

SOUTH SEA SURETY AND INSURANCE CO., INC. AND SUN INSURANCE OFFICE, LTD., PETITIONERS, VS. MANILA PORT SERVICE AND/OR MANILA RAILROAD COMPANY AND THE HONORABLE COURT OF APPEALS, ...

G.R. No. L-26901. May 29, 1970

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal by certiorari, from a decision of the Court of Appeals. The facts are set forth in said decision, from which We quote:

"The Marinduque Iron Mines Inc., is the consignee of one case containing 5,000 pieces of Simonds High Speed Steel Saw Bits carried on board the vessel Pioneer Minx from New York and discharged at the Port of Manila on July 10, 1961 into the custody of the defendant Manila Port Service, a subsidiary of the other defendant Manila Railroad Company. Manila Port Service is the arrastre operator for the port of Manila pursuant to a management agreement entered into by the Bureau of Customs and said defendant, copy of which appears in the records as Exhibit 1.

"There is no dispute that contents of the case were lost while in the custody of the Manila Port Service and the latter has not been able to introduce any evidence to escape its liability for such loss.

"In order to obtain the release of the cargo, the consignee engaged the services of custom's broker Mr. Francisco Barretto who prepared and submitted the necessary papers to the Manila Port Service. Inasmuch as neither the bill of lading nor the ship manifest indicated the value of the cargo, when Barretto applied with the Manila Port Service for the processing of the papers with the end in view of receiving the cargo for and in behalf of the consignee, said defendant charged him and he paid for the account of the consignee the amount of P2.85 as defendant's fees for its services. Thereafter the case was opened and found to contain nothing.

"Prior to the discovery of the loss of the cargo and in compliance with the provisions of Section 15 of the Management Contract, the consignee through its broker filed a provisional claim with the defendant Manila Port Service within the 15-day limit set forth in said section. Following the discovery of the loss, the consignee demanded from the Manila Port Service the payment of the value of the contents of the case but no such payment was made up to the present.

"It appears that said cargo has been insured in New York by Sun Insurance Office, Ltd., for \$2,750.00. The consignee for its part also had the same cargo insured with the South Sea Surety and Insurance Company, Inc., in Manila for the sum of P10,075.00, Philippine Currency. The insurers paid pro rata the value of the cargo to the assignee of the insured and in return they obtained subrogation agreements transferring to the insurers, the herein plaintiffs, all their rights of recovery on account of the loss or damage from the carrier or from any other person or corporation that may be liable therefor. The total amount paid by the insurers is the same amount they are now claiming in their complaint.

"The plaintiffs allege that in failing to deliver to the consignee or the latter's assignee the cargo above referred

to because it was lost while in the possession of the Manila Port Service, the latter became liable to said plaintiffs in the sum of P10,532.31, plus attorney's fees, expenses of litigation and costs.

"The Manila Port Service refuses to pay the amount claimed by the plaintiffs alleging that under the terms of Management Contract particularly paragraph 15 thereof, its liability, if any, is limited to P500.00 because the value of the cargo was not specified or manifested and the arrastre charges paid by the consignee were not based on said actual value."

After appropriate proceedings, the Court of First Instance of Manila rendered a decision holding that the provisions of said paragraph or section 15 of the management contract are inapplicable to the case at bar and sentencing "the defendants to pay, jointly and severally, to the plaintiffs the sum of TEN THOUSAND FIVE HUNDRED THIRTY-TWO PESOS and THIRTY-ONE CENTAVOS (P10,532.31) with interest at the legal rate from the date of the filing of the complaint until fully paid and further to pay the costs." On appeal, taken by the defendants, said decision was modified by the Court of Appeals, which reduced the award in favor of the plaintiffs to the sum of P500.00, with the aforementioned rate of interest, but without costs. Hence, the present petition for review on certiorari, which was given due course.

The only issue in this appeal is the applicability to the present case of paragraph or section 15 of the management contract between the Bureau of Customs and the Arrastre Contractors, the pertinent part of which reads:

"15. x x x and the CONTRACTOR shall be solely responsible as an independent contractor for, and promptly pay to the steamship company, consignee, consignor, or other interested party or parties the invoice value of each package but which in no case shall be more than five hundred pesos (P500) for each package unless the value is otherwise specified or manifested, and the corresponding arrastre charges had been paid. x x x."

In finding that the aforementioned provision of the management contract is not binding upon plaintiffs herein, the trial court acted upon the theory that the consignee "had not made use of the delivery permit and accepted the benefit of delivery of the cargo as this was not delivered because it was lost while in the possession of the defendants."

Upon the other hand, the Court of Appeals held that:

"x x x It is not correct to state x x x that the consignee did not make use of the delivery permit. Actually he made use of the delivery permit when if he delivered it to the arrastre operator. Without the delivery permit, the arrastre operator would not charge the consignee arrastre charges nor deliver to him physical possession of the cargo. In the present case, it is not diluted that after the delivery permit was shown by the broker of the consignee to the defendant, Manila Port Service, the latter assessed and collected the arrastre charges and proceeded to deliver the cargo." [1]

In the language of said Appellate Court:

"The procedure followed before any cargo discharged from a carrying vessel may be delivered to the consignee is for the latter or his broker to obtain from the agents of the carrying vessel a delivery permit and to present it together with the necessary commercial and shipping documents to the Bureau of Customs for processing and for the approval of the delivery permit. Once the delivery permit is approved, the original thereof is stamped with the provisions of Section 15 of the management contract before it is delivered back to the consignee for presentation to the arrastre operator. The Manila Port Service as arrastre operator, before delivering the cargo, to the consignee, would demand payment by the latter of its fees for its services. Thereafter, the goods are placed in the possession of the consignee represented by his broker who is then issued a gate pass by the arrastre operator." [2]

It being conceded that the sum of P2.85 had been paid, by way of arrastre charges, by the broker of the consignee,

it follows that the latter had made use of the delivery permit, on which is stamped said section 15 of the management contract, thereby justifying the conclusion of the Court of Appeals to the effect that the consignee had accepted the provisions thereof. Indeed, this inference is borne out by the fact that the consignee had filed a provisional claim for damages, pursuant to the terms of said section 15, and that plaintiffs herein had filed the present case against the Manila Port Service to enforce its obligations and the rights of the consignee under said management contract.

WHEREFORE, the appealed decision of the Court of Appeals is hereby affirmed, without special pronouncement as to costs.

IT IS SO ORDERED.

Reyes, Dizon, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

Makalintal and Zaldivar, JJ., no part.

Castro, J., on leave.

[1] Underscoring ours.

[2] Underscoring ours.

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