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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC., Petitioner,	**G.R. No. 195031**
	Present:
-versus-	CARPIO, J., Chairperson, BRION, DEL CASTILLO, PEREZ, and REYES,* *JJ.*
CELESTE M. CHUA, Respondent.	Promulgated: MAR 26 2014

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DECISION

PEREZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[1] dated 14 September 2010 and Resolution[2] dated 3 January 2011 of the Court of Appeals in CA-G.R. CV No. 78315. The challenged Decision denied herein International Container Terminal Services, Inc.'s (petitioner) appeal and affirmed the Decision of the Regional Trial Court (RTC) of Quezon City, Branch 76.

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* Per Special Order No. 1650 dated 13 March 2014.

1 *Rollo*, pp. 72-81; Penned by Associate Justice Normandie B. Pizarro with Associate Justices Amelita G. Tolentino and Ruben C. Ayson concurring.

2 Id. at 83-84.

As found by the Court of Appeals, the antecedent facts are as follows:

> On April 2, 1997, the twenty (20)-feet container van loaded with the personal effects of [respondent] Celeste M. Chua arrived at the North Harbor, Manila, from Oakland, California, x x x. On even date, it was unloaded from the vessel and was placed in the depot belonging to [petitioner] for safekeeping pending the customs inspection.
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> On April 6, 1997, the container van was stripped and partially inspected by custom authorities. Further inspection thereof was scheduled on May 8, 1997. However, on the date scheduled, [petitioner's] depot was gutted by fire and [respondent's] container van, together with forty-four (44) others, were burned. In the survey conducted thereafter, seventy percent (70%) of the contents of the van was found to be totally burnt while thirty percent (30%) thereof was wet, dirty, and unusable. [Respondent] demanded reimbursement for the value of the goods. However, her demands fell on deaf ears.
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> On August 23, 1999, [respondent] filed the suit below alleging, in essence, that the proximate cause of the fire that engulfed [petitioner's] depot was the combustible chemicals stored threreat; and, that [petitioner], in storing the said flammable chemicals in its depot, failed to exercise due diligence in the selection and supervision of its employees and/or of their work. She also claims that, while the value of the goods destroyed is x x x (US$87,667.00) x x x, she has in her possession only the machine-copies of receipts showing an aggregate value of only x x x (US$67,535.61) because, pursuant to [petitioner's] request, she gave to the latter's representative the original receipts. x x x.
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> In its *Answer*, [petitioner] admits that it accepted, in good order, [respondent's] container van for storage and safekeeping at its depot but denies that there was negligence on its part or that of its employees. It asserts that the fire that gutted its depot was due to a fortuitous event because it exercised the due diligence required by law. It maintains that [respondent] is not entitled to her claim because she did not declare the true and correct value of the goods, as the Bill of Lading indicates that the contents of the van have no commercial value. Asserting that [respondent] has no cause of action or that [respondent's] cause of action, if any, has already prescribed because the complaint was not filed within twelve (12) months from the time of damage or loss, it prays for the dismissal of the complaint. x x x.[3]

After the issues were joined, pre-trial ensued, during which, the parties failed to settle amicably. The court thereafter conducted trial.

On 16 December 2002, the trial court rendered a decision ordering herein petitioner to pay respondent actual damages in the amount of

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[3] Id. at 73-75.

US$67,535.61 or its equivalent in Philippine Peso at the time of the filing of the complaint; moral damages in the amount of ₱50,000.00; and attorney's fees of ₱50,000.00.[4]

Aggrieved, petitioner filed an appeal to the Court of Appeals alleging that the trial court erred in holding it liable for actual and moral damages, as well as for attorney's fees considering, among others, that: (1) respondent failed to prove negligence on the part of petitioner; (2) the fire that caused the damage to and/or loss of respondent's cargo was a fortuitous event; and (3) petitioner did not act in bad faith in denying respondent's claim for reimbursement of the value of the loss/damaged cargo. Petitioner added that, assuming that it is liable to pay damages to respondent, the same should not exceed the liability provided for in Philippine Ports Authority (PPA) Administrative Order No. 10-81.

In affirming the Decision of the trial court, the Court of Appeals declared that:

> There is no dispute that the van containing [respondent's] cargo was in [petitioner's] depot for safekeeping when the depot caught fire on May 8, 1997. There is, therefore, no denying that, at that time, the subject van was under the custody and control of [petitioner]. There is likewise no dispute that the fire started inside the depot. Ergo, the RTC correctly ruled in applying the doctrine of *res ipsa loquitur* and in placing upon [petitioner] the burden of proving lack of negligence. This is so because the fire that occurred would not have happened in the ordinary course of things if reasonable care and diligence had been exercised. Simply put, the fire started because some negligence must have occurred. x x x.
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> x x x x
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> Also not convincing is [petitioner's] assertion that the fire that razed its depot was a *force majeure* and/or beyond its control considering that ***[i]n our jurisprudence, fire may not be considered a natural disaster or calamity since it almost always arises from some act of man or by human means. It cannot be an act of God unless caused by lightning or a natural disaster or casualty not attributable to human agency.***
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> x x x x
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> On [petitioner's] argument that [respondent's] cause of action has prescribed under its Terms of Business and the amount of its liability cannot exceed x x x (PhP3,500.00) per package as provided under PPA Administrative Order No. 10-81, suffice it to say that a person who is not privy to any contract is not bound thereby. It bears reiterating the RTC's

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4 CA *rollo*, p. 41.

> finding that x x x ***the [respondent] has not signed any contract with [petitioner] wherein she agreed that the liability of the latter shall be limited only to a certain amount.*** (Emphasis and italics supplied)
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> x x x x
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> [Petitioner's] contention that [respondent] is not entitled to moral damages and attorney's fees as there was no finding that it acted in bad faith is belied by the assailed disposition. Emphasis must be made that the RTC found that:
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> > [Petitioner's] outright denial and unjust refusal to heed [respondent's] claim for payment of the value of her lost/damaged shipment causing the latter to suffer serious anxiety, mental anguish[,] and wounded feelings, warranting the award or moral damages in the amount of P50,000.00 in favor of [respondent]. For having been compelled to litigate due to [petitioner's] omission, the Court determines that [respondent] may recover attorney's fees of P50,000.00, x x x.[5]

Its motion for reconsideration having been denied by the Court of Appeals in a Resolution dated 3 January 2011, petitioner is now before us on the following assignment of errors:

> 1. THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE COURT *A QUO*, HOLDING HEREIN PETITIONER LIABLE FOR ACTUAL DAMAGES IN THE AMOUNT OF US$67,535.61 OR ITS EQUIVALENT IN PHILIPPINE PESO, CONSIDERING THAT:
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> > A. RESPONDENT FAILED TO PROVE BY PREPONDERANCE OF EVIDENCE HER AFFIRMATIVE ALLEGATION THAT THE DAMAGE TO AND/OR LOSS OF HER CARGO WAS DIRECTLY AND EXCLUSIVELY BROUGHT ABOUT BY PETITIONER'S FAULT OR NEGLIGENCE;
> >
> > B. FIRE, WHICH CAUSED THE DAMAGE OR LOSS, HAS BEEN HELD AS A FORTUITOUS EVENT, FORCE MAJEURE, AND/OR EVENT BEYOND THE CONTROL OF MAN, HENCE, PETITIONER SHOULD BE ABSOLVED FROM ANY LIABILITY;

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5 *Rollo*, pp. 19-22.

C. RESPONDENT'S CAUSE OF ACTION HAS PRESCRIBED AND/OR IS BARRED BY LACHES;

D. RESPONDENT FAILED TO PROVE ACTUAL DAMAGES OF US$67,535.61; AND

E. ASSUMING, WITHOUT ADMITTING, THAT PETITIONER IS LIABLE, THE LIABILITY SHOULD NOT EXCEED THE LIMIT PROVIDED FOR IN PPA ADMINISTRATIVE ORDER NO. 10-81;

2. THE COURT OF APPEALS ERRED IN AFFIRMING THE AWARD OF ₱50,000.00 AS MORAL DAMAGES AND ₱50,000.00 AS ATTORNEY'S FEES IN VIEW OF THE ABSENCE OF BAD FAITH ON THE PART OF PETITIONER IN DENYING RESPONDENT'S CLAIM; AND

3. THE COURT OF APPEALS ERRED IN NOT GRANTING PETITIONER'S COUNTERCLAIM CONSIDERING RESPONDENT'S BASELESS, EXCESSIVE AND UNJUSTIFIED CLAIMS.[6]

The Ruling of the Court

The petition is partly meritorious.

At the outset, it must be pointed out that it is clear from petitioner's assignment of errors that what the instant petition for review is challenging are the findings of fact and the appreciation of evidence made by the trial court which were affirmed by the Court of Appeals.[7] While it is well-settled that only questions of law may be raised in a petition for review under Rule 45 of the Rules of Court, it is equally well-settled that the rule admits of exceptions,[8] one of which is when the trial court or the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly

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6 Id. at 34-35.
7 *Phil. Home Assurance Corp. v. CA*, 327 Phil. 255, 265 (1996).
8 Id. at 264.

considered, would justify a different conclusion.[9] In this case, the records contain evidence which justify the application of the exception.

This Court will no longer delve on the issue of whether or not the fire which caused the loss of and/or damage to respondent's personal effects is a fortuitous event since both the trial court and the Court of Appeals correctly ruled that the fire which occurred in this case cannot be considered an act of God since the same was not caused by lightning or a natural disaster or other calamity not attributable to human agency.

With respect to the issue of negligence, there is no doubt that, under the circumstances of this case, petitioner is liable to respondent for damages on account of the loss of the contents of her container van. Petitioner itself admitted during the pre-trial of this case that respondent's container van caught fire while stored within its premises.[10] Absent any justifiable explanation on the part of petitioner on the cause of the fire as would absolve it from liability, the presumption that there was negligence on its part comes into play. The situation in this case, therefore, calls for the application of the doctrine of *res ipsa loquitur*.

The doctrine of *res ipsa loquitur* is "based on the theory that the defendant either knows the cause of the accident or has the best opportunity of ascertaining it and the plaintiff, having no knowledge thereof, is compelled to allege negligence in general terms. In such instance, the plaintiff relies on proof of the happening of the accident alone to establish negligence."[11] The principle, furthermore, provides a means by which a plaintiff can hold liable a defendant who, if innocent, should be able to prove that he exercised due care to prevent the accident complained of from happening. It is, consequently, the defendant's responsibility to show that there was no negligence on his part.[12] The doctrine, however, "can be invoked when and only when, under the circumstances involved, direct evidence is absent and not readily available."[13] Here, there was no evidence as to how or why the fire in the container yard of petitioner started; hence, it was up to petitioner to satisfactorily prove that it exercised the diligence required to prevent the fire from happening. This it failed to do. Thus, the

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9 *Eastern Shipping Lines, Inc. v. Prudential Guarantee and Assurance, Inc.*, G.R. No. 174116, 11 September 2009, 599 SCRA 565, 572 citing *Philippine Charter Insurance Corporation v. Unknown Owner of the Vessel M/V "National Honor,"* G.R. No. 161833, 8 July 2005, 463 SCRA 202, 215.

10 Records, Vol. I, p. 140.

11 *Perla Compania De Seguros, Inc. v. Sps. Sarangaya III*, 510 Phil. 676, 686 (2005) citing 57B Am Jur 2d, Negligence § 1819.

12 Id. at 687 citing 57B Am Jur 2d, Negligence § 1819.

13 *Rodriguez v. CA*, G.R. No. 121964, 17 June 1997, 272 SCRA 607, 621citing *Batiquin v. Court of Appeals*, G.R. No. 118231, 5 July 1996, 258 SCRA 334, 344-345.

trial court and the Court of Appeals acted appropriately in applying the principle of *res ipsa loquitur* to the case at bar.

As the findings and conclusions of the lower courts on this point are properly supported by the evidence on record, we submit thereto, there being no basis to disturb the same. We diverge, however, with respect to the award of damages.

Both the trial court and the Court of Appeals found that the liability of petitioner to respondent amounts to US$67,535.61 as actual damages. This amount purportedly represents the value of respondent's shipment that was lost or destroyed as a result of the fire in petitioner's container yard where the van holding the said shipment was in storage at that time. The value was computed based on the receipts – marked as Exhibits "K" to "K-63"[14] – submitted by respondent, which receipts allegedly cover the items that were in the container van.

A painstaking examination of Exhibits "K" to "K-63" ("the receipts") reveals, however, that the items specified therein do not exactly tally or coincide with the items listed in the respective inspection reports submitted by the different marine surveyors which conducted an inventory of the contents of respondent's van after the fire. Thus, the receipts contain articles which consist of grocery items, including perishables such as green onions, chicken, honey dew,[15] Coffee Mate packets (bought way back in 1995), asparagus, turkey breast,[16] grapes,[17] bananas,[18] fresh meat,[19] shrimps,[20] bread,[21] etc. which definitely could not have been included in the shipment to Manila. The inventoried items, on the other hand, primarily consist of electronics and electrical appliances, such as: electric fans, chandeliers, microwave ovens, jet skis, television sets, cassette players, speakers and computers.[22]

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14 Records, Vol. I, pp. 155-218.

15 Id. at 160; Exhibit "K-5," receipt dated 9 November 1995.

16 Id. at 161; Exhibit "K-6," receipt dated 12 September 1995.

17 Id. at 168, 173, and 177; Exhibits "K-13," receipt dated 18 August 1996, "K-18," date of receipt unreadable and "K-22," receipt dated 26 September 1995, respectively.

18 Id. at 160 and 208; Exhibits "K-5," receipt dated 9 November 1995 and "K-53," receipt dated 16 February 1997, respectively.

19 Id. at 161 and 169; Exhibits "K-6," receipt dated 12 September 1995 and "K-14," receipt dated 15 February 1996, respectively.

20 Id. at 161, 169 and 208; Exhibits "K-6," dated 12 September 1995, "K-14," receipt dated 15 February 1996, and "K-53," receipt dated 16 February 1997, respectively.

21 Id. at 161, 173, 177, 207 and 208; Exhibits "K-6," receipt dated 12 September 1995 "K-18," date of receipt unreadable "K-22," receipt dated 26 September 1995, "K-52," receipt dated 25 October 1996, and "K-53," receipt dated 9 January 1997, respectively.

22 Id. at 7-21; Exhibits "A" to "D-2."

It is also significant to note that Exhibits "K" to "K-63" include receipts covering baby products or items like baby bottle nipples, feeding bottles, baby lotion, baby oil, stretch mark creams, baby wipes, crib blanket, pacifier,[23] etc., as well as automobile oils/lubricants, carburetor cleaners, engine degreasers and oil filters,[24] used Vivitar cameras,[25] a Christmas tree[26] and washers and dryers[27] – which items do not, however, appear in any of the inspection reports of the four marine surveyors which conducted the inventory of the burned container van. In the same way, the inspection reports include items which are not covered by the receipts submitted by respondent, including microwave ovens, intercom telephones and a coffee maker.[28]

Also, some receipts are so poorly photocopied[29] that the items listed therein can no longer be properly read and only the total amount paid is visible. Still, others were issued in the name of persons other than respondent, such as Exhibits "K-3," "K-10," "K-41," "K-50," and "K-59" to "K-63," in the name of "Patrick Vidamo,"[30] Exhibit "K-8," ("The Bombay Company" receipt, date unreadable) issued to "Tanya Vidamo,"[31] Exhibit "K-33," receipt issued to "Jane Santos"[32] and Exhibits "K-34" and "K-44," receipts in the name of "Ronny Santos."[33]

Exhibit "K-25,"[34] on the other hand, appears to be a credit card billing statement but the name of the credit card holder does not appear thereon. More importantly, it includes a charge of US$338.97 for "BA auto repair" which, clearly, should not have been included in the computation of the amount of actual damages due respondent. Finally, Exhibit "K-40"[35] shows a receipt for a total of 50 cartons of "commercial garlic" and "giant garlic" valued at US$877.50 with a total weight of 1,600 (unit of measure not specified). In the computation of the amount of actual damages, however, what was indicated as the value of the items was "$1,600.00"[36] which is

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23 Id. at 157,173, and 217; Exhibits "K-2," receipt dated 31 October 1996, "K-18," receipt dated 2 November 1995, and "K-62," receipt dated 23 January 1997, respectively.

24 Id. at 159, 170, and 172; Exhibits "K-4," date of receipt unreadable, "K-15," receipt dated 10 February 1996, and "K-17," receipt dated 10 November 1995, respectively.

25 Id. at 157, 158 and 169; Exhibits "K-2," receipt dated 10 October 1995, "K-3," receipt dated 17 October 1995 and "K-14," receipt dated 17 October 1995, respectively.

26 Id. at 167; Exhibit "K-12," receipt dated 12 December 1996.

27 Id. at 204; Exhibit "K-49," receipt dated 11 January 1997.

28 Id. at 7-21; Exhibits "A" to "D-2."

29 Id. at 163, 164, 172 and 174; Exhibits "K-8," "K-9," "K-17" and "K-19," respectively.

30 Id. at 158, 165, 196, 205, and 214-218.

31 Id. at 163.

32 Id. at 188.

33 Id. at 189 and 199, respectively.

34 Id. at 180.

35 Id. at 195.

36 Id. at 154; Item No. 41.

actually the weight of the garlics purchased, instead of US$877.50, which is the amount of the purchase.

Considering all the foregoing, this Court is, therefore, at a loss as to how the trial court and the Court of Appeals arrived at the conclusion that the items in both lists (Exhibits "K" to "K-63" and the inspection reports) are identical, so as to justify the award of US$67,535.61 – the alleged total value of the receipts – as actual damages. On the contrary, all the foregoing actually prove that the submitted receipts do not accurately reflect the items in the container van and, therefore, cannot be the basis for a grant of actual damages. Furthermore, the award of the trial court failed to take into consideration that since most of the contents of respondent's container van are electronics or electrical items, the same are subject to depreciation. The trial court and the Court of Appeals awarded actual damages based on the value of the items at the time they were bought, which was around two years prior to their shipment to the Philippines.

Article 2199 of the Civil Code states that "[e]xcept 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**. Such compensation is referred to as actual or compensatory damages."[37] "Actual damages are compensation for an injury that will put the injured party in the position where it was before the injury. They pertain to such injuries or losses that are actually sustained and **susceptible of measurement**. Except as provided by law or by stipulation, a party is entitled to adequate compensation only for such pecuniary loss as is duly proven. Basic is the rule that **to recover actual damages, not only must the amount of loss 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."[38]

In the case before us, respondent failed to adduce evidence adequate enough to satisfactorily prove the amount of actual damages claimed. The receipts she submitted cannot be considered competent proof since she failed to prove that the items listed therein are indeed the items that were in her container van and vice versa. As pointed out above, there are discrepancies between the items listed in the submitted receipts and those contained in the respective inspection reports of the marine surveyors. Hence, the said receipts cannot be made the basis for the grant of actual damages.

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37 Emphasis supplied.

38 *Manila Electric Company (MERALCO) v. Castillo*, G.R. No. 182976, 14 January 2013, 688 SCRA 455, 478 citing *Manila Electric Company v. T.E.A.M. Electronics Corporation*, G.R. No. 131723, 13 December 2007, 540 SCRA 62, 79. Emphasis supplied.

This Court has, time and again, emphasized that actual damages cannot be presumed and courts, in making an award, must point out specific facts which could afford a basis for measuring whatever compensatory or actual damages are borne.[39] An award of actual damages is "dependent upon competent proof of the damages suffered and the actual amount thereof. The award must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and unsubstantial proof."[40]

The foregoing notwithstanding, petitioner, nevertheless, cannot rely on PPA Administrative Order No. 10-81 (its Management Contract with the Philippine Ports Authority) as basis of its liability for damages. This administrative order limits petitioner's liability to not more than three Thousand Five Hundred Pesos (₱3,500.00) for each package (for import cargo) if the value of the cargo is not specified or communicated to the arrastre operator in writing.[41] Contrary to petitioner's claim, there is no

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39 *Canada v. All Commodities Marketing Corporation*, 590 Phil. 3452, 350 (2008) citing *B.F. Metal (Corporation) v. Sps. Rolando M. Lomotan*, G.R. No. 170813, 16 April 2008, 551 SCRA 618.

40 *Manila Electric Company (MERALCO) v. Castillo,* supra note 38 at 481-482 citing *Quisumbing v. Manila Electric Company*, G.R. No. 142943, 3 April 2002, 380 SCRA 195, 211-212.

41 Article VI, Section 6.01 of PPA Administrative Order No. 10-81 dated 13 April 1981 provides:

ARTICLE VI. CLAIMS AND LIABILITY FOR LOSSES AND DAMAGES

Section 6.01. Responsibility and Liability for Losses and Damages, Exceptions – The CONTRACTOR shall, at its own expense handle all merchandise in all work undertaken by it hereunder diligently and in a skilful, workman-like and efficient manner, the CONTRACTOR shall be solely responsible as an independent CONTRACTOR, and hereby agrees to accept liability and to promptly pay to the shipping company consignees, consignors or other interested party or parties for the loss, damage or non-delivery of cargoes to the extent of the actual invoice value of each package which in no case shall be more than THREE THOUSAND FIVE HUNDRED PESOS (₱3,500.00) (for import cargo) and ONE THOUSAND PESOS (₱1,000.00) (for domestic cargo) for each package unless the value of the cargo importation is otherwise specified or manifested or communicated in writing together with the declared bill of lading value and supported by a certified packing list to the CONTRACTOR by the interested party or parties before the discharge or loading unto vessel of the goods, as well as all damage that may be suffered on account of loss, damage or destruction of any merchandise while in the custody or under the control of the CONTRACTOR in any pier, shed, warehouse facility or other designated place under the supervision of the AUTHORITY but the CONTRACTOR shall not be responsible for the condition of the contents of any package received, nor for the weight nor for any loss, injury or damage to the said cargo before or while the goods are being received or remains in the piers, sheds, warehouses or facility, if the loss, injury or damage is caused by force majeure or other causes beyond the CONTRACTOR's control or capacity to prevent or remedy, PROVIDED, that a formal claim together with the necessary copies of Bill of Lading, Invoice, Certified Packing List and computation arrived at covering the loss, injury or damage or non-delivery of such goods shall have been filed with the CONTRATOR within fifteen (15) days from date of issuance by the CONTRACTOR of a certificate of non-delivery, PROVIDED, However, that if said CONTRACTOR fails to issue such certification within fifteen (15) days from the receipt of a written request by the shipper/consignee or his duly authorized representative or any interested party, said certification shall be deemed to have been issued, and thereafter, the fifteen (15) days period within which to file the claim

contractual relationship between it and respondent since the latter did not avail herself of petitioner's services; hence, she cannot be bound by the said management contract. The cases cited by petitioner wherein the Supreme Court applied the provision of the Management Contract and limited the arrastre operator's liability to the amount stated therein are not applicable to the case at bar because in all of those cited cases, the consignee either availed of the services of the arrastre operator[42] or is otherwise bound by the Management Contract – despite non-availment of the services of the arrastre operator – as a result of the consignee's acceptance of the delivery of the cargo from the arrastre operator.[43] This absence of a contractual relationship is precisely also the reason why respondent is not bound by petitioner's Terms of Business which requires a claimant to commence any action for damages against petitioner within 12 months from the occurrence of the cause of the claim. Thus, respondent's action against petitioner cannot be said to have been barred by prescription or laches.

In the absence of competent proof on the amount of actual damages suffered, a party is entitled to receive temperate damages.[44] Article 2224 of the New Civil Code provides that: "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 proved with certainty." The amount thereof is usually left to the sound discretion of the courts but the same should be reasonable, bearing in mind that temperate damages

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commence, PROVIDED, Finally, that the request for certification of loss shall be made within thirty (30) days from the date of delivery of the last package to the consignee.

The CONTRACTOR shall be solely responsible for any and all injury or damage that may arise on account of the negligence or carelessness of the CONTRACTOR, its agent or employees in the performance of the undertaking under the Contract. Further, the CONTRACTOR hereby agrees to hold free the AUTHORITY at all times from any claim that may be instituted by its employees by reason of the provisions of the Labor Code, as amended, Employees Liability in force or hereafter may be enacted.

42 *E. Razon, Inc. v. Court of Appeals*, 244 Phil. 375 (1988) and *Northern Motors, Inc. v. Prince Line, et. al*., 107 Phil 253, 256-257 (1960) cited in the Petition, *rollo*, pp. 55-56, respectively.

43 "In the performance of its job, an arrastre operator is bound by the management contract it had executed with the Bureau of Customs. However, a management contract, which is a sort of a stipulation *pour autrui* within the meaning of Article 1311 of the Civil Code, is also binding on a consignee because it is incorporated in the gate pass and delivery receipt which must be presented by the consignee before delivery can be effected to it. x x x. Indeed, upon taking delivery of the cargo, a consignee x x x tacitly accepts the provisions of the management contract, including those which are intended to limit the liability of one of the contracting parties, the arrastre operator.

However, a consignee who does not avail of the services of the arrastre operator is not bound by the management contract. Such an exception to the rule does not obtain here as the consignee did in fact accept delivery of the cargo from the arrastre operator." (*Summa Insurance Corporation v. Court of Appeals*, 323 Phil. 214, 223-224 (1996) cited in the Petition, *rollo*, p. 54.

44 *Manila Electric Company (MERALCO) v. Castillo,* supra note 38 at 482 citing *Dueñas v. Guce-Africa*, G.R. No. 165679, 5 October 2009, 603 SCRA 11, 22.

should be "more than nominal but less than compensatory."[45] Considering the concomitant circumstances prevailing in this case, temperate damages in the amount of ₱350,000.00 is deemed equitable.

Finally, we delete the award of moral damages and attorney's fees, there being no basis therefor.

Article 2217 of the New Civil Code provides:

> Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

Certainly, an award of moral damages must be anchored on a clear showing that the party claiming the same **actually** experienced mental anguish, besmirched reputation, sleepless nights, wounded feelings, or similar injury.[46] In the case herein under consideration, the records are bereft of any proof that respondent in fact suffered moral damages as contemplated in the afore-quoted provision of the Civil Code.[47] The ruling of the trial court provides simply that: "[Petitioner's] outright denial and unjust refusal to heed [respondent's] claim for payment of the value of her lost/damaged shipment caus[ed] the latter to suffer serious anxiety, mental anguish and wounded feelings warranting the award of moral damages x x x."[48] The testimony of respondent, on the other hand, merely states that when she failed to recover damages from petitioner, she "was saddened, had sleepless nights and anxiety"[49] without providing specific details of the suffering she allegedly went through. "Since an award of moral damages is predicated on a **categorical** showing by the claimant that she actually experienced emotional and mental sufferings, it must be disallowed absent any evidence thereon."[50]

As to the award of attorney's fees, Article 2208 of the Civil Code provides:

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45 *Manila Electric Company (MERALCO) v. Castillo*, supra.

46 *De Guzman v. Tumolva*, G.R. No. 188072, 19 October 2011, 659 SCRA 725, 734.

47 Id.

48 Records, Vol. I, pp. 418-419.

49 Id., Vol. III, p. 41; TSN dated 25 August 2000, Direct Examination of respondent.

50 *De Guzman v. Tumolva*, supra note 46 at 735 citing *Metropolitan Bank and Trust Co. v. Perez*, G.R. No. 181842, 5 February 2010, 611 SCRA 740, 746 further citing *Bank of Commerce v. Sps. San Pablo*, G.R. No. 167848, 27 April 2007, 522 SCRA 713, 715. Emphasis supplied.

> ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
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> 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 plainly valid, just 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; and
> 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.

An award of attorney's fees has always been the exception rather than the rule and there must be some compelling legal reason to bring the case within the exception and justify the award.[51] In this case, none of the exceptions applies. "Attorney's fees are not awarded every time a party prevails in a suit. The policy of the Court is that no premium should be placed on the right to litigate."[52] "Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still, attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause."[53]

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51 *Espino v. Spouses Bulut*, G.R. No. 183811, 30 May 2011, 649 SCRA 453, 462 citing *Hanjin Heavy Industries and Construction Co., Ltd. v. Dynamic Planners and Construction Corp.*, G.R. Nos. 169408 and 170144, 30 April 2008, 553 SCRA 541.

52 *Manila Electric Company (MERALCO) v. Castillo*, supra, note 38 citing *National Power Corporation v. Heirs of Macabangkit Sangkay*, G.R. No. 165828, 24 August 2011, 656 SCRA 60, 92.

53 *Development Bank of the Philippines v. Traverse Development Corp*oration, G.R. No. 169293, 5 October 2011, 658 SCRA 614, 624 citing *ABS-CBN Broadcasting Corporation v. Court of Appeals*, 361 Phil. 499, 528 (1999).

The trial court refused to award exemplary damages and denied respondent's claim therefore.[54] It was, therefore, error for it and the Court of Appeals to award attorney's fees after rejecting respondent's prayer for exemplary damages as the latter might have served as basis for awarding attorney's fees.[55]

Moreover, contrary to the findings of the trial court and the Court of Appeals, petitioner did not outrightly deny and unjustly refuse the claim of respondent for reimbursement of the value of her cargo that was lost in the fire. The records of this case disclose that respondent sent a letter, dated 31 May 1997,[56] to the Legal and Claims Department of petitioner demanding the payment of US$87,667.00 – the alleged value of her shipment. Petitioner responded to this communication by sending a letter, dated 25 June 1997,[57] addressed to respondent's broker, requesting the submission of documents, such as the itemized list of the damaged goods, packing list and commercial invoices, in support of the claim of US$87,667.00. The claim of respondent was eventually denied through a letter dated 25 March 1999[58] prepared by petitioner's counsel and coursed through respondent's counsel. The letter outlined the reasons for the denial of respondent's claim.

Under the foregoing circumstances, it cannot be said that petitioner unjustly refused to heed respondent's claim for damages. Petitioner immediately responded to the initial demand for reimbursement and it subsequently denied the claim after evaluation thereof. Petitioner clearly did not act in bad faith, especially since it explained to respondent the reasons for the denial of her claim. The lower courts, therefore, erred in finding that petitioner acted in bad faith, thereby further negating the wisdom of awarding moral damages and attorney's fees to respondent.

WHEREFORE, PREMISES CONSIDERED, the petition is **PARTIALLY GRANTED**. The Decision of the Court of Appeals in CA-G.R. CV No. 78315 dated 14 September 2010 is **MODIFIED** in that the award of actual damages, moral damages and attorney's fees are **DELETED**. However, petitioner is ordered to pay respondent **TEMPERATE DAMAGES** in the amount of ₱350,000.00.

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54 Records, Vol. I, p. 418.
55 See *Espino v. Spouses Bulut*, supra note 51.
56 Records, Vol. I, p. 22; Exhibit "E."
57 Id. at 23; Exhibit "F."
58 Id. at 133.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were 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