SORAS Ltd v. ITEX Sarl

[Rwanda SUPREME COURT – RCOMA 0148/11/CS (Mutashya, P.J., Gatete and Gakwaya, J.) May 23, 2014]

Transport Law – Transport contract – Evidence in transport contract – The contract of transport is proven by all evidence provided for by the law and by bill of lading in case they are related to goods – Law of 19/01/1920 relating to mandate in the commerce and transporters, article 10.

Transport Law – Transport contract – Liability of transporters – The transporter is liable for the damaged or lost goods in case he/she does not prove that the damage, loss or accident resulted from another ground beyond his/her control for which he/she cannot be held liable – The law of 19/01/1920 relating to mandate in the commerce and transporters, article 18.

Insurance Law – compensation of damages by insurance – Subrogation of insurer vis a vis the insured – The insurer who recovered the loss of the insured subrogates him/her in rights to pursue a third party that caused an insurance loss to the insured at the extent of the paid damages – Decree Law n^{o} 20/75 of 20/06/1975 relating to insurance, article 32 paragraph 1.

Contract Law – Calculation of the interests on principal amount of money – Starting time for calculation – If the breach of the contract is related to the failure to pay money, the interests start to be calculated from the time of warning and are calculated to the rate of the National Bank less all deductions to which the party in breach is entitled – Law n^{o}45/2011 of 25/11/2011 governing contracts, article 144.

Facts: SORAS Ltd filed a claim against ITEX Sarl before the Commercial High Court claiming that it concluded an insurance contract of the tea with a transport Company named TACT Ltd. Afterwards, TACT Ltd had agreed with ITEX Sarlto transport the tea of OCIR-THE. Reaching in Kenya, the vehicle carrying tea got an accident and the tea got damaged.

TACT Ltd requested SORAS Ltd to recover the value of insured tea. SORAS Ltd executed and afterward subrogated TACT Ltd in its rights of suing ITEX Sarl for the loss it suffered from the fact that ITEX Sarl did not carry the luggage up to the destination. The Commercial High Court declared the claim of SORAS Ltd without merit.

SORAS Ltd appealed before the Supreme Court arguing that the Commercial High Court disregarded the evidences it produced proving that there has been the contract of transport of the tea of OCIR-THE between ITEX Sarl and TACT Ltd.

ITEX Sarl argued that among the evidence produced, there is waybill proving that the transporter was TACT Ltd, insured by SORAS Ltd which had already covered the tea to OCIR-THE. It also stated that SORAS Ltd did not prove that the vehicle which got an accident was for ITEX Sarl, and even if it would have been for the latter, it would not be sufficient for it to be held liable for the damaged tea since there is no transport contract between ITEX Sarl and TACT Ltd.

ITEX Sarlfiled a cross appeal requesting SORAS Ltd to be ordered to pay it moral damages for its continuous baseless involvement in the court proceedings, procedural and advocate fees.

SORAS Ltd also requested that ITEX Sarl pays it the interests calculated on 18% of the money it paid to TACT Ltd, computed from the date on which ITEX Sarl received the notice. It also requested the procedural and advocate fees.

Held: 1. The contract of transport is not solely proven by a written document, it may be even proven by all evidence provided for by the law as the invoices made between the transporter and the one whose goods are transported, the certificate of international road transport, the quantity of goods to be sent to the consignee must be equal to the goods loaded. It is evident that TACT Ltd and ITEX Sarl concluded a transport contract of tea of OCIR-THE weighing 49,418kg and it was paid for that transport (4,448$).

2. The transporter is liable for the damaged in case he/she does not prove that it resulted from another ground beyond his/her control for which he/she cannot be held liable. The evidence produced demonstrate that TACT Ltd and ITEX Sarl concluded the transport contract of the tea belonging to OCIR-THE.

3. The insurer who recovered the loss of the insured subrogates him/her in rightsat the extent of the amount of the damages it paid. In case SORAS Ltd has paid TACT Ltd 20,700,150Frw, it has right to subrogate TACT Ltd at the extent of the amount of damages it paid. Therefore, SORAS Ltd has right to request ITEX Sarl 20,700,150Frw it paid to TACT Ltd.

4. Moratory damages are paid and computed basing on the rate established by the National Bank from the date on which the one who requested them has given notice to the one who has to pay them.

Appeal with merit.
Appealed judgment is changed in its entire content.
Orders to ITEX Sarl to pay to SORAS Ltd the value of the tea damaged in accident, interest on the principal amount, procedural and advocate fees.
Court fees to the defendant.

Statutes and statutory instrument referred to:
Law n°45/2011 of 25/11/2011 governing contracts, article 144.
Law of 19/01/1920 relating to mandate in the commerce and transporters, article 18.
Law of 30/07/1888 relating to contracts and contractual obligations, article 431 and 432.
Decree law n° 20/75 of 20/06/1975 relating to insurance, article 32 paragraph 1.

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] SORAS Ltd filed a claim against ITEX Sarl before the Commercial High Court stating that it concluded an insurance contract of the tea with the transport company named TACT Ltd (Trans-Africa Container Transport Ltd). Later on TACT Ltd gave ITEX Sarl the tea belonging to OCIR-THÉ for the transport. When the vehicle which was transporting it reached Kenya was involved in accident and the tea got damaged.

[2] As requested by TACT Ltd SORAS Ltd compensated it the value of the damaged tea it had insured amounting to 20,700,150Frw and immediately subrogated TACT Ltd in the right of suing ITEX Sarl for that prejudice suffered due to the fact that it failed the to deliver the luggage at destination.

[3] The Commercial High Court found the claim of SORAS Ltd without merit and the counter claim of ITEX Sarl requesting the moral damages was not admitted since it was filed after the hearing was closed.

[4] Not satisfied with the decision of the court, SORAS Ltd appealed before the Supreme Court claiming that the Commercial High Court disregarded the evidence proving that ITEX Sarl concluded a transport contract of the tea belonging to OCIR-THE with TACT Ltd which got damaged. The court decided that the evidence prove it otherwise and that even the invoices of 22 March 2010 that ITEX Sarl issued for TACT Ltd do not prove that it requested the payment for the transport of the tea belonging to OCIR-THE. ITEX Sarl lodged a cross appeal requesting that SORAS Ltd should be ordered to pay the damages for its continuous baseless involvement in the court proceedings, procedural and advocate fees.

[5] The case was heard in public on 15 April 2014; SORAS Ltd represented by Ruzindana Ignace, the counsel while ITEX Sarl was represented by Ndagijimana Emmanuel, the counsel.

II. ANALYSIS OF LEGAL ISSUES

a. Whether there has been a transport contract ITEX Sarl and TACT Ltd, which may allow SORAS Ltd to subrogate TACT Ltd in requesting ITEX Sarlto compensate the value of the damaged tea in the accident.

[6] Ruzindana Ignace, the counsel, states that as it is demonstrated in the paragraph 5 of the appealed judgment the Commercial High Court held that the evidence on which SORAS Ltd bases its claim is the statement made by the Policeof Kenya which revealed the name of Bisamaza Itex as the one who reported to it the damaged luggage which were carried from Rwanda to Mombasa; the invoices of 22 March 2010 of 4,448USD that ITEX Sarl issued to TACT Ltd requesting it to pay the transportation fee of the tea belonging to OCIR-THE refers to this case and in the letter of 2 February 2010 that Twagirumukiza Benoît, the broker of TACT Ltd wrote to SORAS Ltd. However, the court found that all the evidence does not prove that there had been a transport contract concluded between ITEX Sarl and TACT Ltd of tea belonging to OCIR-THE which got damaged, which SORAS Ltd had recovered and then claiming the restitution.

[7] Ruzindana Ignace, the counsel, explains that to decide so, the Commercial High Court contradicted itself since it decides that the invoice of 22 March 2010 issued by ITEX Sarlconcerning the tea belonging to OCIR-THE mentioned in this case, and finally came up holding that there was no evidence that between ITEX Sarl and TACT Ltd there has been the transport contract of the tea belonging to OCIR-THE which got damaged. He explains that the invoice of 22 March 2010 issued by ITEX Sarl made to TACT Ltd requesting the latter to pay the transport of the tea, was not the sufficient evidence. This proves that the Commercial High Court did not enough analyze the issue since in the pleadings, ITEX Sarl did not mention that the invoice to be paid is not related to another transport contract than the one relating to the tea belonging to OCIR-THE. He also explains that 4,448USD was the transport fee instead of being the value of the tea especially that ITEX Sarl could not request the

payment of the tea from TACT Ltd. He added that ITEX Sarl failed to prove the owner of the tea its vehicle carried, especially that ITEX Sarl should not insure the tea since it was insured by TACT Ltd which clearly prove that the tea belongs to OCIR-THE because the quantity of the tea referred in waybill corresponds that TACT Ltd has given to it. Thus, he realizes that these evidences were sufficient, it was not necessary that there should be the written contract, the reason why ITEX Sarl has to pay back to TACT Ltd 20,700,150Frw it paid to SORAS Ltd due to the damaged tea in the accident occasioned by its vehicle.

[8] With regard to the vehicle which was involved in accident, Ruzindana Ignace, the counsel, states that what is stated in page 4, paragraph 5 of appealed judgment that if it was established that ITEX Sarl was the owner of the vehicle, it should not imply the liability of the transporter because if it could be possible that TACT Ltd might be the transporter but using the vehicle belonging to ITEX Sarl or to whoever else upon special contract not of transport, then, it cannot be considered as a truth, since in its pleadings, ITEX Sarl did not mention that its vehicles were hired by TACT Ltd in such a way that it led it to issue an invoice dated 22 March 2010 requesting TACT Ltd to demonstrate the hired vehicle and its price. Thus, he realizes that the Commercial High Court has based its decision on what has not been invoked during the hearing.

[9] Ndagijimana Emmanuel, the counsel, states apart from that ITEX Sarl and TACT Ltd cooperate in different deals, the invoice of 22 March 2010 concerns the tea that ITEX Sarl carried for TACT Ltd at 4,448USD, which is different from the tea valued at 20,700,000Frw referred in this case. He keeps stating that SORAS Ltd failed to prove that the vehicle involved in accident belongs to ITEX Sarl, even if it had been the case, itwould not have been sufficient for it to be held liable for the damaged tea since there was no contract of transport between ITEX Sarl and TACT Ltd.

[10] Ndagijimana Emmanuel, the counsel explains that waybill indicates the transporter and the owner of the tea. Therefore, he finds that OCIR-THE could not accept that the transporter carries its tea without insurance. He keeps on stating that the transporter was TACT Ltd which has insurance, and that SORAS Ltd has already paid the damaged tea belonging to OCIR-THE. Therefore, he finds that there is no ground for ITEX Sarl to interfere in the contract concluded between TACT Ltd and SORAS Ltd. He concluded stating that if ITEX Sarl has been the transporter, it would have taken the insurance since it could not take the risk by sending its vehicle without the insurance.

THE VIEW OF THE COURT

[11] Article 10 of the Law 19/01/1920 relating to mandate in commerce and transporters provides for that the contract of transport is proven with all evidence provided for by the law and by bill of lading in case they are related to goods.

[12] Article 431 of the civil code book III provides that they (the transporters by road or water) are not only responsible for what have been entrusted with them in the boat or in a vehicle, but also for what have been entrusted to them within the room or within the store to be deposited in the boat or the car.

[13] Article 432 of the civil code book III provides that they (the transporters by road or water) are responsible for what have been entrusted to them and get lost and damaged, unless they prove that the loss or damage due to the unforeseeable and unpredictable event.

[14] Article 18 of the Law of 19/01/1920 relating to mandate in the commerce and transporters, provides that transporter is held liable for what has been damaged or lost and the accident which may occur to people he/she transports unless he/she proves the damage or accident resulted from another cause beyond his/her control to which he/she could not be held liable.

[15] Article 32, paragraph 1 of the of the Decree Law of 20/06/1975 relating to insurance provides that the insurer who recovered the loss of the insured subrogates him/he rin rights to pursue a third party that caused an insurance loss to the insured at the extent of the paid damages.

[16] With regards to the contract of transport between TACT Ltd and ITEX Sarl, the Supreme Court realizes that in the case file there is a statement of the police of Kenya (police station MTITO ANDEI) of 1 March 2010, where Mr BISAMAZA Itex declared what were lost when the car Mercedes Benz which has the plate RAB 691K/ RL 0707 got an accident. It realizes that in the file there was an invoice of 22 March 2010, which ITEX Sarl issued to TACT Ltd, requesting the latter to pay 4,448USD for the transport of 49,418Kg of black tea it carried from Kigali to Mombasa (Kenya), and that the invoice sufficiently proves what the content in the international bill of lading n° 157/2010 of 2 February 2010, where the Gross weight of tea which had to be delivered in Mombasa to BAHARI (T) Co Ltd (destination) were 49,418Kgs as it is in the list of package n° 029/2010 of 2 February 2010 that TACT Ltd has sent to BAHARI (T) Co. Ltd on 19 February 2010 and to SORAS Ltd, the insurer on 5 April 2010. Furthermore de document of 4/3/2010 named arrival advice also proves that the mentioned tea was sent to BAHARI (T) Co. Ltd.

[17] Basing on what has been mentioned above, the Supreme Court finds as provided for by the article 10 of the Law of 19/01/1920 relating to mandate in the commerce and transporterswhere it decides that the contract of transport is proven with all evidence provided for by the law, all the evidence mentioned in the previous paragraph, clearly proves that TACT Ltd and ITEX Sarl concluded a contract of transport of the tea belonging to OCIR-THE weighting 49,418Kg which had to be sent to Mombasa to BAHARI (T) Co. Ltd and that ITEX Sarl paid 4,448USD to ITEX Sarl for that transport of the tea. Therefore the defence of ITEX Sarl that the only written contract of transport can prove it; is baseless.

[18] With regard to the value of the tea sent to Mombasa, the Supreme Court finds the document which is in the file called "the compensation proposal" of 19 July 2010, proves that its price was 143,792USD, equivalent to 82,392,816Frw at the time. Thus, the defense of ITEX Sarl that 4.448USD, mentioned in the invoice of 22 March 2010, is the value of the tea that was sent to Mombasa, it is not related to the tea referred to in the case, is not true since 4,448USD is the value of the transport of the tea as demonstrated above.

[19] With regards to 20,700,150 Frw that SORAS requests ITEX Sarl to pay, the Supreme Court finds that as long as it is proven that SORAS Ltd paid TACT Ltd on 22 July 2010 by cheque n° BB 03920994 (of the Bank of Kigali) as OCIR-THE requested it to compensate the tea damaged in the accident, SORAS Ltd as insurer has the right of subrogating the insured, TACT Ltd, to the extent of damages it paid to ITEX Sarl. Thus basing on articles 431 and 432 of the civil code book IIIon article 18 of the law relating to mandate in the commerce and transporters, and on article 32 paragraph 1 of the Decree Law 20/75 of 20/6/1975 relating to insurance, ITEX Sarl has to pay 20,700,150Frw to SORAS Ltd. Basing on the above holdings, the Supreme Court finds that, the ground of appeal of SORAS Ltd has merit.

b. Whether SORAS Ltd deserves the interests on the principal amount of money it requests, the procedural and advocate fees.

[20] In his written submissions, the counsel, Ruzindana Ignace, requests that ITEX Sarl be ordered to pay to SORAS Ltd the interests for late payment on 20,700,150Frw calculated on 18%, from the date ITEX Sarl got the notice.

[21] Ruzindana Ignace, the counsel, also requests that ITEX Sarl be ordered to pay 1,000,000Frw to SORAS Ltd for the procedural costs, 500,000Frw for the advocate fees at the first instance level and 500,000Frw at the appeal level.

[22] Ndagijimana Emmanuel, the counsel, state that SORAS Ltd may not be granted with the money it requests since it sued the wrong person.

THE VIEW OF THE COURT

[23] Article 144 of the Law n° 45/2011 of 25/11/2011 governing contracts, provides that if the breach of the contract consists of a failure to pay a sum of money or to render a performance with fixed or ascertainable monetary value, interests are calculated from the time for performance was due less all deductions to which the party in breach is entitled.

[24] Basing on the above mentioned article, the fact that the effect of subrogation is that the one who paid subrogates the one to be paid in rights, on claims, he has as to the one who must pay him, the Supreme Court finds that SORAS Ltd deserves those interests. Thus ITEX Sarl has to pay the interests to the principal amount of money it requests, on the rate of 7% as established by the National Bank, calculated from 13 August 2010, the date on which SORAS Ltd has given the notice to ITEX Sarl. However as the rate of 18% claimed by SORAS Ltd is excessive, the interests have to be calculated as follow:

$$\frac{20{,}700{,}150\text{x}7\text{x}\ 1379\text{days}}{100\ \text{x}\ 365\ \text{days}} = 5{,}474{,}481\text{Frw}$$

[25] With regards to the procedural and advocate fees that SORAS Ltd claims, the Supreme Court finds that the amount it requests is excessive, and in its discretion it grants 300,000Frw for the procedural fees, 500,000Frw for advocate fees for both the first instance and the appeal level amounting to 800,000Frw.

[26] Basing on the motivation above, the Supreme Court finds that ITEX Sarl has to pay to SORAS Ltd 20,700,150Frw for the value of the tea damaged in the accident, 5,474,481Frw for the interests on the principal amount of money, 300,000Frw for the procedural and 500,000Frw of advocate fees, which makes the total of 26,974,631Frw.

III. THE DECISION OF THE COURT

[27] Decides that the appeal of SORAS Ltd has basis;

[28] Decides that the judgment RCOM 0341/10/HCC rendered on 29 July 2011 by the Commercial High Court is overturned;

[29] Orders to ITEX Sarl to pay 20,700,150Frw to SORAS Ltd relating to the value of the tea that got damaged in the accident, 5,474,481Frw for the interests on the principal amount,

300,000Frw for the procedural costs and 500,000Frw of advocate fees, which makes the total of 26,974,631Frw;

[30] Orders ITEX Sarl to pay the court fees amounting to 29,150Frw.