Pro

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

TORRES-MADRID BROKERAGE, INC., Petitioner,	**G.R. No. 194121**
	Present:
- versus -	CARPIO, *J., Chairperson,* BRION, DEL CASTILLO, MENDOZA,* and LEONEN, *JJ.*
FEB MITSUI MARINE INSURANCE CO., INC. and BENJAMIN P. MANALASTAS, doing business under the name of BMT TRUCKING SERVICES, Respondents.	Promulgated: 11 JUL 2016

x----------x

DECISION

BRION, *J.*:

We resolve the petition for review on *certiorari* challenging the Court of Appeals' *(CA)* October 14, 2010 decision in **CA-G.R. CV No. 91829.**[1]

The CA affirmed the Regional Trial Court's *(RTC)* decision in **Civil Case No. 01-1596,** and found petitioner Torres-Madrid Brokerage, Inc. *(TMBI)* and respondent Benjamin P. Manalastas jointly and solidarily liable to respondent FEB Mitsui Marine Insurance Co., Inc. *(Mitsui)* for damages from the loss of transported cargo.

---

* On official Leave.

1 Penned by Associate Justice Remedios Salazar-Fernando and concurred in by Associate Justices Celia C. Librea-Leagogo and Michael P. Elbinias.

Antecedents

On October 7, 2000, a shipment of various electronic goods from Thailand and Malaysia arrived at the Port of Manila for Sony Philippines, Inc. *(Sony).* Previous to the arrival, Sony had engaged the services of TMBI to *facilitate, process, withdraw, and deliver* the shipment from the port to its warehouse in Biñan, Laguna.[2]

TMBI – who did not own any delivery trucks – subcontracted the services of Benjamin Manalastas' company, BMT Trucking Services *(BMT)*, to transport the shipment from the port to the Biñan warehouse.[3] Incidentally, TMBI notified Sony who had no objections to the arrangement.[4]

Four BMT trucks picked up the shipment from the port at about 11:00 a.m. of October 7, 2000. However, BMT could not immediately undertake the delivery because of the truck ban and because the following day was a Sunday. Thus, BMT scheduled the delivery on October 9, 2000.

In the early morning of October 9, 2000, the four trucks left BMT's garage for Laguna.[5] However, only three trucks arrived at Sony's Biñan warehouse.

At around 12:00 noon, the truck driven by Rufo Reynaldo Lapesura *(NSF-391)* was found abandoned along the Diversion Road in Filinvest, Alabang, Muntinlupa City.[6] Both the driver and the shipment were missing.

Later that evening, BMT's Operations Manager Melchor Manalastas informed Victor Torres, TMBI's General Manager, of the development.[7] They went to Muntinlupa together to inspect the truck and to report the matter to the police.[8]

Victor Torres also filed a complaint with the National Bureau of Investigation *(NBI)* against Lapesura for "*hijacking*."[9] The complaint resulted in a recommendation by the NBI to the Manila City Prosecutor's Office to prosecute Lapesura for qualified theft.[10]

TMBI notified Sony of the loss through a letter dated October 10, 2000.[11] It also sent BMT a letter dated March 29, 2001, demanding payment for the lost shipment. BMT refused to pay, insisting that the goods were "*hijacked*."

---

2 *Rollo,* pp. 44, 85, and 91.
3 Id. at 43, 44.
4 Id. at 13.
5 Id. at 50.
6 Id. at 44.
7 Id. at 47, 50.
8 Id. at 48, 50
9 Id. at 48, 50, 97.
10 Id. at 98.
11 Id. at 48.

In the meantime, Sony filed an insurance claim with the Mitsui, the insurer of the goods. After evaluating the merits of the claim, Mitsui paid Sony **PHP7,293,386.23** corresponding to the value of the lost goods.[12]

After being subrogated to Sony's rights, Mitsui sent TMBI a demand letter dated August 30, 2001 for payment of the lost goods. TMBI refused to pay Mitsui's claim. As a result, Mitsui filed a complaint against TMBI on November 6, 2001,

TMBI, in turn, impleaded Benjamin Manalastas, the proprietor of BMT, as a third-party defendant. TMBI alleged that BMT's driver, Lapesura, was responsible for the theft/hijacking of the lost cargo and claimed BMT's negligence as the proximate cause of the loss. TMBI prayed that in the event it is held liable to Mitsui for the loss, it should be reimbursed by BMT.

At the trial, it was revealed that BMT and TMBI have been doing business with each other since the early 80's. It also came out that there had been a previous hijacking incident involving Sony's cargo in 1997, but neither Sony nor its insurer filed a complaint against BMT or TMBI.[13]

On August 5, 2008, the RTC found TMBI and Benjamin Manalastas jointly and solidarily liable to pay Mitsui PHP 7,293,386.23 as actual damages, attorney's fees equivalent to 25% of the amount claimed, and the costs of the suit.[14] The RTC held that TMBI and Manalastas were common carriers and had acted negligently.

Both TMBI and BMT appealed the RTC's verdict.

TMBI denied that it was a common carrier required to exercise *extraordinary* diligence. It maintains that it exercised the diligence of a good father of a family and should be absolved of liability because the truck was *"hijacked"* and this was a fortuitous event.

BMT claimed that it had exercised *extraordinary* diligence over the lost shipment, and argued as well that the loss resulted from a fortuitous event.

On October 14, 2010, the CA affirmed the RTC's decision but reduced the award of attorney's fees to PHP 200,000.

The CA held: (1) that "*hijacking*" is not necessarily a fortuitous event because the term refers to the general stealing of cargo during transit;[15] (2) that TMBI is a common carrier engaged in the business of transporting

---

12 Id. at 46.
13 Id. at 48.
14 Id. at 43.
15 Id. at 53.

goods for the general public for a fee;[16] (3) even if the "*hijacking*" were a fortuitous event, TMBI's failure to observe extraordinary diligence in overseeing the cargo and adopting security measures rendered it liable for the loss;[17] and (4) even if TMBI had not been negligent in the handling, transport and the delivery of the shipment, TMBI still breached its contractual obligation to Sony when it failed to deliver the shipment.[18]

TMBI disagreed with the CA's ruling and filed the present petition on December 3, 2010.

The Arguments

TMBI's Petition

TMBI insists that the *hijacking* of the truck was a fortuitous event. It contests the CA's finding that neither force nor intimidation was used in the taking of the cargo. Considering Lapesura was never found, the Court should not discount the possibility that he was a victim rather than a perpetrator.[19]

TMBI denies being a common carrier because it does not own a single truck to transport its shipment and it does not offer transport services to the public for compensation.[20] It emphasizes that Sony knew TMBI did not have its own vehicles and would subcontract the delivery to a third-party.

Further, TMBI now insists that the service it offered was limited to the processing of paperwork attendant to the entry of Sony's goods. It denies that delivery of the shipment was a part of its obligation.[21]

TMBI solely blames BMT as it had full control and custody of the cargo when it was lost.[22] BMT, as a common carrier, is presumed negligent and should be responsible for the loss.

BMT's Comment

BMT insists that it observed the required standard of care.[23] Like the petitioner, BMT maintains that the hijacking was a fortuitous event – a *force majeure* – that exonerates it from liability.[24] It points out that Lapesura has never been seen again and his fate remains a mystery. BMT likewise argues

---

16 Id. at 54.
17 Id. at 55.
18 Id. at 57.
19 Id. at 24.
20 Id. at 26.
21 Id. at 33.
22 Id. at 36.
23 Id. at 143.
24 Id.

that the loss of the cargo necessarily showed that the taking was with the use of force or intimidation.[25]

If there was any attendant negligence, BMT points the finger on TMBI who failed to send a representative to accompany the shipment.[26] BMT further blamed TMBI for the latter's failure to adopt security measures to protect Sony's cargo.[27]

Mitsui's Comment

Mitsui counters that neither TMBI nor BMT alleged or proved during the trial that the taking of the cargo was accompanied with grave or irresistible threat, violence, or force.[28] Hence, the incident cannot be considered "force majeure" and TMBI remains liable for breach of contract.

Mitsui emphasizes that TMBI's theory – that force or intimidation must have been used because Lapesura was never found – was only raised for the first time before this Court.[29] It also discredits the theory as a mere conjecture for lack of supporting evidence.

Mitsui adopts the CA's reasons to conclude that TMBI is a common carrier. It also points out Victor Torres' admission during the trial that TMBI's brokerage service includes the eventual delivery of the cargo to the consignee.[30]

Mitsui invokes as well the legal presumption of negligence against TMBI, pointing out that TMBI simply entrusted the cargo to BMT without adopting any security measures despite: (1) a previous hijacking incident when TMBI lost Sony's cargo; and (2) TMBI's knowledge that the cargo was worth more than 10 million pesos.[31]

Mitsui affirms that TMBI breached the contract of carriage through its negligent handling of the cargo, resulting in its loss.

The Court's Ruling

A brokerage may be considered a common carrier if it also undertakes to deliver the goods for its customers

Common carriers are persons, corporations, firms or associations engaged in the business of transporting passengers or goods or both, by land,

---

25 Id. at 145.
26 Id. at 146.
27 Id. at 147.
28 Id. at 73.
29 Id. at 74.
30 Id. at 77.
31 Id. at 75.

water, or air, for compensation, offering their services to the public.[32] By the nature of their business and for reasons of public policy, they are bound to observe extraordinary diligence in the vigilance over the goods and in the safety of their passengers.[33]

In *A.F. Sanchez Brokerage Inc. v. Court of Appeals,*[34] we held that a customs broker – whose principal business is the preparation of the correct customs declaration and the proper shipping documents – is still considered a common carrier if it also undertakes to deliver the goods for its customers. The law does not distinguish between one whose principal business activity is the carrying of goods and one who undertakes this task only as an ancillary activity.[35] This ruling has been reiterated in *Schmitz Transport & Brokerage Corp. v. Transport Venture, Inc.,*[36] *Loadmasters Customs Services, Inc. v. Glodel Brokerage Corporation,*[37] and *Westwind Shipping Corporation v. UCPB General Insurance Co., Inc.*[38]

Despite TMBI's present denials, we find that the delivery of the goods is an integral, albeit ancillary, part of its brokerage services. TMBI admitted that it was contracted to facilitate, process, and clear the shipments from the customs authorities, withdraw them from the pier, then transport and deliver them to Sony's warehouse in Laguna.[39]

Further, TMBI's General Manager Victor Torres described the nature of its services as follows:

> **ATTY. VIRTUDAZO:** Could you please tell the court what is the nature of the business of [TMBI]?
>
> **Witness MR. Victor Torres of Torres Madrid:** We are engaged in customs brokerage business. We acquire the release documents from the Bureau of Customs and **eventually deliver the cargoes to the consignee's warehouse** and we are engaged in that kind of business, sir.[40]

That TMBI does not own trucks and has to subcontract the delivery of its clients' goods, is immaterial. As long as an entity holds itself to the public for the transport of goods as a business, it is considered a common carrier regardless of whether it owns the vehicle used or has to actually hire one.[41]

Lastly, TMBI's customs brokerage services – including the transport/delivery of the cargo – are available to anyone willing to pay its

---

32 CIVIL CODE, Art. 1732.
33 Id., Art. 1733.
34 488 Phil. 430, 441 (2004).
35 *De Guzman v. Court of Appeals,* 250 Phil. 613, 618 (1988).
36 496 Phil. 437, 450 (2005).
37 654 Phil. 67 (2011).
38 G.R. No. 200289, 25 November 2013, 710 SCRA 544, 558-559.
39 See TMBI's Answer to the Complaint at *Rollo,* p. 91 in relation to p. 85.
40 TSN dated October 17, 2005, p. 9; *rollo,* p. 77.
41 *Westwind Shipping Corporation v. UCPB General Insurance Co., Inc., supra* note 38, at 559.

fees. Given these circumstances, we find it undeniable that TMBI is a common carrier.

Consequently, TMBI should be held responsible for the loss, destruction, or deterioration of the goods it transports unless it results from:

(1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;

(2) Act of the public enemy in war, whether international or civil;

(3) Act of omission of the shipper or owner of the goods;

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

(5) Order or act of competent public authority.[42]

For all other cases - such as theft or robbery – a common carrier is presumed to have been at fault or to have acted negligently, unless it can prove that it observed *extraordinary diligence.*[43]

Simply put, the theft or the robbery of the goods is not considered a fortuitous event or a *force majeure*. Nevertheless, a common carrier may absolve itself of liability for a resulting loss: (1) if it proves that it exercised *extraordinary* diligence in transporting and safekeeping the goods;[44] or (2) if it stipulated with the shipper/owner of the goods to limit its liability for the loss, destruction, or deterioration of the goods to a degree less than extraordinary diligence.[45]

However, a stipulation diminishing or dispensing with the common carrier's liability for acts committed by thieves or robbers who do not act with grave or irresistible threat, violence, or force is void under Article 1745 of the Civil Code **for being contrary to public policy**.[46] Jurisprudence, too, has expanded Article 1734's five exemptions. *De Guzman v. Court of Appeals*[47] interpreted Article 1745 to mean that a robbery attended by "grave or irresistible threat, violence or force" is a fortuitous event that absolves the common carrier from liability.

In the present case, the shipper, Sony, engaged the services of TMBI, a common carrier, to facilitate the release of its shipment and deliver the goods to its warehouse. In turn, TMBI subcontracted a portion of its obligation – the delivery of the cargo – to another common carrier, BMT.

Despite the subcontract, TMBI remained responsible for the cargo. Under Article 1736, a common carrier's extraordinary responsibility over

---

42 CIVIL CODE, Art. 1734.
43 Id., Art. 1735.
44 Id.
45 Id., Art. 1744.
46 Id., Art. 1745.
47 *Supra* note 35.

the shipper's goods lasts from the time these goods are unconditionally placed in the possession of, and received by, the carrier for transportation, **until they are delivered, actually or constructively, by the carrier to the consignee.**[48]

That the cargo disappeared during transit while under the custody of BMT – TMBI's subcontractor – did not diminish nor terminate TMBI's responsibility over the cargo. Article 1735 of the Civil Code presumes that it was at fault.

Instead of showing that it had acted with *extraordinary diligence,* TMBI simply argued that it was not a common carrier bound to observe extraordinary diligence. Its failure to successfully establish this premise carries with it the presumption of fault or negligence, thus rendering it liable to Sony/Mitsui for breach of contract.

Specifically, TMBI's current theory – that the hijacking was attended by force or intimidation – is untenable.

First, TMBI alleged in its Third Party Complaint against BMT that Lapesura was responsible for hijacking the shipment.[49] Further, Victor Torres filed a criminal complaint against Lapesura with the NBI.[50] These actions constitute direct and binding admissions that Lapesura stole the cargo. Justice and fair play dictate that TMBI should not be allowed to change its legal theory on appeal.

Second, neither TMBI nor BMT succeeded in substantiating this theory through evidence. Thus, the theory remained an unsupported allegation no better than speculations and conjectures. The CA therefore correctly disregarded the defense of *force majeure.*

TMBI and BMT are not solidarily liable to Mitsui

We disagree with the lower courts' ruling that TMBI and BMT are solidarily liable to Mitsui for the loss as joint tortfeasors. The ruling was based on Article 2194 of the Civil Code:

> Art. 2194. The responsibility of two or more persons **who are liable for quasi-delict** is solidary.

Notably, TMBI's liability to Mitsui does not stem from a quasi-delict (*culpa aquiliana*) but from its breach of contract (*culpa contractual*). The tie that binds TMBI with Mitsui is contractual, albeit one that passed on to Mitsui as a result of TMBI's contract of carriage with Sony to which Mitsui

---

48 Art. 1737, CIVIL CODE.
49 *Rollo,* pp. 109-110.
50 Id. at 48, 50, 97.

had been subrogated as an insurer who had paid Sony's insurance claim. The legal reality that results from this contractual tie precludes the application of quasi-delict based Article 2194.

A third party may recover from a common carrier for quasi-delict but must prove actual negligence

We likewise disagree with the finding that BMT is directly liable to Sony/Mitsui for the loss of the cargo. While it is undisputed that the cargo was lost under the actual custody of BMT (whose employee is the primary suspect in the hijacking or robbery of the shipment), no direct contractual relationship existed between Sony/Mitsui and BMT. If at all, Sony/Mitsui's cause of action against BMT could only arise from quasi-delict, as a third party suffering damage from the action of another due to the latter's fault or negligence, pursuant to Article 2176 of the Civil Code. [51]

We have repeatedly distinguished between an action for breach of contract (*culpa contractual)* and an action for quasi-delict (*culpa aquiliana).*

In *culpa contractual*, the plaintiff only needs to establish the existence of the contract and the obligor's failure to perform his obligation. It is not necessary for the plaintiff to prove or even allege that the obligor's non-compliance was due to fault or negligence because Article 1735 already presumes that the common carrier is negligent. The common carrier can only free itself from liability by proving that it observed *extraordinary diligence*. It cannot discharge this liability by shifting the blame on its agents or servants.[52]

On the other hand, the plaintiff in *culpa aquiliana* must clearly establish the defendant's fault or negligence because this is the very basis of the action.[53] Moreover, if the injury to the plaintiff resulted from the act or omission of the defendant's employee or servant, the defendant may absolve himself by proving that he observed the diligence of a good father of a family to prevent the damage.[54]

In the present case, Mitsui's action is solely premised on TMBI's breach of contract. Mitsui did not even sue BMT, *much less prove any negligence on its part*. If BMT has entered the picture at all, it is because TMBI sued it for reimbursement for the liability that TMBI might incur from its contract of carriage with Sony/Mitsui. Accordingly, there is no basis to directly hold BMT liable to Mitsui for quasi-delict.

---

51 *Loadmasters Custom Services, Inc. v. Glodel Brokerage Corp.,* 654 Phil. 67, 79 (2011).
52 *Cangco v. Manila Railroad Co.,* 38 Phil. 768, 777 (1918).
53 Id. at 776, citing MANRESA, vol. 8, p. 71 [1907 ed., p. 76].
54 Art. 2180, CIVIL CODE.

BMT is liable to TMBI for breach of their contract of carriage

We do not hereby say that TMBI must absorb the loss. By subcontracting the cargo delivery to BMT, TMBI entered into its own contract of carriage with a fellow common carrier.

The cargo was lost after its transfer to BMT's custody based on its contract of carriage with TMBI. Following Article 1735, BMT is presumed to be at fault. Since BMT failed to prove that it observed *extraordinary diligence* in the performance of its obligation to TMBI, it is liable to TMBI for breach of their contract of carriage.

In these lights, TMBI is liable to Sony (subrogated by Mitsui) for breaching the contract of carriage. In turn, TMBI is entitled to reimbursement from BMT due to the latter's own breach of its contract of carriage with TMBI. The proverbial buck stops with BMT who may either: (a) absorb the loss, or (b) proceed after its missing driver, the suspected culprit, pursuant to Article 2181.[55]

WHEREFORE, the Court hereby **ORDERS** petitioner Torres-Madrid Brokerage, Inc. to pay the respondent FEB Mitsui Marine Insurance Co., Inc. the following:

a. Actual damages in the amount of PHP 7,293,386.23 plus legal interest from the time the complaint was filed until it is fully paid;
b. Attorney's fees in the amount of PHP 200,000.00; and
c. Costs of suit.

Respondent Benjamin P. Manalastas is in turn **ORDERED** to **REIMBURSE** Torres-Madrid Brokerage, Inc. of the above-mentioned amounts.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

---

55 Art. 2181. Whoever pays for the damage caused by his dependents or employees may recover from the later what he has paid or delivered in satisfaction of the claim.

MARIANO C. DEL CASTILLO
Associate Justice

(On Official Leave)
JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest 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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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