Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

EASTERN SHIPPING LINES, INC., Petitioner,	**G.R. No. 182864**
	Present:
-*versus*-	SERENO, *C.J.,* *Chairman,* LEONARDO-DE CASTRO, PERALTA,* PEREZ, and REYES,** *JJ.*
BPI/MS INSURANCE CORP., & MITSUI SUMITOMO INSURANCE CO., LTD., Respondents.	Promulgated: JAN 1 2 2015

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DECISION

PEREZ, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] of the Decision[2] of the Second Division of the Court of Appeals in CA-G.R. CV No. 88744 dated 31 January 2008, modifying the Decision of the Regional Trial Court (RTC) by upholding the liability of Eastern Shipping Lines, Inc. (ESLI) but absolving Asian Terminals, Inc. (ATI) from liability and deleting the award of attorney's fees.

The facts gathered from the records follow:

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* Per Raffle dated 21 April 2014.
** Per Raffle dated 1 December 2014.
1 Rule on Civil Procedure, Rule 45.
2 Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court) with Associate Justices Portia Aliño-Homachuelos and Lucas P. Bersamin (also a member of this Court) concurring. *Rollo,* pp. 43-50.

On 29 December 2004, BPI/MS Insurance Corporation (BPI/MS) and Mitsui Sumitomo Insurance Company Limited (Mitsui) filed a Complaint[3] before the RTC of Makati City against ESLI and ATI to recover actual damages amounting to US$17,560.48 with legal interest, attorney's fees and costs of suit.

In their complaint, BPI/MS and Mitsui alleged that on 2 February 2004 at Yokohama, Japan, Sumitomo Corporation shipped on board ESLI's vessel M/V "Eastern Venus 22" 22 coils of various Steel Sheet weighing 159,534 kilograms in good order and condition for transportation to and delivery at the port of Manila, Philippines in favor of consignee Calamba Steel Center, Inc. (Calamba Steel) located in Saimsim, Calamba, Laguna as evidenced by a Bill of Lading with Nos. ESLIYMA001. The declared value of the shipment was US$83,857.59 as shown by an Invoice with Nos. KJGE-03-1228-NT/KE3. The shipment was insured with the respondents BPI/MS and Mitsui against all risks under Marine Policy No. 103-GG03448834.

On 11 February 2004, the complaint alleged that the shipment arrived at the port of Manila in an unknown condition and was turned over to ATI for safekeeping. Upon withdrawal of the shipment by the Calamba Steel's representative, it was found out that part of the shipment was damaged and was in bad order condition such that there was a Request for Bad Order Survey. It was found out that the damage amounted to US$4,598.85 prompting Calamba Steel to reject the damaged shipment for being unfit for the intended purpose.

On 12 May 2004 at Kashima, Japan, Sumitomo Corporation again shipped on board ESLI's vessel M/V "Eastern Venus 25" 50 coils in various Steel Sheet weighing 383,532 kilograms in good order and condition for transportation to and delivery at the port of Manila, Philippines in favor of the same consignee Calamba Steel as evidenced by a Bill of Lading with Nos. ESLIKSMA002. The declared value of the shipment was US$221,455.58 as evidenced by Invoice Nos. KJGE-04-1327-NT/KE2. The shipment was insured with the respondents BPI/MS and Mitsui against all risks under Marine Policy No. 104-GG04457785.

On 21 May 2004, ESLI's vessel with the second shipment arrived at the port of Manila partly damaged and in bad order. The coils sustained further damage during the discharge from vessel to shore until its turnover to ATI's custody for safekeeping.

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[3] Complaint. Records, pp. 1-5.

Upon withdrawal from ATI and delivery to Calamba Steel, it was found out that the damage amounted to US$12,961.63. As it did before, Calamba Steel rejected the damaged shipment for being unfit for the intended purpose.

Calamba Steel attributed the damages on both shipments to ESLI as the carrier and ATI as the *arrastre* operator in charge of the handling and discharge of the coils and filed a claim against them. When ESLI and ATI refused to pay, Calamba Steel filed an insurance claim for the total amount of the cargo against BPI/MS and Mitsui as cargo insurers. As a result, BPI/MS and Mitsui became subrogated in place of and with all the rights and defenses accorded by law in favor of Calamba Steel.

Opposing the complaint, ATI, in its Answer, denied the allegations and insisted that the coils in two shipments were already damaged upon receipt from ESLI's vessels. It likewise insisted that it exercised due diligence in the handling of the shipments and invoked that in case of adverse decision, its liability should not exceed ₱5,000.00 pursuant to Section 7.01, Article VII[4] of the Contract for Cargo Handling Services between Philippine Ports Authority (PPA) and ATI.[5] A cross-claim was also filed against ESLI.

On its part, ESLI denied the allegations of the complainants and averred that the damage to both shipments was incurred while the same were in the possession and custody of ATI and/or of the consignee or its representatives. It also filed a cross-claim against ATI for indemnification in case of liability.[6]

To expedite settlement, the case was referred to mediation but it was returned to the trial court for further proceedings due to the parties' failure to resolve the legal issues as noted in the Mediator's Report dated 28 June 2005.[7]

On 10 January 2006, the court issued a Pre-Trial Order wherein the following stipulations were agreed upon by the parties:

1. Parties admitted the capacity of the parties to sue and be sued;

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4 *Rollo*, pp. 170-171.
5 Answer of ATI. Records, pp. 23-27.
6 Answer of ESLI. Id. at 38-47.
7 Mediator's Report. Id. at 91.

2. Parties likewise admitted the existence and due execution of the Bill of Lading covering various steel sheets in coil attached to the Complaint as Annex A;

3. Parties admitted the existence of the Invoice issued by Sumitomo Corporation, a true and faithful copy of which was attached to the Complaint as Annex B;

4. Parties likewise admitted the existence of the Marine Cargo Policy issued by the Mitsui Sumitomo Insurance Company, Limited, copy of which was attached to the Complaint as Annex C;

5. [ATI] admitted the existence and due execution of the Request for Bad Order Survey dated February 13, 2004, attached to the Complaint as Annex D;

6. Insofar as the second cause of action, [ESLI] admitted the existence and due execution of the document [Bill of Lading Nos. ESLIKSMA002, Invoice with Nos. KJGE-04-1327-NT/KE2 and Marine Cargo Policy against all risks on the second shipment] attached to the Complaint as Annexes E, F and G;

7. [ATI] admitted the existence of the Bill of Lading together with the Invoices and Marine Cargo Policy. [It] likewise admitted by [ATI] are the Turn Over Survey of Bad Order Cargoes attached to the Complaint as Annexes H, H-1 and J.[8]

The parties agreed that the procedural issue was whether there was a valid subrogation in favor of BPI/MS and Mitsui; and that the substantive issues were, whether the shipments suffered damages, the cause of damage, and the entity liable for reparation of the damages caused.[9]

Due to the limited factual matters of the case, the parties were required to present their evidence through affidavits and documents. Upon submission of these evidence, the case was submitted for resolution.[10]

BPI/MS and Mitsui, to substantiate their claims, submitted the Affidavits of (1) Mario A. Manuel (Manuel),[11] the Cargo Surveyor of Philippine Japan Marine Surveyors and Sworn Measurers Corporation who personally examined and conducted the surveys on the two shipments; (2) Richatto P. Almeda,[12] the General Manager of Calamba Steel who oversaw and examined the condition, quantity, and quality of the shipped steel coils,

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8 As embodied in the Pre-Trial Order. Id. at 98-99.
9 Id. at 99.
10 Id.
11 Id. at 145-147.
12 Id. at 102-104.

and who thereafter filed formal notices and claims against ESLI and ATI; and (3) Virgilio G. Tiangco, Jr.,[13] the Marine Claims Supervisor of BPI/MS who processed the insurance claims of Calamba Steel. Along with the Affidavits were the Bills of Lading[14] covering the two shipments, Invoices,[15] Notices of Loss of Calamba Steel,[16] Subrogation Form,[17] Insurance Claims,[18] Survey Reports,[19] Turn Over Survey of Bad Order Cargoes[20] and Request for Bad Order Survey.[21]

ESLI, in turn, submitted the Affidavits of Captain Hermelo M. Eduarte,[22] Manager of the Operations Department of ESLI, who monitored in coordination with ATI the discharge of the two shipments, and Rodrigo Victoria (Rodrigo),[23] the Cargo Surveyor of R & R Industrial and Marine Services, Inc., who personally surveyed the subject cargoes on board the vessel as well as the manner the ATI employees discharged the coils. The documents presented were the Bills of Lading, Secretary's Certificate[24] of PPA, granting ATI the duty and privilege to provide *arrastre* and stevedoring services at South Harbor, Port of Manila, Contract for Cargo Handling Services,[25] Damage Report[26] and Turn Over Report made by Rodrigo.[27] ESLI also adopted the Survey Reports submitted by BPI/MS and Mitsui.[28]

Lastly, ATI submitted the Affidavits of its Bad Order Inspector Ramon Garcia (Garcia)[29] and Claims Officer Ramiro De Vera.[30] The documents attached to the submissions were the Turn Over Surveys of Bad Cargo Order,[31] Requests for Bad Order Survey,[32] Cargo Gatepasses issued

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13 Id. at 129-131.
14 Id. at 105 and 116.
15 Id. at 106-110 and 117-123.
16 Id. at 124-127.
17 Id. at 128.
18 Id. at 133-136 and 140-143.
19 Id. at 149-154.
20 Id. at 157-159.
21 Id. at 148.
22 Compliance/Manifestation. Id. at 169-171.
23 Id. at 173-176.
24 Id. at 178-179.
25 Id. at 180-205.
26 Id. at 207 and 210-210-A.
27 Id. at 208 and 210-212.
28 Id. at 149-154.
29 Id. at 215-217.
30 Id. at 224-227.
31 Id. at 218 and 221.
32 Id. at 219-220 and 223.

by ATI,[33] Notices of Loss/Claims of Calamba Steel[34] and Contract for Cargo Handling Services.[35]

On 17 September 2006, RTC Makati City rendered a decision finding both the ESLI and ATI liable for the damages sustained by the two shipments. The dispositive portion reads:

> **WHEREFORE,** judgment is hereby rendered in favor of [BPI/MS and Mitsui] and against [ESLI Inc.] and [ATI], jointly and severally ordering the latter to pay [BPI/MS and Mitsui] the following:
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> 1. Actual damages amounting to US$17,560.48 plus 6% legal interest per annum commencing from the filing of this complaint, until the same is fully paid;
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> 2. Attorney's fees in a sum equivalent to 20% of the amount claimed;
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> 3. Costs of suit.[36]

Aggrieved, ESLI and ATI filed their respective appeals before the Court of Appeals on both questions of fact and law.[37]

Before the appellate court, ESLI argued that the trial court erred when it found BPI/MS has the capacity to sue and when it assumed jurisdiction over the case. It also questioned the ruling on its liability since the Survey Reports indicated that the cause of loss and damage was due to the *"rough handling of ATI's stevedores during discharge from vessel to shore and during loading operation onto the trucks."* It invoked the limitation of liability of US$500.00 per package as provided in Commonwealth Act No. 65 or the Carriage of Goods by Sea Act (COGSA).[38]

On the other hand, ATI questioned the capacity to sue of BPI/MS and Mitsui and the award of attorney's fees despite its lack of justification in the body of the decision. ATI also imputed error on the part of the trial court when it ruled that ATI's employees were negligent in the ruling of the shipments. It also insisted on the applicability of the provision of COGSA on limitation of liability.[39]

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33 Id. at 228-232.
34 Id. at 233 and 273.
35 Id. at 235-261.
36 *Rollo*, pp. 131-137.
37 Records, pp. 284-285 and 287.
38 Appellant's Brief of ESLI. *Rollo*, pp. 71-106.
39 Appellant's Brief of ATI. Id. at 107-130.

In its Decision,[40] the Court of Appeals absolved ATI from liability thereby modifying the decision of the trial court. The dispositive portions reads:

> **WHEREFORE**, the appeal of ESLI is **DENIED**, while that of ATI is **GRANTED.** The assailed Judgment dated September 17, 2006 of Branch 138, RTC of Makati City in Civil Case No. 05-108 is hereby MODIFIED absolving ATI from liability and deleting the award of attorney's fees. The rest of the decision is affirmed.[41]

Before this Court, ESLI seeks the reversal of the ruling on its liability.

At the outset, and notably, ESLI included among its arguments the attribution of liability to ATI but it failed to implead the latter as a party to the present petition. This non-inclusion was raised by BPI/MS and Mitsui as an issue[42] in its Comment/Opposition[43] and Memorandum:[44]

> For reasons known only to [ESLI], it did not implead ATI as a party respondent in this case when it could have easily done so. Considering the nature of the arguments raised by petitioner pointing to ATI as solely responsible for the damages sustained by the subject shipments, it is respectfully submitted that ATI is an indispensable party in this case. Without ATI being impleaded, the issue of whether ATI is solely responsible for the damages could not be determined with finality by this Honorable Court. ATI certainly deserves to be heard on the issue but it could not defend itself because it was not impleaded before this Court. Perhaps, this is the reason why [ESLI] left out ATI in this case so that it could not rebut while petitioner puts it at fault.[45]

ESLI in its Reply[46] put the blame for the non-exclusion of ATI to BPI/MS and Mitsui:

> [BPI/MS and Mitsui] claim that herein [ESLI] did not implead [ATI] as a party respondent in the Petition for Review on Certiorari it had filed. Herein Petitioner submits that it is not the obligation of [ESLI] to implead ATI as the same is already the look out of [BPI/MS and Mitsui]. If [BPI/MS and Mitsui] believe that ATI should be made liable, they should have filed a Motion for Reconsideration with the

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40 Id. at 43-50.
41 Id. at 49-50.
42 Id. at 302.
43 Id. at 300-307.
44 Id. at 401-414.
45 Id. at 302.
46 Id. at 308-326.

> Honorable Court of Appeals. The fact that [BPI/MS and Mitsui] did not even lift a finger to question the decision of the Honorable Court of Appeals goes to show that [BPI/MS and Mitsui] are not interested as to whether or not ATI is indeed liable.[47]

It is clear from the exchange that both [ESLI] and [BPI/MS and Mitsui] are aware of the non-inclusion of ATI, the *arrastre* operator, as a party to this review of the Decision of the Court of Appeals. By blaming each other for the exclusion of ATI, [ESLI] and [BPI/MS and Mitsui] impliedly agree that the absolution of ATI from liability is final and beyond review. Clearly, [ESLI] is the consequential loser. It alone must bear the proven liability for the loss of the shipment. It cannot shift the blame to ATI, the *arrastre* operator, which has been cleared by the Court of Appeals. Neither can it argue that the consignee should bear the loss.

Thus confined, we go to the merits of the arguments of ESLI.

First Issue: Liability of ESLI

ESLI bases of its non-liability on the survey reports prepared by BPI/MS and Mitsui's witness Manuel which found that the cause of damage was the rough handling on the shipment by the stevedores of ATI during the discharging operations.[48] However, Manuel does not absolve ESLI of liability. The witness in fact includes ESLI in the findings of negligence. Paragraphs 3 and 11 of the affidavit of witness Manuel attribute fault to both ESLI and ATI.

> 3. The vessel M.V. "EASTERN VENUS" V 22-S carrying the said shipment of 22 coils of various steel sheets arrived at the port of Manila and discharged the said shipment on or about 11 February 2004 to the *arrastre* operator [ATI]. I personally noticed that the 22 coils were roughly handled during their discharging from the vessel to the pier of [ATI] and even during the loading operations of these coils from the pier to the trucks that will transport the coils to the consignees's warehouse. **During the aforesaid operations, the employees and forklift operators of [ESLI] and [ATI] were very negligent in the handling of the subject cargoes.**
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> 11. The vessel M.V. "EASTERN VENUS" V 25-S carrying the said shipment of 50 coils of various steel sheets arrived at the port of Manila

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47 Id. at 312.

48 Petition for Review on *Certiorari*. Id. at 15.

> and discharged the said shipment on or about 21 May 2004 to the *arrastre* operator [ATI]. I personally noticed that the 50 coils were roughly handled during their discharging from the vessel to the pier of [ATI] and even during the loading operations of these coils from the pier to the trucks that will transport the coils to the consignees's warehouse. **During the aforesaid operations, the employees and forklift operators of [ESLI] and [ATI] were very negligent in the handling of the subject cargoes.**[49] (Emphasis supplied).

ESLI cannot rely only on parts it chooses. The entire body of evidence should determine the liability of the parties. From the statements of Manuel, [ESLI] was negligent, whether solely or together with ATI.

To further press its cause, ESLI cites the affidavit of its witness Rodrigo who stated that the cause of the damage was the rough mishandling by ATI's stevedores.

The affidavit of Rodrigo states that his functions as a cargo surveyor are, (1) getting hold of a copy of the bill of lading and cargo manifest; (2) inspection and monitoring of the cargo on-board, during discharging and after unloading from the vessel; and (3) making a necessary report of his findings. Thus, upon arrival at the South Harbor of Manila of the two vessels of ESLI on 11 February 2004 and on 21 May 2004, Rodrigo immediately boarded the vessels to inspect and monitor the unloading of the cargoes. In both instances, it was his finding that there was mishandling on the part of ATI's stevedores which he reported as the cause of the damage.[50]

Easily seen, however, is the absence of a crucial point in determining liability of either or both ESLI and ATI – lack of determination whether the cargo was in a good order condition as described in the bills of lading at the time of his boarding. As Rodrigo admits, it was also his duty to inspect and monitor the cargo on-board upon arrival of the vessel. ESLI cannot invoke its non-liability solely on the manner the cargo was discharged and unloaded. The actual condition of the cargoes upon arrival prior to discharge is equally important and cannot be disregarded. Proof is needed that the cargo arrived at the port of Manila in good order condition and remained as such prior to its handling by ATI.

Common carriers, from the nature of their business and on public policy considerations, are bound to observe extraordinary diligence in the vigilance over the goods transported by them. Subject to certain exceptions

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49 Records, pp. 145-146.

50 Id. at 173-176.

enumerated under Article 1734[51] 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.[52]

In maritime transportation, a bill of lading is issued by a common carrier as a contract, receipt and symbol of the goods covered by it. If it has no notation of any defect or damage in the goods, it is considered as a "clean bill of lading." A clean bill of lading constitutes *prima facie* evidence of the receipt by the carrier of the goods as therein described.[53]

Based on the bills of lading issued, it is undisputed that ESLI received the two shipments of coils from shipper Sumitomo Corporation in good condition at the ports of Yokohama and Kashima, Japan. However, upon arrival at the port of Manila, some coils from the two shipments were partly dented and crumpled as evidenced by the Turn Over Survey of Bad Order Cargoes No. 67982 dated 13 February 2004[54] and Turn Over Survey of Bad Order Cargoes Nos. 68363[55] and 68365[56] both dated 24 May 2004 signed by ESLI's representatives, a certain Tabanao and Rodrigo together with ATI's representative Garcia. According to Turn Over Survey of Bad Order Cargoes No. 67982, four coils and one skid were partly dented and crumpled prior to turnover by ESLI to ATI's possession while a total of eleven coils were partly dented and crumpled prior to turnover based on Turn Over Survey Bad Order Cargoes Nos. 68363 and 68365.

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51 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 or omission of the shipper or owner of the goods;
(4) The character of the goods or defects in the packing or in the containers; and
(5) Order or act of competent public authority.

52 *Asian Terminals, Inc. v. Philam Insurance Co., Inc.* (*Now Chartis Philippines Insurance, Inc.*), G.R. No. 181163, 181262 and 181319, 24 July 2013 citing *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*, G.R. No. 165647, 26 March 2009, 582 SCRA 457, 466-467.

53 *Lorenzo Shipping Corp. v. Chubb and Sons, Inc.*, G.R. No. 147724, 8 June 2004, 431 SCRA 266, 279-280 citing *Aguedo F. Agbayani*, Commentaries and Jurisprudence on the Commercial Laws of the Philippines, Vol. IV, 1987 ed., p. 119 citing further *Government of the Philippine Island v. Ynchausti & Co.*, 40 Phil. 219, 213 (1919); 28 Am Jur 2d 264 and *Westway Coffee Corp. v. M/V Netuno*, 675 F.2d 30, 32 (1982).

54 Records, pp. 218.

55 Id. at 221.

56 Id. at 222.

Calamba Steel requested for a re-examination of the damages sustained by the two shipments. Based on the Requests for Bad Order Survey Nos. 58267[57] and 58254[58] covering the first shipment dated 13 and 17 February 2004, four coils were damaged prior to turnover. The second Request for Bad Order Survey No. 58658[59] dated 25 May 2004 also affirmed the earlier findings that eleven coils on the second shipment were damaged prior to turnover.

In *Asian Terminals, Inc., v. Philam Insurance Co., Inc.,*[60] the Court based its ruling on liability on the Bad Order Cargo and Turn Over of Bad Order. The Receipt bore a notation "B.O. not yet t/over to ATI," while the Survey stated that the said steel case was not opened at the time of survey and was accepted by the *arrastre* in good order. Based on these documents, packages in the *Asian Terminals, Inc. case* were found damaged while in the custody of the carrier Westwind Shipping Corporation.

Mere proof of delivery of the goods in good order to a common carrier and of their arrival in bad order at their destination constitutes a *prima facie* case of fault or negligence against the carrier. If no adequate explanation is given as to how the deterioration, loss, or destruction of the goods happened, the transporter shall be held responsible.[61] From the foregoing, the fault is attributable to ESLI. While no longer an issue, it may be nonetheless state that ATI was correctly absolved of liability for the damage.

Second Issue: Limitation of Liability

ESLI assigns as error the appellate court's finding and reasoning that the package limitation under the COGSA[62] is inapplicable even if the bills of lading covering the shipments only made reference to the corresponding invoices. Noticeably, the invoices specified among others the weight, quantity, description and value of the cargoes, and bore the notation "Freight Prepaid" and "As Arranged."[63] ESLI argues that the value of the cargoes

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57 Id. at 219.
58 Id. at 220.
59 Id. at 223.
60 Supra note 52.
61 *Belgian Overseas Chartering and Shipping N.V. v. Philippine First Insurance Co., Inc.*, 432 Phil. 567, 579 (2002); *Tabacalera Insurance Co. v. North Front Shipping Services, Inc.*, 338 Phil. 1024, 1029-1030 (1997).
62 On 16 April 1936, the Philippine Government adopted the U.S. COGSA by virtue of Commonwealth Act No. 65 and was made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade provided that it would but be construed as a repealing law of the Code of Commerce.
63 Petition for Review on *Certiorari. Rollo*, pp. 30-31.

was not incorporated in the bills of lading[64] and that there was no evidence that the shipper had presented to the carrier in writing prior to the loading of the actual value of the cargo, and, that there was a no payment of corresponding freight.[65] Finally, despite the fact that ESLI admits the existence of the invoices, it denies any knowledge either of the value declared or of any information contained therein.[66]

According to the New Civil Code, the law of the country to which the goods are to be transported shall govern the liability of the common carrier for their loss, destruction or deterioration.[67] The Code takes precedence as the primary law over the rights and obligations of common carriers with the Code of Commerce and COGSA applying suppletorily.[68]

The New Civil Code provides that a stipulation limiting a common carrier's liability to the value of the goods appearing in the bill of lading is binding, unless the shipper or owner declares a greater value.[69] In addition, a contract fixing the sum that may be recovered by the owner or shipper for the loss, destruction, or deterioration of the goods is valid, if it is reasonable and just under the circumstances, and has been fairly and freely agreed upon.[70]

COGSA, on the other hand, provides under Section 4, Subsection 5 that an amount recoverable in case of loss or damage shall not exceed US$500.00 per package or per customary freight unless **the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.**

In line with these maritime law provisions, paragraph 13 of bills of lading issued by ESLI to the shipper specifically provides a similar restriction:

> The value of the goods, in calculating and adjusting any claims for which the Carrier may be liable shall, to avoid uncertainties and difficulties in fixing value, be deemed to the invoice value of the goods plus ocean freight and insurance, if paid, Irrespective of whether any other value is greater or less, and any partial loss or damage shall be adjusted

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64 Id. at 31.
65 Id. at 33.
66 Id. at 34.
67 New Civil Code, Article 1753.
68 Art. 1766. In all matters not regulated by this Code, the rights and obligations of common carriers shall be governed by the Code of Commerce and by special laws.
69 New Civil Code, Article 1749.
70 New Civil Code, Art. 1750.

> *pro rata* on the basis of such value; provided, however, that neither the Carrier nor the ship shall in any event be or become liable for any loss, non-delivery or misdelivery of or damage or delay to, or in connection with the custody or transportation of the goods in an amount exceeding $500.00 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, unless the nature of the goods and a valuation higher than $500.00 is declared in writing by the shipper on delivery to the Carrier and inserted in the bill of lading and extra freight is paid therein as required by applicable tariffs to obtain the benefit of such higher valuation. In which case even if the actual value of the goods per package or unit exceeds such declared value, the value shall nevertheless be deemed to be the declared value and any Carrier's liability shall not exceed such declared value and any partial loss or damage shall be adjusted pro-rata on the basis thereof. The Carrier shall not be liable for any loss or profit or any consequential or special damage and shall have the option of replacing any lost goods and replacing o reconditioning any damage goods. No oral declaration or agreement shall be evidence of a value different from that provided therein.[71]
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Accordingly, the issue whether or not ESLI has limited liability as a carrier is determined by either absence or presence of proof that the nature and value of the goods have been declared by Sumitomo Corporation and inserted in the bills of lading.

ESLI contends that the invoices specifying the weight, quantity, description and value of the cargo in reference to the bills of lading do not prove the fact that the shipper complied with the requirements mandated by the COGSA. It contends that there must be an insertion of this declaration in the bill of lading itself to fall outside the statutory limitation of liability.

ESLI asserts that the appellate court erred when it ruled that there was compliance with the declaration requirement even if the value of the shipment and fact of payment were indicated on the invoice and not on the bill of lading itself.

There is no question about the declaration of the nature, weight and description of the goods on the first bill of lading.

The bills of lading represent the formal expression of the parties' rights, duties and obligations. It is the best evidence of the intention of the

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71 Bill of Lading. Records, p. 105.

parties which is to be deciphered from the language used in the contract, not from the unilateral *post facto* assertions of one of the parties, or of third parties who are strangers to the contract.[72] Thus, when the terms of an agreement have been reduced to writing, it is deemed to contain all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.[73]

As to the non-declaration of the value of the goods on the second bill of lading, we see no error on the part of the appellate court when it ruled that there was a compliance of the requirement provided by COGSA. The declaration requirement does not require that all the details must be written down on the very bill of lading itself. It must be emphasized that all the needed details are in the invoice, which "contains the itemized list of goods shipped to a buyer, stating quantities, prices, shipping charges," and other details which may contain numerous sheets.[74] Compliance can be attained by incorporating the invoice, by way of reference, to the bill of lading provided that the former containing the description of the nature, value and/or payment of freight charges is as in this case duly admitted as evidence.

In *Unsworth Transport International (Phils.), Inc. v. Court of Appeals*,[75] the Court held that the insertion of an invoice number does not in itself sufficiently and convincingly show that petitioner had knowledge of the value of the cargo. However, the same interpretation does not squarely apply if the carrier had been advised of the value of the goods as evidenced by the invoice and payment of corresponding freight charges. It would be unfair for ESLI to invoke the limitation under COGSA when the shipper in fact paid the freight charges based on the value of the goods. In *Adams Express Company v. Croninger*,[76] it was said: "*Neither is it conformable to plain principles of justice that a shipper may understate the value of his property for the purpose of reducing the rate, and then recover a larger*

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72 *Chua Gaw v. Chua,* 574 Phil. 640, 657 (2008) citing *Arwood Induestries, Inc. v. D.M. Consunji, Inc.*, 442 Phil. 203, 212 (2002); *Herbon v. Palad,* 528 Phil. 130, 142 (2006).

73 Rules of Court, Rule 130, Sec. 9.

74 Glossary of Shipping Terms, United States of America, Department of Transportation, Maritime Administration, http://www.marad.dot.gov/documents/Glossary-final.pdf (visited 3 April 2014)

75 G.R. No. 166250, 26 July 2010, 625 SCRA 357, 368.

76 226 U.S. 491, 33 S.Ct. 148, 57 L.Ed. 314 (1913); as reiterated in *H. E. Heacock Company v. Macondray & Co. Inc.*, 42 Phil. 205, 210 (1921) which ruled that, "A limitation of liability based upon an agreed value to obtain a lower rate does not conflict with any sound principle of public policy; and it is not conformable to plain principles of justice that a shipper may understate value in order to reduce the rate and then recover a larger value in case of loss." [*Adams Express Co. v. Croninger* 226 U.S. 491, 492; *Reid v. Fargo* (130 C.C.A., 285); *Jennings v. Smith* (45 C.C.A., 249); *George N. Pierce Co. v. Wells, Fargo and Co.* (236 U.S., 278); *Wells, Fargo & Co. v. Neiman-Marcus Co.* 227 U.S., 469]

value in case of loss. Nor does a limitation based upon an agreed value for the purpose of adjusting the rate conflict with any sound principle of public policy." Conversely, but for the same reason, it is unjust for ESLI to invoke the limitation when it is informed that the shipper paid the freight charges corresponding to the value of the goods.

Also, ESLI admitted the existence and due execution of the Bills of Lading and the Invoice containing the nature and value of the goods on the second shipment. As written in the Pre-Trial Order,[77] the parties, including ESLI, admitted the **existence and due execution of the two Bills of Lading**[78] together with the **Invoice on the second shipment with Nos. KJGE-04-1327-NT/KE2**[79] dated 12 May 2004. On the first shipment, **ESLI admitted the existence of the Invoice with Nos. KJGE-031228-NT/KE3**[80] dated 2 February 2004.

The effect of admission of the genuineness and due execution of a document means that the party whose signature it bears admits that he voluntarily signed the document or it was signed by another for him and with his authority.[81]

A review of the bill of ladings and invoice on the second shipment indicates that the shipper declared the nature and value of the goods with the corresponding payment of the freight on the bills of lading. Further, under the caption "description of packages and goods," it states that the description of the goods to be transported as "various steel sheet in coil" with a gross weight of 383,532 kilograms (89.510 M3). On the other hand, the amount of the goods is referred in the invoice, the due execution and genuineness of which has already been admitted by ESLI, is US$186,906.35 as freight on board with payment of ocean freight of US$32,736.06 and insurance premium of US$1,813.17. From the foregoing, we rule that the non-limitation of liability applies in the present case.

We likewise accord the same binding effect on the contents of the invoice on the first shipment.

ESLI contends that what was admitted and written on the pre-trial order was only the existence of the first shipment' invoice but not its

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77 Records, pp. 98-99.
78 Id. at 9 and 13.
79 Id. at 14.
80 Id. at 10.
81 *Permanent Savings and Loan Bank v. Velarde*, 482 Phil. 193, 202 (2004).

contents and due execution. It invokes admission of existence but renounces any knowledge of the contents written on it.[82]

Judicial admissions are legally binding on the party making the admissions. Pre-trial admission in civil cases is one of the instances of judicial admissions explicitly provided for under Section 7, Rule 18 of the Rules of Court, which mandates that the contents of the pre-trial order shall control the subsequent course of the action, thereby, defining and limiting the issues to be tried. In *Bayas v. Sandiganbayan,*[83] this Court emphasized that:

> Once the stipulations are reduced into writing and signed by the parties and their counsels, they become binding on the parties who made them. They become judicial admissions of the fact or facts stipulated. Even if placed at a disadvantageous position, a party may not be allowed to rescind them unilaterally, it must assume the consequences of the disadvantage.[84]

Moreover, in *Alfelor v. Halasan,*[85] this Court declared that:

> A party who judicially admits a fact cannot later challenge that fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded.[86] (Citations omitted)

The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission. Under Section 4, of Rule 129 of the Rules of Court, a judicial admission requires no proof.[87]

It is inconceivable that a shipping company with maritime experience and resource like the ESLI will admit the existence of a maritime document

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82 *Rollo*, p. 34.
83 440 Phil. 54 (2002).
84 Id. at 69.
85 520 Phil. 982 (2006).
86 Id. at 991; *Constantino v. Heirs of Constantino*, Jr., G.R. No. 181508, 2 October 2013.
87 *SCC Chemicals Corporation v. Court of Appeals*, 405 Phil. 514, 522-523 (2001).

like an invoice even if it has no knowledge of its contents or without having any copy thereof.

ESLI also asserts that the notation "Freight Prepaid" and "As Arranged," does not prove that there was an actual declaration made in writing of the payment of freight as required by COGSA. ESLI did not as it could not deny payment of freight in the amount indicated in the documents. Indeed, the earlier discussions on ESLI's admission of the existence and due execution of the invoices, cover and disprove the argument regarding actual declaration of payment. The bills of lading bore a notation on the manner of payment which was "Freight Prepaid" and "As Arranged" while the invoices indicated the amount exactly paid by the shipper to ESLI.

WHEREFORE, we **DENY** the Petition for Review on *Certiorari*. The Decision dated 31 January 2008 and Resolution dated 5 May 2008 of the Second Division of the Court of Appeals in CA-G.R. CV. No. 88744 are hereby **AFFIRMED.**

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice