REFLECTIONS ON RECENT SUPREME COURT DECISIONS IN TRANSPORTATION LAW*

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In this paper, I shall examine a number of Supreme Court decisions[1] that appear to have effected changes in precedent, as far as the law on transportation is concerned. These decisions deal with three related issues, namely:

1. Who is a common carrier?
2. What is the effect of the words "said to contain" in a bill of lading?
3. To what extent can a carrier avail itself of statutory limits to its liability?

These issues are related since they are all concerned with the primary issue in transportation law, *i.e.*, the liability of the carrier.[2]

The Civil Code describes common carriers as businesses engaged in the carriage of goods or passengers.[3] But not all businesses engaged in the carriage of goods and passengers are common carriers. In *Home Insurance Co. v. American Steamship Agencies*,[4] the Supreme Court described

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[1] *Maritime Agencies and Services, Inc. v. Court of Appeals*, 187 SCRA 346 (1990); *Reyma Brokerage, Inc. v. Philippine Home Assurance Corp.*, 202 SCRA 564 (1991); *National Development Co. v. Court of Appeals*, 164 SCRA 593 (1988); *American Home Assurance Co. v. Court of Appeals*, 208 SCRA 343 (1992).

[2] *See* J. Claro S. Tesoro, *International Transport Law in the Age of Remote Sensing*, JOURNAL OF THE INTEGRATED BAR OF THE PHILIPPINES, vol. 8, no. 4, at 193-198.

[3] The Civil Code of the Philippines, R.A. No. 386, art. 1732 (1950) [hereinafter The Civil Code].

[4] 23 SCRA 24 (1968).

a ship chartered to its full and complete capacity to carry a special cargo, or chartered to a special person only, as a private carrier. Consequently, the Justices concluded that the Civil Code provisions on common carriers should not be applied to a private carrier.[5]

The Civil Code requires the exercise of extraordinary diligence by common carriers.[6] On one hand, this duty gives rise to a presumption of negligence on the common carriers' part whenever goods or passengers carried by such carriers suffer damages or any injuries in the course of carriage.[7] The cargo interest or passenger in most cases need not establish the cause of such damages or injuries, at least in the first instance.[8] On the other hand, the presumption of negligence does not apply to private carriers in the event of loss or damage, since they are not required to exercise extraordinary diligence.[9]

This treatment of common carriers has its origin in English Common Law. Lord Hold, in his judgment in *Coggs v. Bernard*,[10] gave the reason for the rule:

> And this is the case of the common carrier x x x The law charges this person x x x to carry goods against all events, but acts of God, and of the enemies of the King. For though the force be never so great as if an irresistible force of people should rob him, nevertheless he is chargeable. And this is a politic establishment, contrived by the policy of the law, for the safety of all persons, the necessity of whose affairs oblige them to trust these sorts of persons, that they may be safe in their ways of dealing, or else the carriers might have an opportunity of undoing all persons that had any dealings with them, by combining with thieves, for example, and yet doing it in such a clandestine manner as would not be possible to be discovered.[11]

Judge Best, delivering the judgment in *Riley v. Horne*,[12] reiterated the proposition thus:

[5] *Id.* at 28.

[6] The Civil Code, art. 1733.

[7] *Id.*, arts. 1735 and 1756.

[8] *Bascos v. Court of Appeals*, 221 SCRA 318 (1993); *Eastern Shipping Lines v. Intermediate Appellate Court*, 150 SCRA 463 (1987); *Vda. de Abeto v. Philippine Airlines*, 115 SCRA 489 (1982).

[9] *Supra* notes 4 and 5. *See also* EDUARDO F. HERNANDEZ AND ANTERO A. PENASALES, PHILIPPINE ADMIRALITY AND MARITIME LAW 236, 245-246 (1st ed., 1987).

[10] 1 SMITH'S L. C. 175 (13th ed., 1703).

[11] *Id.* at 186

[12] 5 BING. 217 (1828).

> When goods are delivered to a carrier, they are usually no longer under the eye of the owner, he seldom follows or sends any servant with them to the place of their destination. If they should be lost or injured by the grossest negligence of the carrier or his servants, or stolen by them, or by thieves in collusion with them, the owner would be unable to prove any of these causes of loss, his witnesses must be the carrier's servants, and they, knowing that they could not be contradicted, would excuse their masters and themselves.[13]

Though the precedent seems to be that a carrier is not common when chartered to its full capacity, the Supreme Court in *Maritime Agencies and Services Inc. v. Court of Appeals*[14] found the owner of a carrier seemingly chartered to its full capacity liable for shore landed cargo as follows:

> x x x In the cases at bar, the trial court found that 1,383 bags were shortlanded, which could only mean that they were damaged, or lost on board the vessel before unloading of the shipment. It is not denied that the entire cargo shipped by the *charterer* in *Odessa* was covered by a clean bill of lading. As the bags were in good order when received in the vessel, the presumption is that they were damaged or lost during the voyage as a result of their negligent improper stowage. For this the ship owner should be held liable.[15]

In the same case, the Court held that the *Home Insurance* case cannot benefit the owner of the chartered carrier since there was no showing that the vessel was at fault.[16] The trial court in said case, however, had characterized the vessel as a common carrier and consequently applied the presumption of negligence to her.[17] Therefore, it was not necessary to prove that the vessel was at fault because she was already presumed to have been at fault. This presumption did not require any evidence of fault unless it was rebutted.

> Indeed, it was on the issue of characterization as a common carrier that the *Home Insurance* case was appealed to the Supreme Court.[18] When the Court ruled as cited above, the presumption of negligence was deemed to have been erroneously applied and the ship agent was not held liable since the ship owner was exempted from liability through an exclusion clause in the charter party.[19]

[13] *Id.* at 220.

[14] *Supra* note 1.

[15] 187 SCRA at 353.

[16] *Id.*

[17] *Supra* note 4 at 26.

[18] *Id.* at 26-28.

But perhaps, the Supreme Court did not have the Civil Code provision on common carriers in mind when it applied the presumption of negligence in the *Maritime Agencies* case. It should be noted that the Court made the observation that a clean bill of lading was issued to cover the shipment in question, which brings to mind the provision of Commonwealth Act No. 65,[20] otherwise known as the Carriage of Goods By Sea Act (COGSA).[21] This law provides that a bill of lading issued by the carrier shall be *prima facie* evidence of the receipt by such carrier of the goods as described in the bill of lading with respect to their loading marks, quantity or weight and their apparent order and condition upon loading.[22] By applying the provisions of COGSA, the chartered ship is deemed to have received the goods in the quantity stated in the clean bill and, in the absence of any satisfactory explanation on the shortlanding, is presumed to be responsible for the shortage in quantity of the goods.[23]

This approach is tenable if the contract of carriage at issue is covered by the clean bill of lading, since COGSA only applies to contracts of carriage covered by a bill of lading or any similar document of title.[24] Hence, a bill of lading would give rise to a disputable presumption of the carrier's liability for shortlanding only if such bill functions both as a receipt and as evidence of the contract of carriage.[25] However, the *Maritime Agencies* case recognized that the contract of carriage at issue was contained in a charter party.[26] COGSA by express provision does not apply to charter parties.[27]

The *Maritime Agencies* case also applied to the provisions of COGSA

[19] *Id.*

[20] A text of the Act can be found in 3 PHILIPPINE PERMAMENT AND GENERAL STATUTES 57 (1971).

[21] The Carriage of Goods By Sea Act passed by the National Assembly of the Philippines merely adopts Public Act No. 521 enacted by the 74th Congress of the United States of America (*See* sec. 1 of Commonwealth Act No. 65).

[22] *Id.*, title I, sec. 3, subsec. 4.

[23] *Supra* notes 15 and 22.

[24] *Supra* note 21, title I, sec. 1(b); and title II, sec. 13.

[25] *Id.*

[26] *Supra* note 1, 187 SCRA at 351-352.

[27] *Supra* note 21, title I, sec. 5, par. 2.

on prescription. The one-year period for filing suit was applied in dismissing the case against the chartered carrier.[28] Thus, it seems that this case may now be cited as precedent in the following instances.

(1) The period of one year for filing suit under COGSA can now be invoked by a chartered carrier, notwithstanding the express provisions of COGSA that it does not apply to charter parties by operation of law.

(2) The presumption of negligence is applicable to chartered carriers in the event of shortlanding of goods covered by a clean bill of lading, notwithstanding the ruling of the Supreme Court in *Home Insurance Co. v. American Steamship Agencies.*

A "clean bill of lading" refers to a situation where the carrier issues a bill of lading that does not contain any representation from the carrier that the goods were not in apparent good order or condition upon their receipt by such carrier.[29] The following representations appeared in a bill of lading covering a shipment of beef:

> SHIPPED ON BOARD FIVE SHIPPER PACKED CONTAINERS
> *SAID TO CONTAIN* 2680 CARTONS HARD FROZEN BONELESS
> 972938 KGS = 160800 LBS NETT
>
> 536 CARTONS - CONTAINER NO. BROU 43915 (4)
> 536 CARTONS - CONTAINER NO. ITLU 780480 (2)
> 536 CARTONS - CONTAINER NO. BROU 430773 (3)
> 536 CARTONS - CONTAINER NO. ITLU 782454 (3)
> 536 CARTONS - CONTAINER NO. BROU 4306561 (2)[30]

In *United States Lines v. Commissioner of Customs,*[31] the Supreme Court commented on the meaning of the above declaration thus:

> The containerization system was devised to facilitate the expeditious and economical loading, carriage and unloading of cargoes. Under this system, the shipper loads his cargo into a specifically designed container, seals the container and delivers it to the carrier for transportation. The carrier does not participate in the counting of the merchandise for loading thereof nor (sic) the sealing of the container. Having no actual knowledge of the kind, quantity or condition of the contents of the container, the carrier issues the corresponding bill of lading based on the declaration of the shipper. The bill of lading describes the cargo as a container simply and it states the contents of the container either as advised by the shipper or prefaced by the phrase, "said to contain".
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> Clearly then, the matter, quantity, description, and conditions of the cargo is (sic) the sole responsibility of the shipper.[32]

But in *Reyma Brokerage, Inc, v. Philippine Home Assurance Corp.*[33] the Supreme Court ruled that the *US Lines* precedent may not apply under the following circumstances:

> x x x we must also note that the bill of lading itself contains the printed stipulation. "x x x [W]eight, measurement, marks and numbers x x x quality contents and value shown above are furnished by the Merchant and have not been checked and are to be considered unknown, unless expressly acknowledged and agreed to."[34]

Then the Court continues its ruling:

> And in the bottom portion of the bill of lading there appears the statement, "[t]his bill of lading is a receipt only for the number of packages shown above", which was duly signed by the carrier.
>
> Evidently, the carrier, by signifying in the bill of lading that "it is a receipt x x x for the number of packages shown above," had explicitly admitted that the containerized shipments had actually the number of packages declared by the shipper in the bill of lading. And this conclusion is bolstered by the stipulation printed in the bill of lading, "unless expressly acknowledged and agreed to." Therefore, the phrase, "said to contain" also appearing in the bill of lading must give way to this reality.
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> Hence, this express acknowledgement of the carrier makes the case at bar an exception to the doctrine enunciated in the *United States Lines.* The rule enunciated by the *United State Lines* applies to a situation wherein the carrier of the containerized cargo *simply admits* the information furnished by the shipper with regard to the goods it shipped as reflected in the bill of lading ("said to contain") but

[28] *Supra* note 1, 187 SCRA at 351-354.

[29] *Supra* note 21, title I, sec. 3, subsec. 3(c). *See also* THE GALATEA (1980) I ALL ER 501.

[30] *Supra* note 1, 202 SCRA at 569 [emphasis supplied].

[31] 151 SCRA 189 (1987).

[32] *Id.* at 194.

[33] *Supra* note 1.

[34] *Supra* note 30.

> not where the carrier of the containerized cargo makes an *explicit admission* as to the weight, measurement marks, numbers, quality, contents and value, and more so, inscribed these admissions as stipulations in the bill of lading itself, or made them an addendum, to which the carrier affixed its express acknowledgement as what happened in this case. In its stead, the dictum that the bill of lading shall be *prima facie* evidence of the receipt of the carrier of the goods as therein described governs.[35]

It appears that the Court considered the word "packages" in the quoted stipulation as referring not to the containers but their contents.[36] Perhaps, this arose from the ambiguity in the meaning of the word "packages" in the bill of lading and the Court merely applied the rule that the interpretation of ambiguous words or stipulations in a contract shall not favor the party who caused the ambiguity, *i.e.*, the carrier who drafted the bill.[37]

But it is the carrier who added the phrase "said to contain" to the declaration of the shipper and as the petitioner in the *Reyma Brokerage* case pointed out, a "said to contain" bill of lading for sealed containers is receipt only on the containers but not of their contents which the carrier was not in a position to verify.[38]

Through the inclusion of said phrase, is it not clear that the "packages", receipt of which is being acknowledged, were actually the containers and not their contents? For how can the carrier disclaim knowledge of the actual contents of the container and in almost the same breath take an unqualified admission of the quantity of such contents? Indeed, given the meaning of the phrase "said to contain" provided by the *US Lines* case, it seems that the Court could have resolved or even avoided the ambiguity in the word "packages" by holding that the express acknowledgment of receipt by the carrier was limited by such phrase to the number of containers and does not refer to the quantity of cartons such containers were "said to contain".

This case is also noteworthy for two other reasons. First, a brokerage company was held liable for short delivery on the basis of declarations

[35] *Id.* at 569-570.

[36] *Id.*

[37] The Civil Code, art 1377.

[38] *Supra* note 30 at 567.

appearing on a bill of lading which it did not issue and to which it was not a party. Second, although it was held liable, *inter alia*, on a bill of lading subject to the provisions of COGSA, it could not invoke the defense of prescription under COGSA because it was not a carrier, vessel, charterer, or legal holder of the bill of lading.[39]

The defense of prescription when properly invoked exempts the carrier from liability.[40] When prescription is not available, however, the holder usually relies on limitation of liability to reduce the amount of damages that it may be held responsible for.[41] But even this standard defense appears to have been undermined by two recent Supreme Court decisions.

In *National Development Co, v. Court of Appeals*, the Maritime Company of the Philippines contended that its liability should be limited to ₱ 200 per package or bale as provided in the bill of lading.[42] The Supreme Court rejected this contention on the basis that the value of the goods in question was declared in the bill of lading and corroborated by invoices offered as evidence during the trial.[43] That would have been sufficient to dispose of the case, for a bill of lading declaration of the actual value of the shipment supersedes the limitation figure provided in the contract of carriage and serves as the new limitation of liability of the carrier.[44]

The Court went on to say, however, that a common carrier "cannot limit its liability for injury to or loss of goods where such injury or loss was caused by its own negligence,"[45] and cited the case of *Juan Ysmael & Co. v. Barreto et.al.*[46] Since the statement was not necessary to resolve the case, it could have been regarded as *obiter dictum*. In the subsequent case of *American Home Assurance Co. v. Court of Appeals*,[47] however, the Court reiterated the same principle.[48]

[39] *Id.* at 572-573.

[40] *Union Carbide Phil. v. Manila Railroad*, 77 SCRA 359, 365 (1977).

[41] *Supra* note 8, 150 SCRA at 473.

[42] *Supra* note 1, 164 SCRA at 606.

[43] *Id.*

[44] *Supra* note 21, title I, sec. 4, subsec. 5.

[45] *Supra* note 42.

[46] 51 Phil 90 (1927).

[47] *Supra* note 1.

[48] *Id.*, 208 SCRA at 350.

A review of the case of *Juan Ysmael & Co. v. Barreto* discloses that a quoted portion of *Corpus Juris* which provides the basis for the ruling in question contains an important exception which was omitted in both the *National Development* and *Home Assurance* cases. The complete text of the quoted paragraph in *Corpus Juris* reads as follows:

> *In the absence of statute*, it is settled by the weight, or authority in the United States that whatever limitations against its common law liability are permissible to a carrier, it cannot limit its liability for injury to or loss of goods shipped, where such injury or loss is caused by its own negligence. This is the Common Law doctrine and it makes no difference that there is no statutory prohibition against contracts of this character.[49] (emphasis supplied)

The principle that common carriers cannot limit their liability if the proximate cause of the loss of or damage to the goods that it carried is its own negligence admits of an exception, *i.e.*, when a law allows it. Articles 1748, 1749 and 1750 of the Civil Code provide instances in which common carriers can enter into agreements limiting their liability.[50] COGSA establishes a limitation figure of US $500.[51]

Even precedents have sanctioned such limitation. The case *Heacook v. Macondray*[52] validated a stipulation which allowed a holder to limit its liability for loss of or damage to goods to a fixed sum, unless the shipper had declared a higher value for such goods and paid a higher rate of freight.[53] The more recent case of *Eastern Shipping Lines v. Intermediate Appellate Court*[54] contained the following observations:

> It is to be noted that the Civil Code does not of itself limit the liability of the common carrier to a fixed amount per package although the Code expressly permits a stipulation limiting such liability. Thus, the COGSA, which is suppletory to the provisions of the Civil Code steps in and supplements the Code by establishing a statutory provision limiting the carrier's liability in the absence of a declaration of a higher value of the goods by the shipper in the bill of lading. *The provision of the Carriage of Goods By Sea Act on limited liability are as much a part of a bill of lading as though physically in it and as much a part thereof as though placed therein by agreement of the parties.*[55]
>
> It should be noted that in *Eastern Shipping Lines*, the carrier was found to have been negligent and such negligence was the cause of the fire that destroyed both ship and cargo.[56]

In summary, while *Home Insurance Co. v. American Steamship Agencies* classifies a carrier chartered to its full capacity or to a special person only as a private carrier,[57] *Maritime Agencies & Services, Inc. v. Court of Appeals* appears to have cast doubt upon this classification by applying the provision of the Civil Code on common carriers, *i.e.*, the presumption of negligence, to a chartered carrier.[58] *United States Lines v. Commissioner of Customs* interpreted what "said to contain" means in the context of a bill of lading.[59] But *Reyma Brokerage, Inc. v. Philippine Home Insurance Corp.* then made the carrier responsible for the quantity of the cargo declared by the shipper despite the inclusion of the phrase "said to contain" in the bill of lading.[60] Finally, though there are statutory bases available to the carrier for limiting its liability for loss or damages to cargo,[61] the two cases of *National Development Co. v. Court of Appeals* and *American Home Assurance Co., v. Court of Appeals* apparently deprive the negligent carrier of the right of limitation[61] if the carrier is held liable.

In conclusion, it seems that the Supreme Court decisions under review have left the field of Transportation Law in a more confused state.

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[49] *Supra* note 46 at 98.

[50] Article 1748. An agreement limiting the common carrier's liability for delay on account of strikes or riots is valid.

Article 1749. 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.

Article 1750. A contract fixng 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.

[51] *Supra* note 44.

[52] 42 Phil 205 (1921).

[53] *Id.* at 208.

[54] *Supra* note 8.

[55] *Id.*, 150 SCRA at 473-474.

[56] *Id.* at 472.

[57] *Supra* note 5.

[58] *Supra* note 15.

[59] *Supra* note 32.

[60] *Supra* note 35.

[61] *Supra* notes 50, 51, and 52.

[62] *Supra* notes 45 and 48.