

ATLANTIC MUTUAL INSURANCE COMPANY, THE NEW ZEALAND INSURANCE CO., LTD., AND PHILEX MINING CORPORATION, PLAINTIFFS AND APPELLANTS, VS. MANILA PORT SERVICE AND/OR MANILA RAILROAD ...

G.R. No. L-21907. April 29, 1966

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

Appeal from the judgment of the Manila court of first instance dismissing plaintiff's suit to recover the value of eleven (11) bales of cotton piece goods.

It is admitted that on July 11, 1960, defendant Port Service (subsidiary of Manila Railroad Company) received in good condition ex SS Pioneer Minx, a shipment consisting of 216 bales of cotton piece goods, consigned to Philex Mining Corporation (one of plaintiffs); and that defendant Port Service failed to deliver (to said consignee) eleven bales of the total value of P8,840.26, for which formal claim was filed on September 9, 1960. As Port Service failed to pay, the Philex demanded and received payment from the insurers, who are now the plaintiffs suing as subrogees of the consignee.[1]

The defendants denied liability as arrastre operators, and besides questioning the personality of plaintiffs as foreign corporations, invoked section 15 of their Management Contract (the plaintiffs apparently admit it applies to them and the consignee) which Contract provides:

"* * *, in any event the Contractor (defendant herein) shall be relieved and released of any and all responsibility or liability for loss, damage, mis-delivery, and/or non-delivery of goods, unless suit in the court of proper jurisdiction is brought within 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 have 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 the discharge of the last package from the carrying vessel. * * *."

Non-compliance with the 15-day period is the gist of the defense.

The litigation was submitted to the Manila Court on the strength of a stipulation of facts, and the issue for resolution was whether or not the above condition precedent to the liability of Port Service had been duly complied with.

It will be observed that the date of last discharge of the shipment was July 12, 1960, and the formal claim was filed on September 9, 1960," following the filing on July 14, 1960, of a "provisional claim". In short, the "formal claim" was filed beyond the 15-day period; but the provisional claim was filed within such period.

We have already rendered several decisions on the controversial point. We have held that such "provisional claim" made within the 15-day period, sufficiently protects the rights of the consignee. Appellees here argue that such provisional claim "is time-barred for failure of the consignee to file a claim for the value of the eleven bales

of cotton within said 15-day period. It is true that the "provisional claim" did not specify the value of the eleven bales lost. But we held in *State Bonding & Insurance Co., Inc. vs. Manila Port Service* (L-21833, February 28, 1966) in a similar set of circumstances, and in connection with this same section 15, that "a provisional claim without statement of the value and without supporting papers attached thereto" substantially fulfills the requirements. (See also *Parsons Hardware Co. vs. De la Rama*, L-15173, May 30, 1961.)

This claim must, therefore, be held to have been filed in due time. The value paid by the insurers for the goods admittedly undelivered is P7,173.34; but as it was stipulated that if found liable, the defendants should pay only a maximum of P500.00 per bale lost.

Judgment is hereby rendered reversing the appealed decision, and requiring defendants-appellees to pay plaintiffs the sum of five thousand five hundred pesos (P5,500.00), plus costs. So ordered.

Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala, and Makalintal, JJ., concur.

[1] Philex joined in this action expecting to recover certain customs duties, taxes and fees it had paid in advance, for the lost merchandise. But it does not press such demand now.

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