

MALAYAN INSURANCE CO., INC., PLAINTIFF-APPELLEE, VS. MANILA RAILROAD COMPANY AND ITS SUBSIDIARY MANILA PORT SERVICE, DEFENDANTS-APPELLANTS.*G.R. No. L-24233. August 31, 1976*

Ponente: ANTONIO, J.

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Appeal from the judgment of the Court of First Instance of Manila in Civil Case No. 57532[1] ordering defendants-appellants, jointly and severally, to pay plaintiff-appellee the amount of P1,330.37, with legal interest thereon from the filing of the complaint until fully paid, and the costs.

Denki Shoji Co., Ltd. shipped at the Port of Osaka, Japan 220 cases of electric current controlling, regulating and distributing apparatus and electric condensers on board "SS Yakal" consigned to Chua Onga (Bee Seng Electrical Supply), Manila. The shipment was covered by Bill of Lading No. 0-1 dated May 4, 1962 (Exhibit "A") and by Invoice No. V-9856 dated April 27, 1962 (Exhibits "B" & "B-1"), and was insured against losses and/or damages by the consignee with the Malayan Insurance Co., Inc., Manila, Philippines, as per Marine Cargo Policy No. MRO/62-20345, dated May 24, 1962, in the amount of US\$11,118.30 (Exhibit "F"). On May 24, 1962, the vessel "SS Yakal" arrived and discharged its cargo at the Port of Manila to the custody of the Manila Port Service as arrastre operator, a subsidiary of the Manila Railroad Company, now the Philippine National Railways. The consignee, through his customs broker, Commercial Brokerage Corporation, filed his "Provisional Claim" (Exhibit "D") with the Manila Port Service on May 28, 1962.

The Manila Port Service delivered to the consignee only 216 cases which it received from the vessel out of the 220 cases mentioned in the Bill of Lading No. 0-1, per Manila Port Service Certificate of Delivery dated June 28, 1962 (Exhibits "C" and "2") and, as such, there was a short-delivery of four (4) cases.

On July 27, 1962, the consignee, through his aforesaid customs broker, filed his formal claim in the amount of P1,330.72, representing the value of the four (4) cases undelivered (Exhibits "E" & "E-1"), specifically indicating the nature of his claim, the quality, marks and/or countermarks of the missing merchandise (bearing Cases Nos. 8, 185, 239 and 400) and the corresponding value thereof. The Gate Passes showing the delivery of 216 packages to the con-signee do not bear the particular number of the cases delivered in relation to the packing list of the shipment.

Upon demand, the insurance company paid the consignee the amount of P1,995.56 for the value of the undelivered four (4) cases, as per Marine Loss Receipt dated August 2, 1962 (Exhibit "G"). In turn, the insurance company demanded payment of this amount from the arrastre operator, but the latter refused. On May 24, 1963, the insurance company, as subrogee of the consignee, filed a complaint with the Municipal (now City) Court of Manila, Branch VII (Civil Case No. 109435) against the Manila Railroad Company and the Manila Port Service for the recovery of said amount of P1,995.56 with legal interest thereon, plus attorney's fees and costs. The Municipal Court rendered judgment in favor of the Malayan Insurance Co., Inc. Defendants Manila Railroad

Company and Manila Port Service appealed from said judgment to the Court of First Instance of Manila, Branch XV (Civil Case No. 57532), where plaintiff's complaint was reproduced.[2]

On August 7, 1964, the defendants filed their answer with special and affirmative defenses alleging, among others, that the shipment in question was not discharged complete, and in good order condition, into the custody of the Manila Port Service; that the consignee takes delivery of cargoes from the arrastre operator subject to and with knowledge of the pertinent provisions of the Management Contract entered into by the Manila Port Service and the Bureau of Customs; that since no claim for value has been filed with the defendants within fifteen (15) days from the date of discharge of the last package from the carrying vessel, the defendants are relieved and released of all and any liability therefor, pursuant to paragraph 15 of the Management Contract; that since no suit was filed in the court of proper jurisdiction within one (1) year from the date of discharge of the last package from the carrying vessel, defendants are likewise relieved and released of all and any liability therefor, pursuant to paragraph 15 of the Management Contract; and that the liability of defendants, if at all, is limited to the invoice value of the loss and/or damage of the cargoes under claim which in no case shall exceed P500.00 for each package unless the value thereof has been declared or manifested, pursuant to paragraph 15 of the Management Contract.

On November 18, 1964, the parties filed their Stipulation of Facts. After the submission of the parties' memoranda, the Court of First Instance of Manila rendered judgment on January 13, 1965, ordering the defendants to pay to the plaintiff, jointly and severally, the amount of P1,330.37, with legal interest thereon from the filing of the complaint until fully paid, and the costs.

From this judgment, the defendants Manila Port Service and Manila Railroad Company appealed directly to this Court on questions of law.[3] In this appeal, defendants-appellants Manila Port Service and Manila Railroad Company contend that the court a quo erred: (1) in holding that the provisional claim in question is substantially a claim for value under paragraph 15 of the Management Contract; (2) in holding that the missing four (4) cases are the responsibility of the appellants, arrastre operators; (3) in holding that the liability of the appellants amounts to P1,330.37 instead of P498.61 only; and (4) in not absolving the appellants from any liability whatsoever.

Defendants-appellants maintain that the action of plaintiff-appellee has already been barred because the "provisional claim" dated May 23, 1962 filed by the latter is not a "claim for value" within the purview and spirit of paragraph 15 of the Management Contract, and the formal claim for value of plaintiff-appellee was filed on July 27, 1962, beyond the fifteen-day period from the date of the discharge of the last package from the carrying vessel, as required in said paragraph 15 of the Management Contract entered into between the Bureau of Customs and the Manila Port Service on February 29, 1956, by virtue of which the latter was appointed sole arrastre operator for the Port of Manila (Exhibit "1"). The pertinent provision of paragraph 15 (Exhibit "1-A") of the Management Contract invoked by defendants-appellants reads:

" * * * in any event the CONTRACTOR shall be relieved and released of any and all responsibility or liability for loss, damage, misdelivery, and/or nondelivery of goods, unless suit in the court of proper jurisdiction is brought within a period of one (1) year from the date of the discharge of the goods, or from the date when the claim for the value of such goods has been rejected or denied by the CONTRACTOR, provided that such claim shall have been filed with the CONTRACTOR within fifteen (15) days from the date of discharge of the last package from the carrying vessel."

Thus, defendants-appellants contend that the provisional claim should have contained "a statement of damages, the extent and the corresponding value thereof" and that the "Supplier's Invoice" or the "Packing Lists" of the shipment should have been attached in order that the arrastre operator could ascertain whether the claim is meritorious or not. This contention of defendants-appellants have been raised by them in previous cases, and in

connection therewith this Court has repeatedly held that a provisional claim is sufficient "even if the value of the goods involved were not stated therein, if it describes the goods sufficiently to permit its identification by the operator and the determination by the latter of the facts relevant thereto, such as the name of the carrying vessel, its date of arrival, the corresponding bill of lading, * * *" (Manila Port Service v. Court of Appeals, L-22986, July 29, 1969; Fireman's Fund Insurance Co. v. Manila Railroad Co., L-24166, April 25, 1969; Filippro v. Manila Port Service, L-25724, Oct. 8, 1968; Yap Teck Suy v. Manila Port Service, L-24677, May 29, 1968; Liverpool & London & Glove Insurance v. Manila Port Service, L-23338, Nov. 18, 1967; Tabacalera v. Manila Railroad, L-23636, Oct. 31, 1967; Phil. Education Co. v. Manila Port Service, L-23811, Oct. 30, 1967; Caltex (Phil.) Inc. v. Manila Port Service, L-24591, Sept. 29, 1967; Phil. Education Co. v. Manila Port Service, L-24091, Sept. 20, 1967, Switzerland General Insurance Co. v. Manila Railroad, L-21760, April 30, 1966; State Bonding & Insurance Co., Inc., v. Manila Port Service, L-21833, Feb. 28, 1966; Yu Kimteng Construction Corp. v. Manila Railroad, L-17027, Nov. 29, 1965; GSIS v. Manila Railroad, L-20342, Nov. 29, 1965.) * * *"[4] We deem the provisional claim filed in the case at bar to be sufficient under the foregoing criterion.

The claim of defendants-appellants that they should be liable in the amount of P498.61 only and not P1,330.37 as found by the trial court is equally without merit. It should be noted that defendants-appellants computed the value of the four (4) cases short-delivered on the basis of the average invoice value of the entire shipment of 220 cases. It is, therefore, obvious that the computation of the trial court is more accurate "since it is based on the actual invoice value of the missing four packages (Exhibits "E" and "F-1") in relation to the corresponding invoices and packing list (Exhibits "B" and "B-1")."[5] This valuation is correct as it is based on the invoice value of each package and does not exceed P500.00 each. As this Court ruled in previous cases, where the arrastre fees on the shipment are paid on the basis of weight and measurement and not on the value thereof, and the value of the goods is not specified or manifested in the corresponding documents, the liability of the arrastre operator should be limited to the invoice value of each package, but in no case to exceed P500.00 each.[6]

WHEREFORE, in view of the foregoing, the appealed decision is hereby AFFIRMED.

Fernando, Acting C.J., Barredo, (Acting Chairman), Aquino, and Concepcion, Jr., JJ., concur.

[1] Entitled "Malayan Insurance Co., Inc., Plaintiff, versus Manila Railroad Company and its subsidiary Manila Port Service, Defendants."

[2] Section 9, Rule 40, Revised Rules of Court.

[3] The appeal was made prior to Republic Act No. 5440, which took effect on September 9, 1968.

[4] Philippine Education Co., Inc. v. Manila Port Service, 42 SCRA 31, 41-42.

[5] Decision in Civil Case No. 57532.

[6] Thus, in Philippine Education Co., Inc. v. Manila Port Service, 42 SCRA 31, 44, We ruled:

"* * * In none of the cases under consideration have the arrastre charges been paid on the basis of the value of the goods involved. Neither had such value been stated, either in the ship manifest or in the bill of lading. Accordingly, the liability of the arrastre operator in these cases is limited to the invoice value of each package, plus 'all damages that may be suffered on account of loss, destruction or damage of any merchandise while in the custody or under the control of the contractor' (Phil. Education Co. v. Manila Port Service, L-23811, Oct. 30, 1967; Caltex (Phil.) v. Manila Port Service, L-21055, Aug. 31, 1966.) — which liability may in no case exceed P500.00 for each package. In the language of Phil. Education Co. Inc. v. Manila Port Service (L-26524, April 25, 1969):

'* * * In a number of cases we have interpreted this provision in the management contract as embracing not only the actual amount of costs, insurance and freight but even marginal fees which had been paid in connection with the shipment. Freight and insurance charges were paid in addition to costs of the shipment, and the shortages suffered by the shipment resulted in their loss. These are actual damages suffered on account of the short-delivery, and, in accordance with par. 15 of the management contract, the arrastre operator must answer for them.'

"In other words, the defendants are liable for the CIF value of the goods in question and other legitimate expenses incurred in connection therewith, all of which, however, shall not exceed P500.00 for each package."

This was affirmed in *Domestic Insurance Co. of the Phil. v. Maersk Line*, 45 SCRA 443.

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