Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

TRANSIMEX CO.,
Petitioner,

- versus -

MAFRE ASIAN INSURANCE CORP.,
Respondent.

G.R. No. 190271

Present:

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,*
PERLAS-BERNABE, and
CAGUIOA, *JJ.*

Promulgated:
SEP 14 2016

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DECISION

SERENO, *CJ:*

This case involves a money claim filed by an insurance company against the ship agent of a common carrier. The dispute stemmed from an alleged shortage in a shipment of fertilizer delivered by the carrier to a consignee. Before this Court, the ship agent insists that the shortage was caused by bad weather, which must be considered either a storm under Article 1734 of the Civil Code or a peril of the sea under the Carriage of Goods by Sea Act (COGSA).[1]

In the Decision[2] and the Resolution[3] assailed in this Petition for Review on *Certiorari*,[4] the Court of Appeals (CA) affirmed the Decision[5] of the Regional Trial Court (RTC). The RTC ordered petitioner Transimex Co. (Transimex) to pay respondent Mafre Asian Insurance Corp.[6] the amount of ₱1,617,527.37 in addition to attorney's fees and costs. Petitioner is the local ship agent of the vessel, while respondent is the subrogee of Fertiphil

* On official leave.
[1] Commonwealth Act No. 65, Public Act No. 521 (1936).
[2] Dated 27 August 2009, and penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Portia Aliño-Hormachuelos and Ramon R. Garcia; *rollo*, pp. 19-36.
[3] Dated 10 November 2009; id. at 38-39.
[4] Id. at 3-18.
[5] Dated 16 February 1999 and penned by Judge Teofilo L. Guadiz, Jr.; id at 56-62.
[6] "Mapfre Asian Insurance Corporation" in some parts of the record.

Corporation (Fertiphil),[7] the consignee of a shipment of Prilled Urea Fertilizer transported by *M/V Meryem Ana*.

FACTUAL ANTECEDENTS

On 21 May 1996, *M/V Meryem Ana* received a shipment consisting of 21,857 metric tons of Prilled Urea Fertilizer from Helm Duengemittel GMBH at Odessa, Ukraine.[8] The shipment was covered by two separate bills of lading and consigned to Fertiphil for delivery to two ports – one in Poro Point, San Fernando, La Union; and the other in Tabaco, Albay.[9] Fertiphil insured the cargo against all risks under Marine Risk Note Nos. MN-MAR-HO-0001341 and MN-MAR-HO-0001347 issued by respondent.[10]

On 20 June 1996, *M/V Meryem Ana* arrived at Poro Point, La Union, and discharged 14,339.507 metric tons of fertilizer under the first bill of lading.[11] The ship sailed on to Tabaco, Albay, to unload the remainder of the cargo. The fertilizer unloaded at Albay appeared to have a gross weight of 7,700 metric tons.[12] The present controversy involves only this second delivery.

As soon as the vessel docked at the Tabaco port, the fertilizer was bagged and stored inside a warehouse by employees of the consignee.[13] When the cargo was subsequently weighed, it was discovered that only 7,350.35 metric tons of fertilizer had been delivered.[14] Because of the alleged shortage of 349.65 metric tons, Fertiphil filed a claim with respondent for ₱1,617,527.37,[15] which was found compensable.[16]

After paying the claim of Fertiphil, respondent demanded reimbursement from petitioner on the basis of the right of subrogation. The claim was denied, prompting respondent to file a Complaint with the RTC for recovery of sum of money.[17] In support of its claim, respondent presented a Report of Survey[18] and a Certification[19] from David Cargo Survey Services to prove the shortage. In addition, respondent submitted an Adjustment Report[20] prepared by Adjustment Standards Corporation (ASC) to establish the outturn quantity and condition of the fertilizer discharged

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[7] The appeal before the Court of Appeals case was docketed as CA-G.R. CV No. 64482.
[8] *Rollo*, p. 20.
[9] Id.
[10] Id.
[11] Id.
[12] Id. at 20-21.
[13] Id. at 21.
[14] Id.
[15] Id.
[16] Id.
[17] The case was filed with the RTC of Makati, Branch 147, and docketed as Civil Case No. 97-1300.
[18] *Rollo*, pp. 53-55.
[19] Id. at 44.
[20] Id. at 45-52.

from the vessel at the Tabaco port.[21] In the report, the adjuster also stated that the shortage was attributable to the melting of the fertilizer while inside the hatches, when the vessel took on water because of the bad weather experienced at sea.[22] Two witnesses were then presented by respondent to buttress its documentary evidence.[23]

Petitioner, on the other hand, denied that there was loss or damage to the cargo.[24] It submitted survey certificates and presented the testimony of a marine surveyor to prove that there was, in fact, an excess of 3.340 metric tons of fertilizer delivered to the consignee.[25] Petitioner also alleged that defendants had exercised extraordinary diligence in the transport and handling of the cargo.[26]

THE RTC RULING

The RTC ruled in favor of respondent and ordered petitioner to pay the claim of ₱1,617,527.37. In its Decision,[27] the trial court found that there was indeed a shortage in the cargo delivered, for which the common carrier must be held responsible under Article 1734 of the Civil Code. The RTC also refused to give credence to petitioner's claim of overage and noted that the presumption of fault and/or negligence on the part of the carrier remained unrebutted. The trial court explained:

> The defendants' defense is that there was no loss/damage to the cargo because instead of a shortage there was an overage of 3.340, invoking the findings of Raul Pelagio, a marine surveyor connected with Survey Specialists, Inc. whose services were engaged by the defendants. However, the Court notes that what was loaded in the vessel M/V Meryem Ana at Odessa, Ukraine on May 21, 1996 was 21,857 metric tons of prilled urea fertilizer (Draft Survey Report, Exhibit F). How the quantity loaded had increased to 21,860.34 has not been explained by the defendants. Thus, the Court finds incredible the testimony of Raul Pelagio that he found an overage of 3.340 metric tons. The Court is inclined to give credence to the testimonies of witness Jaime David, the cargo surveyor engaged by consignee Fertiphil Corporation, and witness Fabian Bon, a cargo surveyor of Adjustment Standards Corporation, whose services were engaged by plaintiff Mafre Asian Insurance Corporation, there being no reason for the Court to disregard their findings which jibe with one another.
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> Thus, it appears crystal clear that on the vessel M/V Meryem Ana was loaded in bulk on May 21, 1996 at Odessa, Ukraine a cargo consisting of 21,857 metric tons of prilled urea fertilizer bound for delivery at Poro Point, San Fernando, La Union and at Tabaco, Albay; that the cargo unloaded at said ports of destination had a shortage of 349.65 metric tons.

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[21] Id. at 49.
[22] Id. at 52.
[23] Id. at 60.
[24] Id.
[25] Id.
[26] Id. at 61.
[27] Dated 16 February 1999; id. at 56-62.

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As to the defense that defendants had supposedly exercised extraordinary care and diligence in the transport and handling of the cargo, the Court finds that the evidence presented by the defendants is absolutely and completely bereft of anything to support their claim of having exercised extraordinary care and diligence.

Hence, the presumption of fault and/or negligence as provided in Art. 1735 of the Civil Code on the part of the defendants stands unrebutted as against the latter.[28]

THE CA RULING

The CA affirmed the ruling of the RTC and denied petitioner's appeal.[29] After evaluating the evidence presented during trial, the appellate court found no reason to disturb the trial court's conclusion that there was indeed a shortage in the shipment.[30]

The CA also rejected the assertion that petitioner was not a common carrier.[31] Because the latter offered services to the public for the transport of goods in exchange for compensation, it was considered a common carrier in accordance with Article 1732 of the Civil Code. The CA further noted that petitioner had already admitted this fact in the Answer[32] and even raised the defenses usually invoked by common carriers during trial and on appeal, i.e., the exercise of extraordinary care and diligence, and fortuitous event.[33] These defenses were, however, found unmeritorious:

Defendants-appellants claim that the loss was due to a fortuitous event as the Survey Report of Jaime David stated that during its voyage, the vessel encountered bad weather. But to excuse a common carrier fully of any liability, Article 1739 of the Civil Code requires that the fortuitous event must have been the proximate and only cause of the loss. Moreover, it should have exercised due diligence to prevent or minimize the loss before, during and after the occurrence of the fortuitous event.

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In the present case, defendants-appellants did not present proof that the "bad weather" they encountered was a "storm" as contemplated by Article 1734(1). String winds are the ordinary vicissitudes of a sea voyage. Even if the weather encountered by the ship was to be deemed a natural disaster under Article 1739 of the Civil Code, defendants-appellants failed to show that such natural disaster or calamity was the proximate and only cause of the loss. The shortage must not have been caused or worsened by human participation. The defense of fortuitous event or natural disaster

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[28] Id. at 60-61.
[29] Decision dated 27 August 2009; id. at 19-36.
[30] Id. at 25-30.
[31] Id. at 30-32.
[32] Id. at 31.
[33] Id. at 32.

> cannot be successfully made when the injury could have been avoided by human precaution.[34]

Petitioner moved for reconsideration of the CA Decision, but the motion was denied.[35] Not only did the Motion for Reconsideration lack meit according to the appellate court; it was also filed out of time.[36]

PROCEEDINGS BEFORE THIS COURT

On 3 December 2009, Transimex filed a Petition for Review on *Certiorari*[37] before this Court praying for the reversal of the CA Decision and Resolution.[38] Petitioner asserts that the lower courts erred in holding it liable for the alleged shortage in the shipment of fertilizer. While it no longer questions the existence of the shortage, it claims that the loss or damage was caused by bad weather.[39] It then insists that the dispute is governed by Section 4 of COGSA, which exempts the carrier from liability for any loss or damage arising from "perils, dangers and accidents of the sea.[40]

In its Comment,[41] respondent maintains that petitioner was correctly held liable for the shortage of the cargo in accordance with the Civil Code provisions on common carriers.[42] It insists that the factual findings of the lower courts must be respected[43] particularly in this case, since petitioner failed to timely appeal the Decision of the CA.[44]

Petitioner, in its Reply,[45] takes a position different from its initial stance as to the law applicable to the dispute. It concedes that the Civil Code primarily governs its liability as a carrier, with COGSA as a suppletory source.[46] Under both laws, petitioner contends that it is exempt from liability, because damage to the cargo was caused by the bad weather encountered by the vessel while at sea. This kind of weather supposedly qualifies as a violent storm under the Civil Code; or as a peril, danger or accident of the sea under COGSA.[47]

ISSUES

The following issues are presented for resolution by this Court:

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[34] Id. at 33-34.
[35] Resolution dated 10 November 2009; id. at 38-39.
[36] Id.
[37] Id. at 3-18
[38] Id. at 14.
[39] Id. at 13-14
[40] Id.
[41] Dated 23 March 2010; id. at 68-77.
[42] Id. at 70-73.
[43] Id. at 74-75.
[44] Id. at 75-76.
[45] Dated 26 June 2010; id. at 79-95.
[46] Id. at 81-82.
[47] Id. at 82-91.

1. Whether the CA Decision has become final and executory

2. Whether the transaction is governed by the provisions of the Civil Code on common carriers or by the provisions of COGSA

3. Whether petitioner is liable for the loss or damage sustained by the cargo because of bad weather

OUR RULING

We **DENY** the Petition.

This Court finds that the CA Decision has become final because of the failure of petitioner to timely file a motion for reconsideration. Furthermore, contrary to the argument raised by the latter, there is insufficient evidence to establish that the loss or damage to the cargo was caused by a storm or a peril of the sea.

The CA Decision has become final and executory.

In the assailed Resolution, in which the CA ruled that petitioner's Motion for Reconsideration was filed late, it explained:

> Defendants-appellants' motion for reconsideration of the Court's Decision dated August 7, 2009 was filed out of time, as based on the reply letter dated October 13, 2009 of the Chief, Administrative Unit, Office of the Postmaster, Makati City, copy of said Decision was received by defendants-appellants' counsel on September 4, 2009, not September 14, 2009 as alleged in the motion for reconsideration. Consequently, the subject Decision dated August 27, 2009 had become final and executory considering that the motion for reconsideration was filed only on September 29, 2009, beyond the fifteen (15)-day reglementary period which lasted until September 19, 2009.[48]

The Court agrees. The Certification issued by the Office of the Postmaster of Makati, which states that the Decision was received by respondent's counsel on 4 September 2009, is entitled to full faith and credence. In the absence of contradictory evidence, the presumption is that the postmaster has regularly performed his duty.[49] In this case, there is no reason to doubt his statement as to the date respondent received the CA Decision.

Significantly, Transimex failed to address this matter in its Petition. While it continued to allege that it received the CA Decision on 14 September 2009, it did not refute the finding of the appellate court that the former's Motion for Reconsideration had been filed late. It was only after

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[48] Id. at 38.

[49] See *Aportadera, Sr. v. Court of Appeals*, 242 Phil. 420 (1988)

respondent again asserted the finality of the CA Decision in its Comment did petitioner attempt to explain the discrepancy:

> x x x Apparently, the said Decision dated 27 August 2009 was delivered by the postman to the guard on duty at the ground floor of the building where undersigned counsel's office is located. It was the guard on duty who received the said decision on 4 September 2009 but it was only on 14 September 2009 that undersigned counsel actually received the said decision. Hence, the date of receipt of the decision should be reckoned from the date of receipt by the counsel of the decision and not from the date of receipt of the guard who is not an employee of the law office of the undersigned counsel.

This Court notes that the foregoing account remains unsupported by evidence. The guard on duty or any employee of the law firm could have easily substantiated the explanation offered by counsel for petitioner, but no statement from any of them was ever submitted. Since petitioner was challenging the official statement of the Office of the Postmaster of Makati on the matter, the former had the burden of proving its assertions and presenting countervailing evidence. Unfounded allegations would not suffice.

In any event, this Court has decided to review the merits of this case in the interest of justice. After a judicious evaluation of the arguments interposed by the parties, we find no reason to reverse the CA Decision and Resolution.

The provisions of the Civil Code on common carriers are applicable.

As previously discussed, petitioner initially argued that the CA erred in applying the provisions of the Civil Code to this case. It insisted that the contract of carriage between the parties was governed by COGSA,[50] the law applicable to "all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade."[51] This assertion is bereft of merit.

This Court upholds the ruling of the CA with respect to the applicable law. As expressly provided in Article 1753 of the Civil Code, "[t]he 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." Since the cargo in this case was transported from Odessa, Ukraine, to Tabaco, Albay,

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[50] *Rollo*, p. 10;

[51] Section 1 of CA 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 existing provision of the Code of Commerce which is now in force, or as limiting its application.

the liability of petitioner for the alleged shortage must be determined in accordance with the provisions of the Civil Code on common carriers. In *Eastern Shipping Lines, Inc. v. BPI/MS Insurance Corp.*, the Court declared:

> 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. 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.[52]

Besides, petitioner itself later conceded in its Reply that the Civil Code provisions on common carriers are primarily applicable to the present dispute, while COGSA only applies in a suppletory manner.[53]

Petitioner is liable for the shortage incurred by the shipment.

Having settled the foregoing preliminary issues, the only argument left for this Court to resolve is petitioner's assertion that it is exempt from liability for the loss or damage to the cargo. As grounds for this exemption, petitioner cites both the Civil Code and COGSA, particularly the provisions absolving a carrier from loss or damage sustained as the result of a "storm" or a "peril of the sea."

In its Petition, Transimex summarizes the testimony of one witness for respondent supposedly proving that the shortage in the shipment was caused by inclement weather encountered by the vessel at sea. Petitioner claims that this testimony proves that damage to the cargo was the result of the melting of the fertilizer after seawater entered Hatch No. 1 of the vessel as a result of the bad weather conditions at sea:

> The evidence for the respondent clearly proves that the loss/damage/shortage [suffered by] the cargo was caused by the bad weather encountered by the vessel during the voyage from Odessa, Ukraine to Poro Point, San Fernando, La Union, wherein due to bad weather[,] sea water found its way inside Hatch No. 1 resulting in the wetting, melting and discoloration of the prilled urea fertilizer. The fact that sea water found its way inside Hatch No. 1 was clearly testified to by the witness for the respondent. Jaime R. Davis testified that:
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> > "He was present during the discharging operation, that **he saw the hatches opened whereupon he noticed the presence of water thereat; accordingly, he informed the master of the vessel of the presence of water at the hatches to which the master of the vessel replied that on the way they encountered bad weather**." [54] (Emphasis in the original)

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[52] G.R. No. 182864, 12 January 2015, 745 SCRA 98.
[53] *Rollo*, pp. 81-82.
[54] Id. at 11-12.

Petitioner also cites a portion of the Adjustment Report submitted by respondent during trial as proof that damage to the cargo was caused by a storm:

> How the sea water found its way inside Hatch No. 1 was clearly explained by another witness for the respondent by the name of Fabian Bon who stated in his Adjustment as follows:
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> > Our inquiries disclosed that the master of the vessel interviewed by the consignee's surveyor (David Cargo Survey Services) that during sailing from Odessa (Ukraine) bound to Poro Point, San Fernando, La Union, Philippines, **the vessel encountered bad weather on June 3, 1996 and was rolling from starboard to portside top of the 1, 2, 3, 4, 5, 6 & 7 hatch covers and sea water were washing over all main deck.**
> >
> > **On the following day, June 4, 1996, wind reading up to 40 knots and very high swells were coming from south west direction. The vessel was rolling and pitching heavily. Heavy sea water were washing all main deck and were jumping from main deck to top of the seven (7) hatch covers. As a result, the master filed a Marine Note of Protest on June 19, 1996 at the Port of Poro Point, San Fernando, La Union, Philippines.** [55]
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> (Emphases in the original)

The question before this Court therefore comes down to whether there is sufficient proof that the loss or damage incurred by the cargo was caused by a "storm" or a "peril of the sea."

We rule in the negative. As will be discussed, petitioner failed to prove the existence of a storm or a peril of the sea within the context of Article 1734(1) of the Civil Code or Section 4(2)(c) of COGSA. Furthermore, there was no sufficient proof that the damage to the shipment was solely and proximately caused by bad weather.

The presence of a "storm" or a "peril of the sea" was not established.

It must be emphasized that not all instances of bad weather may be categorized as "storms" or "perils of the sea" within the meaning of the provisions of the Civil Code and COGSA on common carriers. To be considered absolutory causes under either statute, bad weather conditions must reach a certain threshold of severity.

With respect to storms, this Court has explained the difference between a storm and ordinary weather conditions in *Central Shipping Co. Inc. v. Insurance Company of North America:*[56]

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[55] Id. at 12.
[56] 481 Phil. 868 (2004).

> Nonetheless, to our mind it would not be sufficient to categorize the weather condition at the time as a "storm" within the absolutory causes enumerated in the law. Significantly, no typhoon was observed within the Philippine area of responsibility during that period.
>
> According to PAGASA, **a storm has a wind force of 48 to 55 knots, equivalent to 55 to 63 miles per hour or 10 to 11 in the Beaufort Scale.** The second mate of the vessel stated that the wind was blowing around force 7 to 8 on the Beaufort Scale. **Consequently, the strong winds accompanying the southwestern monsoon could not be classified as a "storm." Such winds are the ordinary vicissitudes of a sea voyage.**[57] (Emphases supplied; citations omitted)

The phrase "perils of the sea" carries the same connotation. Although the term has not been definitively defined in Philippine jurisprudence, courts in the United States of America generally limit the application of the phrase to weather that is "so unusual, unexpected and catastrophic as to be beyond reasonable expectation."[58] Accordingly, strong winds and waves are not automatically deemed perils of the sea, if these conditions are not unusual for that particular sea area at that specific time, or if they could have been reasonably anticipated or foreseen.[59] While cases decided by U.S. courts are not binding precedents in this jurisdiction, the Court considers these pronouncements persuasive[60] in light of the fact that COGSA was originally an American statute[61] that was merely adopted by the Philippine Legislature in 1936.[62]

In this case, the documentary and testimonial evidence cited by petitioner indicate that *M/V Meryem Ana* faced winds of only up to 40 knots while at sea. This wind force clearly fell short of the 48 to 55 knots required for "storms" under Article 1734(1) of the Civil Code based on the threshold

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[57] Id. at 877-878

[58] 13 A.L.R. Fed. 323 (originally published in 1972) citing, among others, *Georgia-Pacific Corp. v The Motorship Marilyn L.*, 331 F Supp 776 (1971); *New Rotterdam Ins. Co. v The Loppersum,* 215 F Supp 563 (1963); *Freedman & Slater, Inc. v M. V. Tofevo*, 222 F Supp 964 (1963); *R. T. Jones Lumber Co. v Roen S.S. Co.*, 270 F2d 456 (1959); *R. T. Jones Lumber Co. v Roen S.S. Co.*, 213 F2d 370 (1954); *Waterman S.S. Corp. v United States Smelting, Ref. & Min. Co.*, 155 F2d 687 (1946).

[59] 13 A.L.R. Fed. 323 (originally published in 1972) citing, among others, *J. Gerber & Co. v S.S. Sabine Howaldt,* 437 F2d 580 (1971); *Nichimen Co. v MV Farland,* 333 F Supp 691 (1971); *New Rotterdam Ins. Co. v The Loppersum,* 215 F Supp 563 (1963); *Freedman & Slater, Inc. v M. V. Tofevo,* 222 F Supp 964 (1963); *R. T. Jones Lumber Co. v Roen S.S. Co.,* 270 F2d 456 (1959); *Pakistan, Ministry of Food & Agriculture v The Ionian Trader,* 173 F Supp 29 (1959); *Petition of Moore-McCormack Lines, Inc.,* 164 F Supp 198 (1958); *Palmer Distributing Corp. v S.S. American Counselor,* 158 F Supp 264 (1957); *State S.S. Co. v United States*, 259 F 2d 458 (1957); *Diethelm & Co. v The Flying Trader,* 141 F Supp 271 (1956); *Establissements Edouard Materne v The Leerdam,* 143 F Supp 367 (1956); *R. T. Jones Lumber Co. v Roen S.S. Co.,* 213 F2d 370 (1954); *Continex, Inc. v The Flying Independent,* 106 F Supp 319 (1952); *Artemis Maritime Co. v Southwestern Sugar & Molasses Co.,* 189 F2d 488 (1951); *Middle East Agency, Inc. v John B. Waterman,* 86 F Supp 487 (1949); *The Norte,* 69 F Supp 881 (1947); *The Vizcaya,* 63 F Supp 898 (1945); *S.S. Corp. v D/S A/S Hassel*, 137 F2d 326 (1943); *The Schickshinny,* 45 F Supp 813 (1942).

[60] A similar approach has been taken by this Court with respect to Philippine law on: (a) corporations (See *Ponce v. Legaspi*, 284 Phil. 517 [1992]; *Philippine First Insurance Co., Inc. v. Hartigan*, 145 Phil. 310 [1970]); and (b) income taxes (See *Chamber of Real Estate and Builders' Association, Inc. v. Romulo*, 628 Phil. 508 [2010]; *Commissioner of Internal Revenue v. Baier-Nickel,* 531 Phil. 480 [2006]).

[61] 46 U.S.C.A. §§ 1300-1315.

[62] Public Act No. 521 or the "Carriage of Goods by Sea Act" was enacted by Seventy-fourth Congress of the United States on 16 April 1936. It was adopted by the National Assembly and made applicable to the Philippines through Commonwealth Act No. 65 enacted on 22 October 1936. (*See* Carriage of Goods by Sea Act , Commonwealth Act No. 65, Public Act No. 521, [1936]).

established by PAGASA.[63] Petitioner also failed to prove that the inclement weather encountered by the vessel was unusual, unexpected, or catastrophic. In particular, the strong winds and waves, which allegedly assaulted the ship, were not shown to be worse than what should have been expected in that particular location during that time of the year. Consequently, this Court cannot consider these weather conditions as "perils of the sea" that would absolve the carrier from liability.

As a side note, we observe that there are no definite statutory standards for determining the existence of a "storm" or "peril of the sea" that would exempt a common carrier from liability. Hence, in marine insurance cases, courts are constrained to rely upon their own understanding of these terms of art, or upon imprecise accounts of the speed of the winds encountered and the strength of the waves experienced by a vessel. To obviate uncertainty, it may be time for Congress to lay down specific rules to distinguish "storms" and other "perils of the sea" from the ordinary action of the wind and waves. While uniform measures of severity may prove difficult to establish, the legislature may consider providing more detailed standards to be used by the judiciary in resolving maritime cases. These may include wind velocity, violence of the seas, the height of the waves, or even the expected weather conditions in the area involved at the time of the incident.

Petitioner failed to prove the other requisites for exemption from liability under Article 1734 of the Civil Code.

Even assuming that the inclement weather encountered by the vessel amounted to a "storm" under Article 1734(1) of the Civil Code, there are two other reasons why this Court cannot absolve petitioner from liability for loss or damage to the cargo under the Civil Code. First, there is no proof that the bad weather encountered by *M/V Meryem Ana* was the proximate and only cause of damage to the shipment. Second, petitioner failed to establish that it had exercised the diligence required from common carriers to prevent loss or damage to the cargo.

We emphasize that common carriers are automatically presumed to have been at fault or to have acted negligently if the goods they were transporting were lost, destroyed or damaged while in transit.[64] This presumption can only be rebutted by proof that the carrier exercised extraordinary diligence and caution to ensure the protection of the shipment in the event of foul weather.[65] As this Court explained in *Fortune Sea Carrier, Inc. v. BPI/MS Insurance Corp.:*

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[63] Supra note 56.
[64] *Unsworth Transport International (Phils.), Inc. v. Court of Appeals*, 639 Phil. 371, 380 (2010).
[65] *Fortune Sea Carrier, Inc. v. BPI/MS Insurance Corp.*, G.R. No. 209118 (Notice), 24 November 2014.

> While the records of this case clearly establish that M/V Sea Merchant was damaged as result of extreme weather conditions, petitioner cannot be absolved from liability. As pointed out by this Court in *Lea Mer Industries, Inc. v. Malayan Insurance, Inc.*, a common carrier is not liable for loss only when (1) the fortuitous event was the only and proximate cause of the loss and (2) it exercised due diligence to prevent or minimize the loss. The second element is absent here. As a common carrier, petitioner should have been more vigilant in monitoring weather disturbances within the country and their (possible) effect on its routes and destination. More specifically, it should have been more alert on the possible attenuating and dysfunctional effects of bad weather on the parts of the ship. It should have foreseen the likely prejudicial effects of the strong waves and winds on the ship brought about by inclement weather and should have taken the necessary precautionary measures through extraordinary diligence to prevent the weakening or dysfunction of the parts of the ship to avoid or prune down the loss to cargo.[66] (citations omitted)

In the instant case, there is absolutely no evidence that petitioner satisfied the two requisites. Before the trial court, petitioner limited itself to the defense of denial. The latter refused to admit that the shipment sustained any loss or damage and even alleged overage of the cargo delivered.[67] As a result, the evidence it submitted was severely limited, i.e., the testimony of a witness that supposedly confirmed the alleged excess in the quantity of the fertilizer delivered to the consignee in Albay.[68] No other evidence was presented to demonstrate either the proximate and exclusive cause of the loss or the extraordinary diligence of the carrier.

Under these circumstances, the Court cannot absolve petitioner from liability for the shortage incurred by the shipment.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals Decision and Resolution dated 27 August 2009 and 10 November 2009, respectively, are hereby **AFFIRMED**.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

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[66] Id.
[67] *Rollo,* p. 22, 60.
[68] Id.

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(On official leave)
LUCAS P. BERSAMIN
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
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