

STATE BONDING & INSURANCE CO., INC., PLAINTIFF AND APPELLEE, VS. MANILA PORT SERVICE, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-18754. June 30, 1964

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Plaintiff, as successor-interest and subrogee of seven consignees, filed a complaint before the Court of First Instance of Manila to recover certain sums of money against defendants Manila Port Service and Manila Railroad Company. The claim involves various amounts representing the value of portions of goods allegedly short-delivered in seven shipments discharged on different dates unto the custody of defendant Manila Port Service as arrastre operator at the Port of Manila.

In answer to the complaint, defendants averred with respect to the first, fourth, fifth and sixth causes of action that they had delivered to the consignees the same number and condition of merchandise as actually received by them from the carrying vessel. With regard to the third cause of action, defendants specifically denied the imputation of negligence made in paragraph 23 of the complaint alleging by way of defense that they have always been ready and able to deliver to the consignees the merchandise claimed to have been short-delivered but that appellee's predecessor-in-interest, for no justifiable reason, had unlawfully refused to take delivery of the merchandise from the piers.

At the trial, appellee presented an employee in its claims involved in the case. After presenting this witness, the parties submitted a stipulation of facts on the basis of which the trial court rendered its decision. The defendants were ordered to pay the sums of money claimed in the complaint, with legal interest thereon, with the exception of those involved in the second, seventh and eighth causes of action, as to which the complaint was dismissed. Defendants were also sentenced to pay 10% of the sums adjudicated as attorney's fees, plus the costs of action.

This is a direct appeal from said decision. Appellants maintain that appellee failed to present any proof to establish (1) the arrival of the shipments in question; (2) the date of their discharge from the vessel to the arrastre operator; and (3) the number and condition of the merchandise as actually unloaded unto the custody of said operator. And since appellee has the burden of proof to establish the above facts which are necessary to justify its causes of action, the court quo erred in adjudicating damages to appellee as prayed for in its complaint.

It, however, appears that these facts do not need any proof since they were admitted in the very answer of appellants. Indeed, in their answer, appellants expressly alleged that they had delivered to the consignees of the different shipments in question the same quantity and condition of the cargo as they received from the carrying vessel, which is a clear and positive admission that the shipments had arrived and were unloaded unto the custody of appellant Manila Port Service. It would seem, therefore, that it is unnecessary to prove either the dates of their arrival or their discharge when it is admitted that they had actually arrived and were in fact delivered to the Manila Port Service.

With reference to the quantity and quality of the goods discharged, while no actual evidence was submitted on the matter, the same would appear to be unnecessary as it may have inferred from the management contract attached to the stipulation entered into between the parties. In this connection, it should be noted that said contract prescribes a definite procedure to be followed in connection with the short-landing of cargo or whenever the same appears to be damaged. Thus, it is stated therein that it is the express duty of the Manila Port Service to "make it complete and detailed checking by marks and numbers of all cargo handled in the Port of Manila, whether unto or over wharfs or piers, or delivered at ship-side." In such contract it is also made the duty of said operator, in the event that it should receive any short-landed or damaged cargo, "to furnish the consignee or consignees with a memorandum or certificate showing shortage or damage, if any, to the consignment or cargo as disclosed by the check of the cargo." It is to be presumed that such procedure has been followed in connection with the shipments in question thereby making the duty of the arrastre operator to furnish proof thereof to show that there was no such short-landing as now claimed. The non-presentation of such proof or memorandum would necessarily imply that it contains a matter that may work prejudice to said operator, contrary to what it has done in connection with the shipments covered by the first and second causes of action as to which the Manila Port Service issued and presented the requisite memorandum of shortage known as a short-landing certificate. The presentation of such requisite memorandum is necessary to show the true condition in which a particular shipment is discharged from the pier to the custody of the arrastre operator.

Moreover, in the same management contract it is made the duty of the arrastre operator to segregate all cargo landed in bad order immediately upon its discharge from the vessel in order that a survey thereof may be made within 72 hours after discharge by the representatives of the vessel and the arrastre operator. This was not also done, or at least there is no evidence to show that it was done. Appellant operator cannot therefore dispute that the shipments in question, with the exception of those covered by the first and second causes of action, were unloaded unto it in good condition as stated on the face of the respective bills of lading.

The contention that appellee failed to present as evidence the tally receipts covering the shipments in question is untenable. These receipts which are documents prepared and signed by the checker of the carrying vessel and the checker of the arrastre operator indicating the condition, as well as the numbers, marks and countermarks of the merchandise as actually unloaded at the Port of Manila, are not furnished to the consignees. They are kept by both the vessel and the arrastre operator. If such evidence is material to bolster up the case of appellants their duty was to present it. Their failure to do so can only be considered as a circumstance prejudicial to them and not to appellee.

If it is true that the missing goods were available and existing as appellants contend and that they were able and ready to deliver them to the consignees, no reason is seen why the latter should not accept them to avoid litigation. The fact is that the consignees were never informed of their existence as otherwise they would not have filed the claims for shortage in connection with said goods. There is also no proof that appellants ever submitted to the Bureau of Customs a list of unclaimed or undelivered cargo, if any, as required in the management contract.

We find no merit in appellants' argument with regard to the attorney's fees awarded by the court *a quo*.

Wherefore, the decision appealed from is affirmed. No costs.

Bengzon, C. J., Padilla, Concepcion, Reyes, J. B. L., Paredes, Regala and Makalintal, JJ., concur.

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