of the container van.

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20 Id. at 82-83.
21 Id. at 83.
22 Id. at 75-103.

WALLEM was held liable as HEUNG-A's ship agent in the Philippines while PROTOP was adjudged liable because the damage sustained by the shipment was due to the bad condition of the container van. Also, based on the statement at the back of the bill of lading, it assumed responsibility for loss and damage as freight forwarder, *viz*:

> 6.1 The responsibility of the Freight Forwarder for the goods under these conditions covers the period from the time the Freight Forwarder has taken the goods in his charge to the time of the delivery.
>
> 6.2 The Freight Forwarde[r] shall be liable for loss or damage to the goods as well as for delay in delivery if the occurrence which caused the loss, damage, delay in delivery took place while the goods were in his charge as defined in clause 2.1.a unless the Freight Forwarder proves that no fault or neglect of his own servants or agents or any other person referred to in Clause 2.2 has caused or contributed to such loss, damage or delay. However, the Freight Forwarder shall only be liable for loss following from delay in delivery if the Consignor has made a declaration of interest in timely delivery which has been accepted by the Freight Forwarder and stated in this FBL.[23]

PHILAM was declared to have been validly subrogated in NOVARTIS' stead and thus entitled to recover the insurance claims it paid to the latter.

ATI and STEPHANIE were exonerated from any liability. SAGAWA was likewise adjudged not liable for the loss/damage to the shipment by virtue of the phrase "Shipper's Load and Count" reflected in the bill of lading issued by PROTOP. Since the container van was packed under the sole responsibility of the shipper in Korea, SAGAWA, which is based in the Philippines, had no chance to check if the contents were in good condition or not. The RTC concluded that SAGAWA cannot be expected to observe the diligence or care required of a carrier or ship agent.

SAGAWA, ATI and STEPHANIE's counterclaims for attorney's fees were granted and PHILAM was ordered to pay the same for having been filed a 'shotgun case' against them. Accordingly, the dispositive portion of the RTC decision read:

> WHEREFORE, premises considered, judgment is hereby rendered declaring defendants PROTOP SHIPPING CORPORATION, HEUNG-A SHIPPING CORPORATION and WALLEM PHILIPPINES SHIPPING, INC. solidarily liable to pay x x x PHILAM INSURANCE COMPANY, INC. the following amounts:

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[23] Id. at 100-101.

1. [□]1,904,613.20 plus interest of 12% per annum from December 26, 2001 (date of service of summons to defendant Heung-A) until full payment;

2. [□]350,000.00 as attorney's fees; and

3. Cost of suit.

With regards to the counter claims, x x x PHILAM INSURANCE COMPANY, INC. is hereby ordered to pay defendants SAGAWA EXPRESS PHILIPPINES, INC., ASIAN TERMINALS, INC., and STEPHANIE CUSTOMS BROKERAGE CORPORATION the amount of [□]100,000.00 each as attorney's fees.

SO ORDERED.[24]

Ruling of the CA

An appeal to the CA was interposed by PHILAM, WALLEM and HEUNG-A. In a Decision[25] dated January 30, 2009, the CA agreed with the RTC that PROTOP, HEUNG-A and WALLEM are liable for the damaged shipment. The fact that HEUNG-A was not a party to the bill of lading did not negate the existence of a contract of carriage between HEUNG-A and/or WALLEM and NOVARTIS. A bill of lading is not indispensable for the creation of a contract of carriage. By agreeing to transport the goods contained in the sea van provided by DONGNAMA, HEUNG-A impliedly entered into a contract of carriage with NOVARTIS with whom the goods were consigned. Hence, it assumed the obligations of a common carrier to observe extraordinary diligence in the vigilance over the goods transported by it. Further the Slot Charter Agreement did not change HEUNG-A's character as a common carrier.

Moreover, the proximate cause of the damage was the failure of HEUNG-A to inspect and examine the actual condition of the sea van before loading it on the vessel. Also, proper measures in handling and stowage should have been adopted to prevent seepage of sea water into the sea van.

The CA rejected WALLEM and HEUNG-A's argument that NOVARTIS failed to comply with Article 366 of the Code of Commerce requiring that a claim must be made against the carrier within 24 hours from receipt of the merchandise because such provision applies only to inter-island shipments within the Philippines.

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24 Id. at 103.

25 Id. at 42-70; *rollo* (G.R. No. 187812), pp. 42-70.

The CA limited the liability of PROTOP, WALLEM and HEUNG-A to US$8,500.00 pursuant to the liability limitation under the COGSA since the shipper failed to declare the value of the subject cargo in the bill of lading and since they could not be made answerable for the two (2) unaccounted pallets because the shipment was on a "shipper's load, count and seal" basis.

The attorney's fees awarded to SAGAWA, ATI and STEPHANIE were deleted because it was not shown that PHILAM was motivated by malice and bad faith in impleading them as defendants. Thus, the CA decision was disposed as follows:

> **WHEREFORE**, premises considered, the appealed Decision is hereby **AFFIRMED with MODIFICATION.** Defendants PROTOP SHIPPING CORPORATION, HEUNG-A SHIPPING CORPORATION [and] WALLEM PHILIPPINES SHIPPING, INC.'s solidary liability to PHILAM INSURANCE COMPANY, INC. is reduced to $8,500.00 plus interest per annum from 26 December 2001 (date of service of summons to defendant Heung-A) until full payment. The award of attorney's fees in the amount of One Hundred Thousand Pesos ([ ]100,000.[00]) each to SAGAWA EXPRESS PHILIPPINES, INC., ASIAN TERMINALS, INC. and STEPHANIE CUSTOMS BROKERAGE is hereby **DELETED.**
>
> **SO ORDERED**.[26]

The foregoing judgment was reiterated in the CA Resolution[27] dated May 8, 2009 which denied the motions for reconsideration filed by PHILAM, WALLEM and HEUNG-A.

PHILAM thereafter filed a petition for review before the Court docketed as G.R. No. 187701. WALLEM and HEUNG-A followed suit and their petition was docketed as G.R. No. 187812. Considering that both petitions involved similar parties and issue, emanated from the same Civil Case No. 01-889 and assailed the same CA judgment, they were ordered consolidated in a Resolution[28] dated January 13, 2010.

In G.R. No. 187701, PHILAM raised the following grounds:

> THE HONORABLE [CA] COMMITTED SERIOUS ERROR WHEN IT RULED IN ITS DECISION OF 30 JANUARY 2009 THAT [HEUNG-A and WALLEM] HAVE THE RIGHT TO LIMIT THEIR LIABILITY UNDER THE PACKAGE LIMITATION OF

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26 *Rollo* (G.R. No. 187701), pp. 69-70; *rollo* (G.R. No. 187812), pp. 69-70.
27 *Rollo* (G.R. No. 187701), pp. 72-74; *rollo* (G.R. No. 187812), pp. 72-74.
28 *Rollo* (G.R. No. 187701), p. 137A; *rollo* (G.R. No. 187812), p. 215.

LIABILITY OF SECTION 4(5) OF THE CARRIAGE OF GOODS BY SEA ACT, 1924, IN VIEW OF ITS OBSERVATION THAT [NOWHERE] IN THE BILL OF LADING DID THE SHIPPER DECLARE THE VALUE OF THE SUBJECT CARGO;

THE HONORABLE [CA] COMMITTED SERIOUS ERROR WHEN IT COMPLETELY DISREGARDED THE FUNDAMENTAL BREACHES OF [HEUNG-A and WALLEM] OF [THEIR] OBLIGATIONS AND RESPONSIBILITIES UNDER THE CONTRACT OF CARRIAGE AND LAW OF THE CASE AS LEGAL GROUNDS TO PRECLUDE ITS AVAILMENT OF THE PACKAGE LIMITATION OF LIABILITY UNDER SECTION 4(5) OF THE CARRIAGE OF GOODS BY SEA ACT, 1924.[29]

In G.R. No. 187812, HEUNG-A and WALLEM argued that:

THE [CA] COMMITTED A SERIOUS ERROR OF LAW IN RULING THAT THE CODE OF COMMERCE, SPECIFICALLY ARTICLE 366 THEREOF, DOES NOT APPLY IN THIS CASE[;]

THE [CA] COMMITTED A SERIOUS ERROR OF LAW IN RULING THAT THE SO-CALLED "PARAMOUNT CLAUSE" IN THE BILL OF LADING, WHICH PROVIDED THAT "COGSA" SHALL GOVERN THE TRANSACTION, RESULTED IN THE EXCLUSION OR INAPPLICABILITY OF THE CODE OF COMMERCE[;]

THE [CA] COMMITTED A SERIOUS ERROR OF LAW IN NOT RULING THAT [PHILAM] HAS NO RIGHT OF ACTION AGAINST [HEUNG-A and WALLEM] INSOFAR AS DAMAGE TO CARGO IS CONCERNED IN VIEW OF THE FACT THAT NO TIMELY CLAIM WAS FILED PURSUANT TO ARTICLE 366 OF THE CODE OF COMMERCE OR THE PROVISIONS OF THE BILL OF LADING NO. DNALGOBUM 005019[;]

THE [CA] GRAVELY ABUSED ITS DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN FINDING THAT THE CONTAINERIZED CARGO WAS DAMAGED WHILE IN THE POSSESSION OR CUSTODY OF THE VESSEL "HEUNG-A BANGKOK".[30]

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29 *Rollo* (G.R. No. 187701), p. 23.

30 *Rollo* (G.R. No. 187812), p. 21-22.

Issues

The arguments proffered by the parties can be summed up into the following issues: (1) Whether the shipment sustained damage while in the possession and custody of HEUNG-A, and if so, whether HEUNG-A's liability can be limited to US$500 per package pursuant to the COGSA; (2) Whether or not NOVARTIS/PHILAM failed to file a timely claim against HEUNG-A and/or WALLEM.

Ruling of the Court

It must be stressed that the question on whether the subject shipment sustained damaged while in the possession and custody of HEUNG-A is a factual matter which has already been determined by the RTC and the CA. The courts *a quo* were uniform in finding that the goods inside the container van were damaged by sea water while in transit on board HEUNG-A's vessel.

Being a factual question, it is not reviewable in the herein petition filed under Rule 45 of the Rules of Court. It is not the Court's duty to evaluate and weigh the evidence all over again as such function is conceded to be within the expertise of the trial court whose findings, when supported by substantial evidence on record and affirmed by the CA, are regarded with respect, if not binding effect, by this Court.[31]

There are certain instances, however, when the Court is compelled to deviate from this rule, dismantle the factual findings of the courts *a quo* and conduct a probe into the factual questions at issue. These circumstances are: (1) the inference made is manifestly mistaken, absurd or impossible; (2) there is grave abuse of discretion; (3) the findings are grounded entirely on speculations, surmises or conjectures; (4) the judgment of the CA is based on misapprehension of facts; (5) the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) the findings of fact are conclusions without citation of specific evidence on which they are based; (7) the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.[32]

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[31] *Asian Terminals, Inc. v. Malayan Insurance Co., Inc.,* G.R. No. 171406, April 4, 2011, 647 SCRA 111, 126.

[32] Id. at 126-127.

None of the foregoing instances is extant from records of the present case. Instead, the Court finds that the factual findings of the courts *a quo* are supported by evidence on record.

The uncontested results of the inspection survey conducted by Manila Adjusters Surveyors Company showed that sea water seeped into the panels/sidings and roofing of the container van. This was confirmed by the examination conducted by Hernandez, the chemist of PRECISION, on samples from the cartons, boxes, aluminum foil and laminated plastic packaging materials. Based on the laboratory examination results, the contents of the van were drenched by sea water, an element which is highly conspicuous in the high seas. It can thus be reasonably concluded that negligence occurred while the container van was in transit, in HEUNG-A's possession, control and custody as the carrier.

Although the container van had defects, they were not, however, so severe as to accommodate heavy saturation of sea water. The holes were tiny and the rusty portions did not cause gaps or tearing. Hence, the van was still in a suitable condition to hold the goods and protect them from natural weather elements or even the normal flutter of waves in the seas.

The scale of the damage sustained by the cargo inside the van could have been only caused by large volume of sea water since not a single package inside was spared. Aside from the defective condition of the van, some other circumstance or occurrence contributed to the damages sustained by the shipment. Since the presence of sea water is highly concentrated in the high seas and considering HEUNG-A's failure to demonstrate how it exercised due diligence in handling and preserving the container van while in transit, it is liable for the damages sustained thereby.

As the carrier of the subject shipment, HEUNG-A was bound to exercise extraordinary diligence in conveying the same and its slot charter agreement with DONGNAMA did not divest it of such characterization nor relieve it of any accountability for the shipment.

Based on the testimony of Gonzales,[33] WALLEM's employee and witness, the charter party between HEUNG-A and DONGNAMA was a contract of affreightment and not a bare boat or demise charter, *viz*:

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33 *Rollo* (G.R. No. 187701), pp. 88-90.

> Q: Now, the space charter that you are mentioning is not either a bareboat or a demise?
> A: Yes, sir.
>
> Q: Okay. So in other words, that space charter party is only to allow the shipper, Dongnama, to load its cargo for a certain specified space?
> A: Yes, sir.[34]

A charter party has been defined in *Planters Products, Inc. v. Court of Appeals*[35] as:

> [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 by which the owner of a ship or other vessel lets the whole or a 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. x x x.[36] (Citations omitted)

A charter party has two types. *First*, it could be a contract of affreightment whereby the use of shipping space on vessels is 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 determinate period of time (time charter) or 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.[37] 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.[38]

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.[39] 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.[40]

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34 Id. at 89-90.
35 G.R. No. 101503, September 15, 1993, 226 SCRA 476.
36 Id. at 483-484.
37 Id. at 484.
38 *Caltex (Philippines), Inc. v. Sulpicio Lines, Inc.*, 374 Phil. 325, 334 (1999).
39 *Planters Products, Inc. v. Court of Appeals*, supra note 35, at 484.
40 *Caltex (Philippines), Inc. v. Sulpicio Lines, Inc.*, supra note 38, at 333.

Clearly then, despite its contract of affreightment with DONGNAMA, HEUNG-A remained responsible as the carrier, hence, answerable for the damages incurred by the goods received for transportation. "[C]ommon 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.'"[41]

"[C]ommon 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."[42] Further, under Article 1742 of the Civil Code, even if the loss, destruction, or deterioration of the goods should be caused by the faulty nature of the containers, the common carrier must exercise due diligence to forestall or lessen the loss.

Here, HEUNG-A failed to rebut this *prima facie* presumption when it failed to give adequate explanation as to how the shipment inside the container van was handled, stored and preserved to forestall or prevent any damage or loss while the same was in its possession, custody and control.

PROTOP is solidarily liable with HEUNG-A for the lost/damaged shipment in view of the bill of lading the former issued to NOVARTIS. "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."[43] PROTOP breached its contract with NOVARTIS when it failed to deliver the goods in the same quantity, quality and description as stated in Bill of Lading No. PROTAS 200387.

The CA did not err in applying the provisions of the COGSA specifically, the rule on Package Liability Limitation.

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41 *Belgian Overseas Chartering and Shipping N.V. v. Philippine First Insurance Co., Inc.,* 432 Phil. 567, 578 (2002)

42 Id. at 579.

43 *Unsworth Transport International (Phils.), Inc. v. Court of Appeals,* G.R. No. 166250, July 26, 2010, 625 SCRA 357, 366.

Under 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 subject shipment was being transported from South Korea to the Philippines, the Civil Code provisions shall apply. In all matters not regulated by the Civil Code, the rights and obligations of common carriers shall be governed by the Code of Commerce and by special laws,[44] such as the COGSA.

While the Civil Code contains provisions making the common carrier liable for loss/damage to the goods transported, it failed to outline the manner of determining the amount of such liability. Article 372 of the Code of Commerce fills in this gap, thus:

> Article 372. **The value of the goods which the carrier must pay in cases if loss or misplacement shall be determined in accordance with that declared in the bill of lading, the shipper not being allowed to present proof that among the goods declared therein there were articles of greater value and money.**
>
> Horses, vehicles, vessels, equipment and all other principal and accessory means of transportation shall be especially bound in favor of the shipper, although with respect to railroads said liability shall be subordinated to the provisions of the laws of concession with respect to the property, and to what this Code established as to the manner and form of effecting seizures and attachments against said companies. (Emphasis ours)

In case, however, of the shipper's failure to declare the value of the goods in the bill of lading, Section 4, paragraph 5 of the COGSA provides:

> 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 be conclusive on the carrier.

Hence, when there is a loss/damage to goods covered by contracts of carriage from a foreign port to a Philippine port and in the absence a shipper's declaration of the value of the goods in the bill of lading, as in the present case, the foregoing provisions of the COGSA shall apply. The CA,

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44 CIVIL CODE OF THE PHILIPPINES, Article 1766.

therefore, did not err in ruling that HEUNG-A, WALLEM and PROTOP's liability is limited to $500 per package or pallet.[45]

The Court likewise affirms the CA in pronouncing HEUNG-A, WALLEM and PROTOP liable only for the lost/damaged 17 pallets instead of 19 pallets stated in the bill of lading. This is because, per the "Shipper's Load and Count" arrangement, the contents are not required to be checked and inventoried by the carrier at the port of loading or before said carrier enters the port of unloading in the Philippines since it is the shipper who has the sole responsibility for the quantity, description and condition of the cargoes shipped in container vans.[46] As such, the carrier cannot be held responsible for any discrepancy if the description in the bill of lading is different from the actual contents of the container.[47]

Consonant with the ruling in the recent *Asian Terminals, Inc. v. Philam Insurance Co., Inc.*,[48] the prescriptive period for filing an action for lost/damaged goods governed by contracts of carriage by sea to and from Philippine ports in foreign trade is governed by paragraph 6, Section 3 of the COGSA which states:

> (6) 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 before 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 maybe 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.

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45 If the number of cartons inside the container is disclosed in the bill of lading, each carton shall be treated as the COGSA packages. *See Eastern Shipping Lines, Inc. v. Intermediate Appellate Court*, No. L-71478, May 29, 1987, 150 SCRA 464, 476-477.

46 *United States Lines, Inc. v. Commissioner of Customs*, No. L-73490, June 18, 1987, 151 SCRA 189, 194.

47 Id.

48 G.R. No. 181319, July 24, 2013, 702 SCRA 88.

It was further ruled in *Asian Terminals* that pursuant to the foregoing COGSA provision, 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.

The consignee, NOVARTIS, received the subject shipment on January 5, 2001. PHILAM, as the subrogee of NOVARTIS, filed a claim against PROTOP on June 4, 2001, against WALLEM on October 12, 2001 and against HEUNG-A on December 11, 2001, or all within the one-year prescriptive period. Verily then, despite NOVARTIS' failure to comply with the three-day notice requirement, its subrogee PHILAM is not barred from seeking reimbursement from PROTOP, HEUNG-A and WALLEM because the demands for payment were timely filed.

The amount which PHILAM is entitled to receive shall earn a legal interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until its full satisfaction pursuant to *Nacar v. Gallery Frames.*[49]

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.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

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49 G.R. No. 189871, August 13, 2013, 703 SCRA 439.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice