

**MANILA PORT SERVICE AND/OR MANILA RAILROAD COMPANY,
PETITIONERS, VS. FORTUNE INSURANCE & SURETY CO., INC.
AND COURT OF APPEALS, RESPONDENTS.**

G.R. No. L-29812. May 24, 1972

Ponente: REYES, J.B.L., Actg. C J.

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REYES, J.B.L., Actg. C J.:

Petition for review on certiorari of the decision of the Court of Appeals, affirming the judgment of the Court of First Instance of Manila against the Manila Port Service and the Manila Railroad Company in its Civil Case No. 50845.

As found by the trial court, the facts of this case are as follows: P. J. Rhodes & Co. shipped at the port of New Orleans, U.S.A., 998 bags of soyabean meal on board the vessel M/S "Philippines Rizal", consigned to Mabuhay Feeds, Inc. in Manila. The shipment was covered by insurance against all risks subscribed by the Fortune Insurance & Surety Co., Inc.

On 5 July 1961, the vessel arrived at the port of Manila and immediately thereafter began discharging its cargo. On 10 July 1961, the 998 bags of soyabean meal consigned to Mabuhay Feeds, Inc. were discharged from the vessel unto the custody of the Manila Port Service, the arrastre operator of the port of Manila, in good order and condition with the exception of 12 bags which were landed in bad order. After paying the customs duties and securing the necessary permit and gate passes from the Bureau of Customs, the consignee received from the arrastre operator from 13 July 1961 to 18 July 1961 a total of 781 bags of soyabean meal or 217 bags short of the actual shipment. It appears that as of 7 July 1961 the consignee Mabuhay Feeds, Inc. had already filed with the arrastre operator a provisional claim (the nature of which was not disclosed in the records), and this was followed on 21 August 1961 by a formal demand for the value of the missing goods. The consignee at the same time filed a claim with the insurer and was accordingly paid the sum of P4,647.50.

In view of the refusal of the arrastre operator to pay the value of the lost articles, the insurer, as subrogee to the consignee's rights, filed on 6 July 1962 a complaint in the Court of First Instance of Manila against the Manila Railroad Company and the Manila Port Service, as arrastre operators, and the Maritime Company of the Philippines, the vessel owner (Civil Case No. 50845), demanding payment of the sum of P4,249.74, plus attorneys' fees and litigation costs. In their answer to the complaint, the arrastre operators set up the defense of non-compliance with the terms and provisions of paragraph 15 of the Management Contract, while defendant shipping company disclaimed liability for the loss of the goods.

After due hearing, the court rendered judgment dismissing the complaint against the defendant shipping company and ordering the arrastre operators to pay to the plaintiff the sum of P4,249.74, with legal interest thereon from 3 July 1962 until the amount is fully paid, plus costs. In finding for the plaintiff, the trial court ruled that there was proper demand in the case, the consignee having filed a provisional claim with the arrastre operators within 15 days from the discharge of the shipment from the vessel, and a formal claim 11 days after the

issuance of certification by the Manila Port Service as to the incomplete delivery of the shipped goods. Defendants arrastre operators brought the case to the Court of Appeals, and when by decision of 22 August 1968 the appellate tribunal affirmed the judgment of the trial court, said defendants came to this Court raising the same issue of lack of a valid claim as prerequisite to recovery by the consignee of the value of lost or missing goods under paragraph 15 of the Management Contract.

It is not disputed that there was short delivery of merchandise in this case, for which the respondent insurer paid the consignee the sum of P4,647.50. It is likewise alleged by petitioners,[1] which allegation has remained uncontroverted, that the consignee was able to withdraw the 781 bags of soyabean meal from the custody of petitioners using therefor the delivery permit and gate passes issued by the Bureau of Customs bearing the notice that presentation thereof subjects the user to all the terms and conditions of the Management Contract, among which is the provision –

"* * * releasing the Company from liability unless suit is brought within one (1) year from the date of discharge of the goods, or from the date when the claim for the value of the goods has been rejected, provided, such claim shall have been filed with the Company within 15 days from the date of discharge of the last package from the carrying vessel."

In declaring petitioners liable for the value of the missing or lost goods and ordering them to make payment to respondent insurer, the Court of Appeals and the trial court considered the provisional claim filed by the consignee with the arrastre operator on 7 July 1961, or before the subject shipment had been delivered unto the custody of the latter, as substantial compliance with the aforequoted provision of paragraph 15 of the Management Contract. This is not in accord with the established ruling on the matter. It may be pointed out that the consignee, by availing of the services of the arrastre operator and taking delivery of the goods with the use of those permit and gate passes, became bound by the provisions of the Management Contract,[2] including Section 15 thereof under which the arrastre operator becomes liable for the value of lost or undelivered goods only where claim therefor has been filed "within 15 days from the discharge of the last package from the carrying vessel." And it has been ruled in a long line of decided cases[3] that this requirement is satisfied where the claim for value of the lost goods was filed in 15 days from the unloading of the last package from the carrying vessel, or from the time the claimant learns of the loss, damage or misdelivery of the goods, or from the date on which, with the exercise of due diligence, such information could have been obtained. The foregoing ruling was actually drawn by the purpose for which the requirement was made, which is to apprise the arrastre operator of the existence of a claim and enable it to check on the validity of the claimant's demand while the facts are still fresh for recollection of the persons who took part in the undertaking and the pertinent papers are still available.[4]

It cannot be said then that the provisional claim filed by the claimant on 7 July 1961, or 3 days prior to the unloading of the shipment under consideration, serves the purpose underlying the requirement. For there is no showing that at the time the consignee had already acquired information or knowledge of the misplacement of part of the shipped merchandise. The provisional claim, presumably filed in anticipation of any possible loss or damage that may take place while the goods are in petitioners' custody, is, therefore, speculative and premature, thereby failing to constitute the demand contemplated by paragraph 15 of the Management Contract. In fact, it has been held that the premature filing of a provisional claim, even for one day, would not be sufficient to avail of the remedy provided in the aforementioned contractual provision.[5]

Neither would the fact that the formal demand made on the arrastre operator on 21 August 1961 was only 11 days after the certification by the latter of the existence of shortage in the unloaded merchandise improve claimant's position. The consignee having been placed on notice of the loss of the goods at least on 18 July 1961, when the last of the 781 bags of soyabean meal was delivered to it, the 15-day period within which to make the claim for

loss should be reckoned from the said date, and no such claim was filed within the allowable time. The certification by the arrastre operator on 21 August 1961 as to the existence of shortage in the shipment actually is nothing more than a formal attestation or confirmation of a fact that the consignee already knew all along, and it cannot work to revive a right that by then has already been lost.

WHEREFORE, the decision under review is hereby reversed and set aside, and the claim against the herein petitioners dismissed, without pronouncement as to costs.

Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Makasiar, and Antonio, JJ., concur.

Castro, J., did not take part.

Concepcion, C.J., on official leave.

[1] Pages 5-6, Petition.

[2] Government Service Insurance System vs. Manila Railroad Company, G.R. No. L-13276, 25 February 1961, 1 SCRA 553; Shell Company of the Philippines, Ltd. vs. Compania General de Tabacos de Filipinas, G.R. No. L-20230, 30 July 1965, 14 SCRA 763; Lo Kiong vs. United States Lines Company, G.R. No. L-18673, 29 November 1965, 15 SCRA 339; Lexal Pure Drug Laboratories vs. Manila Railroad Company, G.R. No. L-20155, April 30, 1966, 16 SCRA 866; Manila Port Service vs. Court of Appeals, G.R. No. L-22618, 31 Aug. 1967, 20 SCRA 1214; Republic Manufacturing Co., Inc. vs. Manila Railroad Company, G.R. No. L-22382, 30 April 1969, 27 SCRA 1237; South Sea Surety & Ins. Co. Inc. vs. Manila Port Service, G.R. No. L-26901, 29 May 1970, 33 SCRA 238.

[3] Yu Kimteng Construction Corporation vs. Manila Railroad Co., G.R. No. L-17027, 29 Nov. 1965, 15 SCRA 292; GSIS vs. Manila Railroad Co., G.R. No. L-20342, 29 Nov. 1965, 15 SCRA 383; Insurance Co. of North America vs. Maritime Company of the Philippines, G.R. No. L-22534, 9 August 1966, 17 SCRA 905; Yu Kimteng Construction Corp. vs. Manila Railroad Company, G.R. No. L-17027, Resol. 3 March 1967, 19 SCRA 587; New Zealand Insurance Company, Ltd. vs. Manila Port Service, G.R. No. L-22500, 24 Apr. 1967, 19 SCRA 801; Domestic Ins. Co. of the Phil. vs. Manila Railroad Company, G.R. No. L-24066, 30 Aug. 1967, 20 SCRA 1190; Ang Ching Gi vs. Delgado Brothers, Inc., G.R. No. L-22138, 17 February 1968, 22 SCRA 598; Insurance Company of North America vs. Manila Port Service, G.R. No. L-26268, 25 March 1970, 32 SCRA 39.

[4] Philippine Education Co. vs. Manila Port Service, G.R. No. L-23716, 20 Sept. 1967, 21 SCRA 171, citing Consunji vs. Manila Port Service, G.R. No. L-15551, 29 Nov. 1960; Insurance Company of North America vs. Manila Port Service, G.R. No. L-23124, 11 Oct. 1967, 21 SCRA 421; Republic vs. Manila Port Service, G.R. No. L-19115, 31 March 1964, 10 SCRA 612.

[5] Shell Company of the Phil., Ltd. vs. Compania General de Tabacos de Filipinas, G.R. No. L-20230, 30 July 1968, 14 SCRA 763; New Hampshire Fire Insurance Co. vs. Manila Port Service, G.R. No. L-20938, 9 Aug. 1966, 17 SCRA 899; Rizal Surety and Insurance Co., Inc. vs. Manila Railroad Co., G.R. No. L-22409, 27 April 1967, 19 SCRA 870; Insurance Company of North America vs. Manila Port Service, G.R. No. L-23124, 11 Oct. 1967, 21 SCRA 421; see also Phil. Education Co., Inc. vs. Manila Port Service, G.R. No. L-23716, 20 Sept. 1967, 21 SCRA 171.

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