Republic of the Philippines
Supreme Court
Manila
FIRST DIVISION

ASIAN TERMINALS, INC.,
Petitioner,

G.R. No. 181163

- versus -

PHILAM INSURANCE CO., INC. (now Chartis Philippines Insurance, Inc.),
Respondent.

x- -x

PHILAM INSURANCE CO., INC. (now Chartis Philippines Insurance, Inc.),
Petitioner,

G.R. No. 181262

- versus -

WESTWIND SHIPPING CORPORATION and ASIAN TERMINALS, INC.,
Respondents.

x- -x

WESTWIND SHIPPING CORPORATION,
Petitioner,

G.R. No. 181319

- versus -

PHILAM INSURANCE CO., INC. (now Chartis Philippines Insurance, Inc.) and ASIAN TERMINALS, INC.,
Respondents.

Present:

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

Promulgated:
JUL 24 2013

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* Designated additional member per Raffle dated June 26, 2013.

DECISION

VILLARAMA, JR., *J.*:

Before us are three consolidated petitions for review on certiorari assailing the Decision[1] dated October 15, 2007 and the Resolution[2] dated January 11, 2008 of the Court of Appeals (CA) which affirmed with modification the Decision[3] of the Regional Trial Court (RTC) of Makati City, Branch 148, in Civil Case No. 96-062. The RTC had ordered Westwind Shipping Corporation (Westwind) and Asian Terminals, Inc. (ATI) to pay, jointly and severally, Philam Insurance Co., Inc. (Philam) the sum of ₱633,957.15, with interest at 12% per annum from the date of judicial demand and ₱158,989.28 as attorney's fees.

The facts of the case follow:

On April 15, 1995, Nichimen Corporation shipped to Universal Motors Corporation (Universal Motors) 219 packages containing 120 units of brand new Nissan Pickup Truck Double Cab 4x2 model, without engine, tires and batteries, on board the vessel S/S "Calayan Iris" from Japan to Manila. The shipment, which had a declared value of US$81,368 or ₱29,400,000, was insured with Philam against all risks under Marine Policy No. 708-8006717-4.[4]

The carrying vessel arrived at the port of Manila on April 20, 1995, and when the shipment was unloaded by the staff of ATI, it was found that the package marked as 03-245-42K/1 was in bad order.[5] The Turn Over Survey of Bad Order Cargoes[6] dated April 21, 1995 identified two packages, labeled 03-245-42K/1 and 03/237/7CK/2, as being dented and broken. Thereafter, the cargoes were stored for temporary safekeeping inside CFS Warehouse in Pier No. 5.

On May 11, 1995, the shipment was withdrawn by R.F. Revilla Customs Brokerage, Inc., the authorized broker of Universal Motors, and delivered to the latter's warehouse in Mandaluyong City. Upon the request[7] of Universal Motors, a bad order survey was conducted on the cargoes and it was found that one Frame Axle Sub without LWR was deeply dented on the buffle plate while six Frame Assembly with Bush were deformed and misaligned.[8] Owing to the extent of the damage to said cargoes, Universal Motors declared them a total loss.

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1 *Rollo* (G.R. No. 181163), pp. 31-43. Penned by Associate Justice Aurora Santiago-Lagman with Associate Justices Bienvenido L. Reyes (now a member of this Court) and Apolinario D. Bruselas, Jr. concurring. The assailed decision was rendered in CA-G.R. CV No. 69284.

2 Id. at 55-59.

3 Records, Vol. II, pp. 399-408. Penned by Judge Oscar B. Pimentel.

4 Records, Vol. I, pp. 159-160.

5 Bad Order Cargo Receipt, Exhibit "T," id. at 188.

6 Id. at 187.

7 Id. at 166.

8 CKD Crate B.O. Inspection Report, Exhibit "J," id. at 171.

On August 4, 1995, Universal Motors filed a formal claim for damages in the amount of ₱643,963.84 against Westwind,[9] ATI[10] and R.F. Revilla Customs Brokerage, Inc.[11] When Universal Motors' demands remained unheeded, it sought reparation from and was compensated in the sum of ₱633,957.15 by Philam. Accordingly, Universal Motors issued a Subrogation Receipt[12] dated November 15, 1995 in favor of Philam.

On January 18, 1996, Philam, as subrogee of Universal Motors, filed a Complaint[13] for damages against Westwind, ATI and R.F. Revilla Customs Brokerage, Inc. before the RTC of Makati City, Branch 148.

On September 24, 1999, the RTC rendered judgment in favor of Philam and ordered Westwind and ATI to pay Philam, jointly and severally, the sum of ₱633,957.15 with interest at the rate of 12% per annum, ₱158,989.28 by way of attorney's fees and expenses of litigation.

The court *a quo* ruled that there was sufficient evidence to establish the respective participation of Westwind and ATI in the discharge of and consequent damage to the shipment. It found that the subject cargoes were compressed while being hoisted using a cable that was too short and taut. The trial court observed that while the staff of ATI undertook the physical unloading of the cargoes from the carrying vessel, Westwind's duty officer exercised full supervision and control throughout the process. It held Westwind vicariously liable for failing to prove that it exercised extraordinary diligence in the supervision of the ATI stevedores who unloaded the cargoes from the vessel. However, the court absolved R.F. Revilla Customs Brokerage, Inc. from liability in light of its finding that the cargoes had been damaged before delivery to the consignee.

The trial court acknowledged the subrogation between Philam and Universal Motors on the strength of the Subrogation Receipt dated November 15, 1995. It likewise upheld Philam's claim for the value of the alleged damaged vehicle parts contained in Case Nos. 03-245-42K/1 and 03-245-51K or specifically for "7 [pieces] of Frame Axle Sub Without Lower and Frame Assembly with Bush."[14]

Westwind filed a Motion for Reconsideration[15] which was, however, denied in an Order[16] dated October 26, 2000.

On appeal, the CA affirmed with modification the ruling of the RTC. In a Decision dated October 15, 2007, the appellate court directed Westwind and ATI to pay Philam, jointly and severally, the amount of ₱190,684.48 with interest at the rate of 12% per annum until fully paid, attorney's fees of

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9 Id. at 168.
10 Id. at 169.
11 Id. at 170.
12 Id. at 10.
13 Id. at 1-7.
14 Records, Vol. II, p. 406.
15 Id. at 409-413.
16 Id. at 453-454.

₱47,671 and litigation expenses.

The CA stressed that Philam may not modify its allegations by claiming in its Appellee's Brief[17] that the six pieces of Frame Assembly with Bush, which were purportedly damaged, were also inside Case No. 03-245-42K/1. The CA noted that in its Complaint, Philam alleged that "one (1) pc. FRAME AXLE SUB W/O LWR from Case No. 03-245-42K/1 [was] completely deformed and misaligned, and six (6) other pcs. of FRAME ASSEMBLY WITH BUSH from Case No. 03-245-51K [were] likewise completely deformed and misaligned."[18]

The appellate court accordingly affirmed Westwind and ATI's joint and solidary liability for the damage to only one (1) unit of Frame Axle Sub without Lower inside Case No. 03-245-42K/1. It also noted that when said cargo sustained damage, it was not yet in the custody of the consignee or the person who had the right to receive it. The CA pointed out that Westwind's duty to observe extraordinary diligence in the care of the cargoes subsisted during unloading thereof by ATI's personnel since the former exercised full control and supervision over the discharging operation.

Similarly, the appellate court held ATI liable for the negligence of its employees who carried out the offloading of cargoes from the ship to the pier. As regards the extent of ATI's liability, the CA ruled that ATI cannot limit its liability to ₱5,000 per damaged package. It explained that Section 7.01[19] of

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17 CA *rollo*, pp. 710-763.

18 Records, Vol. I, p. 4.

19 Section 7.01. 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 skillful, workman-like and efficient manner. The CONTRACTOR shall be solely responsible as an independent contractor, and hereby agrees to accept liability and to pay to the shipping company, consignees, consignors or other interested party or parties for the loss, damage or non-delivery of cargoes in its custody and control to the extent of the actual invoice value of each package which in no case shall be more than FIVE THOUSAND PESOS (₱5,000.00) each, unless the value of the cargo shipment 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. This amount of Five Thousand Pesos (₱5,000.00) per package may be reviewed and adjusted by the AUTHORITY from time to time. THE CONTRACTOR shall not be responsible for the condition or 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 CONTRACTOR within fifteen (15) days from day 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 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) day period within which to file the claim commences; PROVIDED, finally, that the request for certification of loss shall be made within thirty (30) days from the date of delivery of the package to the consignee.

The CONTRACTOR shall submit to the AUTHORITY a list of all pending and new claims filed against it together with pertinent information on the nature of the claim and status of payments made by the CONTRACTOR. The CONTRACTOR shall have a formal Claims Division or Unit within its organization.

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 employee by reason of the provisions of the Labor Code, as amended.

the Contract for Cargo Handling Services[20] does not apply in this case since ATI was not yet in custody and control of the cargoes when the Frame Axle Sub without Lower suffered damage.

Citing *Belgian Overseas Chartering and Shipping N.V. v. Philippine First Insurance Co., Inc.*,[21] the appellate court also held that Philam's action for damages had not prescribed notwithstanding the absence of a notice of claim.

All the parties moved for reconsideration, but their motions were denied in a Resolution dated January 11, 2008. Thus, they each filed a petition for review on certiorari which were consolidated together by this Court considering that all three petitions assail the same CA decision and resolution and involve the same parties.

Essentially, the issues posed by petitioner ATI in G.R. No. 181163, petitioner Philam in G.R. No. 181262 and petitioner Westwind in G.R. No. 181319 can be summed up into and resolved by addressing three questions: (1) Has Philam's action for damages prescribed? (2) Who between Westwind and ATI should be held liable for the damaged cargoes? and (3) What is the extent of their liability?

Petitioners' Arguments

G.R. No. 181163

Petitioner ATI disowns liability for the damage to the Frame Axle Sub without Lower inside Case No. 03-245-42K/1. It shifts the blame to Westwind, whom it charges with negligence in the supervision of the stevedores who unloaded the cargoes. ATI admits that the damage could have been averted had Westwind observed extraordinary diligence in handling the goods. Even so, ATI suspects that Case No. 03-245-42K/1 is "weak and defective"[22] considering that it alone sustained damage out of the 219 packages.

Notwithstanding, petitioner ATI submits that, at most, it can be held liable to pay only ₱5,000 per package pursuant to its Contract for Cargo Handling Services. ATI maintains that it was not properly notified of the actual value of the cargoes prior to their discharge from the vessel.

G.R. No. 181262

Petitioner Philam supports the CA in holding both Westwind and ATI

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20 Records, Vol. II, pp. 291-297.
21 G.R. No. 143133, June 5, 2002, 383 SCRA 23.
22 *Rollo* (G.R. No. 181163), p. 21.

liable for the deformed and misaligned Frame Axle Sub without Lower inside Case No. 03-245-42K/1. It, however, faults the appellate court for disallowing its claim for the value of six Chassis Frame Assembly which were likewise supposedly inside Case Nos. 03-245-51K and 03-245-42K/1. As to the latter container, Philam anchors its claim on the results of the Inspection/Survey Report[23] of Chartered Adjusters, Inc., which the court received without objection from Westwind and ATI. Petitioner believes that with the offer and consequent admission of evidence to the effect that Case No. 03-245-42K/1 contains six pieces of dented Chassis Frame Assembly, Philam's claim thereon should be treated, in all respects, as if it has been raised in the pleadings. Thus, Philam insists on the reinstatement of the trial court's award in its favor for the payment of ₱633,957.15 plus legal interest, ₱158,989.28 as attorney's fees and costs.

G.R. No. 181319

Petitioner Westwind denies joint liability with ATI for the value of the deformed Frame Axle Sub without Lower in Case No. 03-245-42K/1. Westwind argues that the evidence shows that ATI was already in actual custody of said case when the Frame Axle Sub without Lower inside it was misaligned from being compressed by the tight cable used to unload it. Accordingly, Westwind ceased to have responsibility over the cargoes as provided in paragraph 4 of the Bill of Lading which provides that the responsibility of the carrier shall cease when the goods are taken into the custody of the arrastre.

Westwind contends that sole liability for the damage rests on ATI since it was the latter's stevedores who operated the ship's gear to unload the cargoes. Westwind reasons that ATI is an independent company, over whose employees and operations it does not exercise control. Moreover, it was ATI's employees who selected and used the wrong cable to lift the box containing the cargo which was damaged.

Westwind likewise believes that ATI is bound by its acceptance of the goods in good order despite a finding that Case No. 03-245-42K/1 was partly torn and crumpled on one side. Westwind also notes that the discovery that a piece of Frame Axle Sub without Lower was completely deformed and misaligned came only on May 12, 1995 or 22 days after the cargoes were turned over to ATI and after the same had been hauled by R.F. Revilla Customs Brokerage, Inc.

Westwind further argues that the CA erred in holding it liable considering that Philam's cause of action has prescribed since the latter filed a formal claim with it only on August 17, 1995 or four months after the cargoes arrived on April 20, 1995. Westwind stresses that according to the

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[23] Records, Vol. I, p. 179.

provisions of clause 20, paragraph 2[24] of the Bill of Lading as well as Article 366[25] of the Code of Commerce, the consignee had until April 20, 1995 within which to make a claim considering the readily apparent nature of the damage, or until April 27, 1995 at the latest, if it is assumed that the damage is not readily apparent.

Lastly, petitioner Westwind contests the imposition of 12% interest on the award of damages to Philam reckoned from the time of extrajudicial demand. Westwind asserts that, at most, it can only be charged with 6% interest since the damages claimed by Philam does not constitute a loan or forbearance of money.

The Court's Ruling

The three consolidated petitions before us call for a determination of who between ATI and Westwind is liable for the damage suffered by the subject cargo and to what extent. However, the resolution of the issues raised by the present petitions is predicated on the appreciation of factual issues which is beyond the scope of a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended. It is settled that in petitions for review on certiorari, only questions of law may be put in issue. Questions of fact cannot be entertained.[26]

There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual.[27]

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[24] 20. Notice of loss, Time bar.

x x x x

(2) Unless notice of loss or damage to the Goods and the general nature of it be given in writing to the Carrier at the Place of Delivery before or at the time of the removal of the Goods into the custody of the person entitled to delivery hereof under this Bill of Lading, or if the Loss or damages be not apparent, within seven (7) consecutive days hereafter, such removal shall be prima facie evidence of the delivery of the Carrier of the Goods as described in this Bill of Lading. x x x [*Rollo* (G.R. No. 181319), pp. 54-55. Emphasis and underscoring omitted.]

[25] Article 366. Within twenty-four hours following the receipt of the merchandise, the claim against the carrier for damage or average which may be found therein upon opening of the packages may be made, provided the indications of the damage or the average which give rise to the claim cannot be ascertained from the outside part of such packages, in which case the claim shall be admitted only at the time of receipt.

After the periods mentioned have elapsed, or the transportation charges have been paid, no claim shall be admitted against the carrier with regard to the condition on which the goods transported were delivered. (Id. at 55.)

[26] *Philippine National Railways Corporation v. Vizcara*, G.R. No. 190022, February 15, 2012, 666 SCRA 363, 375.

[27] *Insurance Company of North America v. Asian Terminals, Inc.*, G.R. No. 180784, February 15, 2012, 666 SCRA 226, 236.

In the present petitions, the resolution of the question as to who between Westwind and ATI should be liable for the damages to the cargo and to what extent would have this Court pass upon the evidence on record. But while it is not our duty to review, examine and evaluate or weigh all over again the probative value of the evidence presented,[28] the Court may nonetheless resolve questions of fact when the case falls under any of the following exceptions:

> (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[29]

In the cases at bar, the fifth and seventh exceptions apply. While the CA affirmed the joint liability of ATI and Westwind, it held them liable only for the value of one unit of Frame Axle Sub without Lower inside Case No. 03-245-42K/1. The appellate court disallowed the award of damages for the six pieces of Frame Assembly with Bush, which petitioner Philam alleged, for the first time in its Appellee's Brief, to be likewise inside Case No. 03-245-42K/1. Lastly, the CA reduced the award of attorney's fees to ₱47,671.

Foremost, the Court holds that petitioner Philam has adequately established the basis of its claim against petitioners ATI and Westwind. Philam, as insurer, was subrogated to the rights of the consignee, Universal Motors Corporation, pursuant to the Subrogation Receipt executed by the latter in favor of the former. The right of subrogation accrues simply upon payment by the insurance company of the insurance claim.[30] Petitioner Philam's action finds support in Article 2207 of the Civil Code, which provides as follows:

> Art. 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. x x x.

In their respective comments[31] to Philam's Formal Offer of Evidence,[32]

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

29 *Insurance Company of North America v. Asian Terminals, Inc.*, supra note 27, at 236-237.

30 *Gaisano Cagayan, Inc. v. Insurance Company of North America*, 523 Phil. 677, 693 (2006).

31 Records, Vol. I, pp. 191-195, 198-201.

32 Id. at 147-156.

petitioners ATI and Westwind objected to the admission of Marine Certificate No. 708-8006717-4 and the Subrogation Receipt as documentary exhibits "B" and "P," respectively. Petitioner Westwind objects to the admission of both documents for being hearsay as they were not authenticated by the persons who executed them. For the same reason, petitioner ATI assails the admissibility of the Subrogation Receipt. As regards Marine Certificate No. 708-8006717-4, ATI makes issue of the fact that the same was issued only on April 27, 1995 or 12 days after the shipment was loaded on and transported via S/S "Calayan Iris."

The nature of documents as either public or private determines how the documents may be presented as evidence in court. Public documents, as enumerated under Section 19,[33] Rule 132 of the Rules of Court, are self-authenticating and require no further authentication in order to be presented as evidence in court.[34]

In contrast, a private document is any other writing, deed or instrument executed by a private person without the intervention of a notary or other person legally authorized by which some disposition or agreement is proved or set forth. Lacking the official or sovereign character of a public document, or the solemnities prescribed by law, a private document requires authentication[35] in the manner prescribed under Section 20, Rule 132 of the Rules:

> SEC. 20. *Proof of private document*. – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:
>
> (a) By anyone who saw the document executed or written; or
>
> (b) By evidence of the genuineness of the signature or handwriting of the maker.
>
> Any other private document need only be identified as that which it is claimed to be.

The requirement of authentication of a private document is excused only in four instances, specifically: (a) when the document is an ancient one within the context of Section 21,[36] Rule 132 of the Rules; (b) when the genuineness and authenticity of the actionable document have not been

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[33] SEC. 19. *Classes of documents*. – For the purpose of their presentation in evidence, documents are either public or private.
Public documents are:
(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
(b) Documents acknowledged before a notary public except last wills and testaments; and
(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.
All other writings are private. (Emphasis supplied.)

[34] *Patula v. People*, G.R. No. 164457, April 11, 2012, 669 SCRA 135, 156.

[35] Id.

[36] SEC. 21. *When evidence of authenticity of private document not necessary*. – Where a private document is more than thirty years old, is produced from a custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion, no other evidence of its authenticity need be given.

specifically denied under oath by the adverse party; (c) when the genuineness and authenticity of the document have been admitted; or (d) when the document is not being offered as genuine.[37]

Indubitably, Marine Certificate No. 708-8006717-4 and the Subrogation Receipt are private documents which Philam and the consignee, respectively, issue in the pursuit of their business. Since none of the exceptions to the requirement of authentication of a private document obtains in these cases, said documents may not be admitted in evidence for Philam without being properly authenticated.

Contrary to the contention of petitioners ATI and Westwind, however, Philam presented its claims officer, Ricardo Ongchangco, Jr. to testify on the execution of the Subrogation Receipt, as follows:

> ATTY. PALACIOS
> Q How were you able to get hold of this subrogation receipt?
> A Because I personally delivered the claim check to consignee and have them [receive] the said check.
>
> Q I see. Therefore, what you are saying is that you personally delivered the claim check of Universal Motors Corporation to that company and you have the subrogation receipt signed by them personally?
> A Yes, sir.
>
> Q And it was signed in your presence?
> A Yes, sir.[38]

Indeed, all that the Rules require to establish the authenticity of a document is the testimony of a person who saw the document executed or written. Thus, the trial court did not err in admitting the Subrogation Receipt in evidence despite petitioners ATI and Westwind's objections that it was not authenticated by the person who signed it.

However, the same cannot be said about Marine Certificate No. 708-8006717-4 which Ongchangcho, Jr. merely identified in court. There is nothing in Ongchangco, Jr.'s testimony which indicates that he saw Philam's authorized representative sign said document, thus:

> ATTY. PALACIOS
> Q Now, I am presenting to you a copy of this marine certificate 708-8006717-4 issued by Philam Insurance Company, Inc. to Universal Motors Corporation on April 15, 1995. Will you tell us what relation does it have to that policy risk claim mentioned in that letter?
> A This is a photocopy of the said policy issued by the consignee Universal Motors Corporation.
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> ATTY. PALACIOS

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37 *Patula v. People*, supra note 34, at 156-157.
38 TSN November 11, 1996, pp. 43-44.

> I see. [May] I request, if Your Honor please, that this marine risk policy of the plaintiff as submitted by claimant Universal Motors Corporation be marked as Exhibit B.
>
> COURT
> Mark it.[39]

As regards the issuance of Marine Certificate No. 708-8006717-4 after the fact of loss occurred, suffice it to say that said document simply certifies the existence of an open insurance policy in favor of the consignee. Hence, the reference to an "Open Policy Number 9595093" in said certificate. The Court finds it completely absurd to suppose that any insurance company, of sound business practice, would assume a loss that has already been realized, when the profitability of its business rests precisely on the non-happening of the risk insured against.

Yet, even with the exclusion of Marine Certificate No. 708-8006717-4, the Subrogation Receipt, on its own, is adequate proof that petitioner Philam paid the consignee's claim on the damaged goods. Petitioners ATI and Westwind failed to offer any evidence to controvert the same. In *Malayan Insurance Co., Inc. v. Alberto*,[40] the Court explained the effect of payment by the insurer of the insurance claim in this wise:

> We have held that payment by the insurer to the insured operates as an equitable assignment to the insurer of all the remedies that the insured may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of, any privity of contract. It accrues simply upon payment by the insurance company of the insurance claim. The doctrine of subrogation has its roots in equity. It is designed to promote and accomplish justice; and is the mode that equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, ought to pay.[41]

Neither do we find support in petitioner Westwind's contention that Philam's right of action has prescribed.

The Carriage of Goods by Sea Act (COGSA) or Public Act No. 521 of the 74th US Congress, was accepted to be made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade by virtue of Commonwealth Act (C.A.) No. 65.[42] Section 1 of C.A. No. 65 states:

> Section 1. That the provisions of Public Act Numbered Five hundred and twenty-one of the Seventy-fourth Congress of the United States, approved on April sixteenth, nineteen hundred and thirty-six, be accepted, as it is hereby accepted to be made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade: *Provided*, That nothing in the Act shall be construed as repealing any

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39 Id. at 13-14.
40 G.R. No. 194320, February 1, 2012, 664 SCRA 791.
41 Id. at 806.
42 *Insurance Company of North America v. Asian Terminals, Inc.*, supra note 27, at 237.

> existing provision of the Code of Commerce which is now in force, or as limiting its application.

The prescriptive period for filing an action for the loss or damage of the goods under the COGSA is found in paragraph (6), Section 3, thus:

> (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.
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> 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.

In the Bill of Lading[43] dated April 15, 1995, Rizal Commercial Banking Corporation (RCBC) is indicated as the consignee while Universal Motors is listed as the notify party. These designations are in line with the subject shipment being covered by Letter of Credit No. I501054, which RCBC issued upon the request of Universal Motors.

A letter of credit is a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have control of his goods before paying.[44] However, letters of credit are employed by the parties desiring to enter into commercial transactions, not for the benefit of the issuing bank but mainly for the benefit of the parties to the original transaction,[45] in these cases, Nichimen Corporation as the seller and Universal Motors as the buyer. Hence, the latter, as the buyer of the Nissan CKD parts, should be regarded as the person entitled to delivery of the goods. Accordingly, for purposes of reckoning when notice of loss or damage should be given to the carrier or its agent, the date of delivery to Universal Motors is controlling.

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43 Records, Vol. I, p. 160.

44 *Transfield Philippines, Inc. v. Luzon Hydro Corporation*, 485 Phil. 699, 717 (2004).

45 Id. at 721.

S/S "Calayan Iris" arrived at the port of Manila on April 20, 1995, and the subject cargoes were discharged to the custody of ATI the next day. The goods were then withdrawn from the CFS Warehouse on May 11, 1995 and the last of the packages delivered to Universal Motors on May 17, 1995. Prior to this, the latter filed a Request for Bad Order Survey[46] on May 12, 1995 following a joint inspection where it was discovered that six pieces of Chassis Frame Assembly from two bundles were deformed and one Front Axle Sub without Lower from a steel case was dented. Yet, it was not until August 4, 1995 that Universal Motors filed a formal claim for damages against petitioner Westwind.

Even so, we have held in *Insurance Company of North America v. Asian Terminals, Inc.* that a request for, and the result of a bad order examination, done within the reglementary period for furnishing notice of loss or damage to the carrier or its agent, serves the purpose of a claim. A claim is required to be filed within the reglementary period to afford the carrier or depositary reasonable opportunity and facilities to check the validity of the claims while facts are still fresh in the minds of the persons who took part in the transaction and documents are still available.[47] Here, Universal Motors filed a request for bad order survey on May 12, 1995, even before all the packages could be unloaded to its warehouse.

Moreover, paragraph (6), Section 3 of the COGSA clearly states that failure to comply with the notice requirement shall not affect or prejudice the right of the shipper to bring suit within one year after delivery of the goods. Petitioner Philam, as subrogee of Universal Motors, filed the Complaint for damages on January 18, 1996, just eight months after all the packages were delivered to its possession on May 17, 1995. Evidently, petitioner Philam's action against petitioners Westwind and ATI was seasonably filed.

This brings us to the question that must be resolved in these consolidated petitions. Who between Westwind and ATI should be liable for the damage to the cargo?

It is undisputed that Steel Case No. 03-245-42K/1 was partly torn and crumpled on one side while it was being unloaded from the carrying vessel. The damage to said container was noted in the Bad Order Cargo Receipt[48] dated April 20, 1995 and Turn Over Survey of Bad Order Cargoes dated April 21, 1995. The Turn Over Survey of Bad Order Cargoes indicates that said steel case was not opened at the time of survey and was accepted by the arrastre in good order. Meanwhile, the Bad Order Cargo Receipt bore a notation "B.O. not yet t/over to ATI." On the basis of these documents, petitioner ATI claims that the contents of Steel Case No. 03-245-42K/1 were damaged while in the custody of petitioner Westwind.

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46 Records, Vol. I, p. 166.
47 Supra note 27, at 242.
48 Records, Vol. I, p. 188.

We agree.

Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods transported by them. Subject to certain exceptions enumerated under Article 1734[49] of the Civil Code, common carriers are responsible for the loss, destruction, or deterioration of the goods. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them.[50]

The court *a quo*, however, found both petitioners Westwind and ATI, jointly and severally, liable for the damage to the cargo. It observed that while the staff of ATI undertook the physical unloading of the cargoes from the carrying vessel, Westwind's duty officer exercised full supervision and control over the entire process. The appellate court affirmed the solidary liability of Westwind and ATI, but only for the damage to one Frame Axle Sub without Lower.

Upon a careful review of the records, the Court finds no reason to deviate from the finding that petitioners Westwind and ATI are concurrently accountable for the damage to the content of Steel Case No. 03-245-42K/1.

Section 2[51] of the COGSA provides that under every contract of carriage of goods by the sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities set forth in the Act. Section 3 (2)[52] thereof then states that among the carrier's responsibilities are to properly load, handle, stow, carry, keep, care for and discharge the goods carried.[53]

At the trial, Westwind's Operation Assistant, Menandro G. Ramirez,

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[49] ART. 1734. Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:
(1) Flood, storm, earthquake, lightning or other natural disaster or calamity;
(2) Act of the public enemy in war, whether international or civil;
(3) Act of the 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.

[50] *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*, G.R. No. 165647, March 26, 2009, 582 SCRA 457, 466-467.

[51] Section 2. Subject to the provisions of section 6, under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities hereinafter set forth.

[52] Section 3. x x x
x x x x
2) The carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

[53] *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*, supra note 50, at 467.

testified on the presence of a ship officer to supervise the unloading of the subject cargoes.

> ATTY. LLAMAS
> Q Having been present during the entire discharging operation, do you remember who else were present at that time?
> A Our surveyor and our checker the foreman of ATI.
>
> Q **Were there officials of the ship present also**?
> A Yes, sir **there was an officer of the vessel on duty at that time**.[54]
>
> x x x x
>
> Q **Who selected the cable slink to be used**?
> A **ATI Operation**.
>
> Q Are you aware of how they made that selection?
> A Before the vessel arrived we issued a manifesto of the storage plan informing the ATI of what type of cargo and equipment will be utilitized in discharging the cargo.[55]
>
> x x x x
>
> Q You testified that it **was the ATI foremen who select the cable slink to be used in discharging**, is that correct?
> A **Yes sir**, because they are the one who select the slink and they know the kind of cargoes because they inspected it before the discharge of said cargo.
>
> Q Are you aware that the ship captain is consulted in the selection of the cable sling?
> A Because the ship captain knows for a fact the equipment being utilized in the discharge of the cargoes because before the ship leave the port of Japan the crew already utilized the proper equipment fitted to the cargo.[56] (Emphasis supplied.)

It is settled in maritime law jurisprudence that cargoes while being unloaded generally remain under the custody of the carrier.[57] The Damage Survey Report[58] of the survey conducted by Phil. Navtech Services, Inc. from April 20-21, 1995 reveals that Case No. 03-245-42K/1 was damaged by ATI stevedores due to overtightening of a cable sling hold during discharge from the vessel's hatch to the pier. Since the damage to the cargo was incurred during the discharge of the shipment and while under the supervision of the carrier, the latter is liable for the damage caused to the cargo.

This is not to say, however, that petitioner ATI is without liability for the damaged cargo.

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54 TSN, February 17, 1998, p. 13.
55 Id. at 15.
56 Id. at 17-18.
57 *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*, supra note 50, at 472.
58 Records, Vol. I, p. 90.

The functions of an arrastre operator involve the handling of cargo deposited on the wharf or between the establishment of the consignee or shipper and the ship's tackle. Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession.[59]

Handling cargo is mainly the arrastre operator's principal work so its drivers/operators or employees should observe the standards and measures necessary to prevent losses and damage to shipments under its custody.[60]

While it is true that an arrastre operator and a carrier may not be held solidarily liable at all times,[61] the facts of these cases show that apart from ATI's stevedores being directly in charge of the physical unloading of the cargo, its foreman picked the cable sling that was used to hoist the packages for transfer to the dock. Moreover, the fact that 218 of the 219 packages were unloaded with the same sling unharmed is telling of the inadequate care with which ATI's stevedore handled and discharged Case No. 03-245-42K/1.

With respect to petitioners ATI and Westwind's liability, we agree with the CA that the same should be confined to the value of the one piece Frame Axle Sub without Lower.

In the Bad Order Inspection Report[62] prepared by Universal Motors, the latter referred to Case No. 03-245-42K/1 as the source of said Frame Axle Sub without Lower which suffered a deep dent on its buffle plate. Yet, it identified Case No. 03-245-51K as the container which bore the six pieces Frame Assembly with Bush. Thus, in Philam's Complaint, it alleged that "the entire shipment showed one (1) pc. FRAME AXLE SUB W/O LWR from Case No. 03-245-42K/1 [was] completely deformed and misaligned, and six (6) other pcs. of FRAME ASSEMBLY WITH BUSH from Case No. 03-245-51K [were] likewise completely deformed and misaligned."[63] Philam later claimed in its Appellee's Brief that the six pieces of Frame Assembly with Bush were also inside the damaged Case No. 03-245-42K/1.

However, there is nothing in the records to show conclusively that the six Frame Assembly with Bush were likewise contained in and damaged inside Case No. 03-245-42K/1. In the Inspection Survey Report of Chartered Adjusters, Inc., it mentioned six pieces of chassis frame assembly with deformed body mounting bracket. However, it merely noted the same as coming from two bundles with no identifying marks.

Lastly, we agree with petitioner Westwind that the CA erred in imposing an interest rate of 12% on the award of damages. Under Article 2209 of the Civil Code, when an obligation not constituting a loan or

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59 *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*, supra note 50, at 468.
60 Id.
61 Id. at 469.
62 Records, Vol. I, p. 171.
63 Supra note 18.

forbearance of money is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% per annum.[64] In the similar case of *Belgian Overseas Chartering and Shipping N.V. v. Philippine First Insurance Co., Inc.*,[65] the Court reduced the rate of interest on the damages awarded to the carrier therein to 6% from the time of the filing of the complaint until the finality of the decision.

WHEREFORE, the Court **AFFIRMS with MODIFICATION** the Decision dated October 15, 2007 and the Resolution dated January 11, 2008 of the Court of Appeals in CA-G.R. CV No. 69284 in that the interest rate on the award of ₱190,684.48 is reduced to 6% per annum from the date of extrajudicial demand, until fully paid.

With costs against the petitioners in G.R. No. 181163 and G.R. No. 181319, respectively.

SO ORDERED.

MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

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[64] *Soriamont Steamship Agencies, Inc. v. Sprint Transport Services, Inc.*, G.R. No. 174610, July 14, 2009, 592 SCRA 622, 639-640; *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 96.

[65] Supra note 21, at 42.

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 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