

## **AMERICAN INSURANCE COMPANY, PLAINTIFF-APPELLEE, VS. MANILA PORT SERVICE AND MANILA RAILROAD COMPANY, DEFENDANTS-APPELLANTS.**

*G.R. No. L-27776. January 31, 1968*

Ponente: BENGZON, J.P., J.

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### **BENGZON, J.P., J.:**

The present action started on November 15, 1963. Plaintiff American Insurance Co., filed the complaint in the City Court of Manila against defendants Manila Port Service and Manila Railroad Co., as arrastre operator of the Port of Manila.

Alleged therein, inter alia, were the following:

Plaintiff is a foreign corporation licensed to do business in this country. On or about November 15, 1962 the SS "TUNGUS" discharged one thousand three hundred and thirty four (1,334) cartons composition cock rods, under bill of lading No. 3, unto defendants, custody and control, complete and in good order. The shipment, valued at P28,888.80, was imported by and consigned to the order of Sociedade Corticeira Concorco, Lda., notify San Miguel Brewery, Inc., Manila, Philippines, and insured with plaintiff, against loss and damages. And this cargo was delivered by defendants to the consignee with losses and damages amounting to P4,054.20.

Claim therefor was made on defendants, who refused to pay. As insurer, plaintiff in due course paid P4,054.20 to the consignee. As subrogee, plaintiff filed the present suit, since defendants continued their refusal to pay the claim.

After defendants answered and the parties submitted evidence, the City Court decided in plaintiff's favor. Defendants thereupon appealed to the Court of First Instance.

As the case proceeded de novo in the Court of First Instance, pre-trial was held on October 18, 1965. Not being finished then, pre-trial was continued. And on January 11, 1967, when the case was again called for pre-trial, plaintiff's counsel and plaintiff's representative appeared but neither defendants' counsel nor defendants' representative was present.

Plaintiff's counsel then moved to dismiss the appeal. Considering the several postponements asked by the defendants, and their absence that morning, the court granted plaintiff's motion, dismissed the appeal and ordered the case remanded to the lower court for execution.

Ten minutes later, Atty. Cipriano Dizon appeared and manifested that he received a telegram from defendants' counsel (Atty. Natividad Gepiga), asking him to appear in his behalf that morning to ask for postponement of the case in view of said counsel's having been called to the province due to the illness of his mother. Atty. Dizon orally moved for reconsideration of the dismissal order but was given leave to file it in writing. Pursuant thereto, said motion for reconsideration was filed in writing on January 12, 1967. It was denied on January 14, 1967.

A motion for reconsideration of said denial was filed by defendants' counsel. The same was likewise denied. And, hence, defendants' present appeal from the dismissal of its appeal in the Court of First Instance.

The point at issue has already been ruled upon by Us in *Home Insurance Co. v. United States Lines, Co.*,<sup>1</sup> wherein We held that under the Revised Rules of Court pre-trial is mandatory and the parties as well as their counsel are required to appear during the pre-trial. And there We stressed that Section 2, Rule 20 provides that "a party who fails to appear at a pre-trial conference may be non-suited or considered as in default."

In this case, both defendants and defendants' counsel failed to appear. Although another lawyer appeared, ten minutes after the pre-trial was called and the dismissal order issued, to ask for postponement of said pre-trial on behalf of defendants' counsel, the court did not err in denying the same, not only because it was late but also because of its finding that defendants had already asked several postponements. Furthermore, defendants themselves, or their representative, did not appear. A finding of failure to prosecute their appeal was therefore in order. And, applying Section 9 of Rule 40, Rules of Court: "If the appeal is withdrawn, or dismissed for failure to prosecute, the judgment shall be deemed revived and shall forthwith be remanded to the municipal or city court for execution."

WHEREFORE, the appealed order of dismissal is affirmed. No costs.

**SO ORDERED.**

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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<sup>1</sup> L-25593, Nov. 15, 1967.

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