

NEW ZEALAND INSURANCE COMPANY, LTD., PETITIONER, VS. HONORABLE MIGUEL R. NA-VARRO AND E. RAZON, INC., RESPONDENTS.

G.R. No. L-48686. October 04, 1989

Ponente: FELICIANO, J.

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FELICIANO, J.:

The instant Petition seeks review of the Decision[1] dated 14 January 1978 rendered by Branch 31 of the then Court of First Instance of Manila, Sixth Judicial District, in Civil Case No. 97581 (entitled "New Zealand Insurance Co. Ltd., plaintiff, versus Maritime Company of the Philippines, E. Razon Inc., E.B. Marcha Transport Co., Inc. and Executive Brokerage Corp., defendants").

The background facts are stated in the decision of the trial court:

"The New Zealand Insurance Co., Ltd. ["New Zealand," petitioner herein] instituted this action to recover from defendants Maritime Company of the Philippines and E. Razon Inc. ["Razon," respondent herein], the sum of P19,644.05 it paid to the consignee for the loss by spillage and contamination of imported soybean meal, and from either E. Razon, Inc. or Executive Brokerage Corporation and E.B Marcha Transport Co., Inc. the value of the undelivered 30 bags of soybean meal, with interest, plus costs of suit.

Upon plaintiff's motions and on the ground of payments in settlement of its claims against defendants E.B. Marcha Transport Co., Inc., Executive Brokerage Corporation and Maritime Co., the case was dismissed as respect them.

The facts, as gathered from the documented evidence, are not disputed. Defendant Maritime Company of the Philippines [on May 1, 1974] loaded 5,974 bags of soybean meal, with a gross weight of 100 lbs. per bag and a total invoice value (C & F/ Manila) of \$83,374.30 on board its M/S "Zamboanga" in New Orleans, U.S.A., for shipment to Monterey Farms Corporation at Manila (Exhs. A, B, 32-B & 32-A).[2] Upon discharge [on June 28, 1974] of the cargo from the vessel into the custody of defendant arrastre operator, E. Razon Inc., 173 bags of soybean meal were found to be in bad order condition arising from spillage. The spillage amounted to 3,895 lbs. (Exhs. C, H & 2-Razon).[3]

When the shipment was delivered by defendant E. Razon, Inc. to the consignee, a total of 284 bags of soybean meal, weighing 9,953 lbs. was in bad condition (Exhs. D-1, D-2, 30-Razon & 31-Razon).[4]

Under date of August 9, 1974, the consignee wrote defendant E. Razon Inc., laying its formal claim for spillage/damage sustained by the shipment (Exhs. D and 32).[5]

Having paid the consignee the sum of P19,644.05 under the insurance coverage of the shipment,[6] the New Zealand Insurance Co., Ltd., subrogee, instituted this action,[7] which, as afore-stated, is now directed against E. Razon, Inc., the arrastre operator, for spillage/loss, weighing 6,058 lbs., sustained by the additional 111 damaged bags of soybean meal, in the amount of U.S. \$845.091 or P5,746.61 (its equivalent in Philippine pesos at the then exchange rate of P6.80 to US \$1.00)."

In its Answer[8] to the complaint, respondent Razon (defendant below) denied responsibility and liability for the additional loss of 111 bags of soybean meal, alleging that "the questioned shipment was delivered to the consignee in exactly the same order, condition and quantity it was received from the carrying vessel." Respondent Razon alleged further that the claim for indemnity filed with it by the consignee, Monterey Farms Corporation, "did not comply with the prescribed period within which to file a claim as provided under the Management Contract." [9]

Article VI, Section 1 of the Management Contract then in force between respondent Razon and the Bureau of Customs was thus specifically put in issue. That provision read, in pertinent part:

"Responsibility and Liability for Losses and Damages; Claims. -- The CONTRACTOR [respondent Razon] shall x x x be solely responsible as an independent CONTRACTOR, and hereby agrees to accept liability, and to promptly pay to the steamship company, consignee, consignor or other interested party or parties for the loss, damage or non-delivery of cargoes x x x as well as all damage that may be suffered on account of loss, damage or destruction of any merchandise while in custody or under control of the CONTRACTOR x x x; PROVIDED, that a formal claim together with the necessary copies of the Bill of Lading, invoice, certified packing list, bank certificate showing the rate of exchange at the time of the purchase or opening of letter of credit, and computation arrived at covering the loss, injury or damage or non-delivery of such goods shall have been filed with the CONTRACTOR within fifteen (15) days from the date of issuance by the CONTRACTOR of a certificate of loss, damage or injury or certificate of non-delivery, provided further, that if said CONTRACTOR fails to issue such certification within fifteen (15) days from the receipt of written request by the importer or his authorized representative or any interested party said certificate shall be deemed to have been issued, and thereafter, the fifteen day period within which to file the claim shall commence. Provided, finally, that the request for certificate of loss shall be made within thirty (30) days from the date of delivery of last package to the consignee, broker or importer." (Underscoring supplied)

Judgment was rendered in this case on 14 January 1978. In its disputed Decision, the trial court, although it found that respondent Razon "admits spillage/loss while the cargo was in its custody," nevertheless, ordered the dismissal of the complaint with costs against petitioner New Zealand (plaintiff below), upon the ground that "the claim for spillage/loss was filed with defendant arrastre operator, E. Razon, Inc., beyond fifteen (15) days from the issuance of the certificate of loss, damage, injury or delivery."

The trial court explained its ruling in the following terms:

"The examination report of the Bad Order Inspector of arrastre operator E. Razon, Inc., which attests to the spillage/loss from the additional damaged bags of soybeans, bears the date of July 9, 1974. It was rendered upon request of consignee's broker. And the examination was conducted in the presence of the consignee's representative. Obviously, this examination report is the certificate of loss, damage, or injury referred to in Article VI, No. 1, of the Management Contract. And it appearing that the formal claim for the spillage/damage was filed with defendant Razon, Inc. on August 9, 1974 (not August 21, 1974 as asserted by defendant E. Razon, Inc. in its Memorandum), the same was filed beyond the 15-day period prescribed by the contract." [10]

In the Petition for Review now before this Court, petitioner New Zealand assigned three (3) errors, to wit:

"I

The respondent judge erred in holding that the request for, and the result of, the bad order examination, Exhibits "D-1" and "D-2" did not serve the purpose of a claim, contrary to the doctrine laid down in *Firemen's Fund Ins. Co. vs. Manila Port Service Co., et al.*, 16 SCRA 796-798.

II

The respondent judge erred in holding that the claim for spillage/loss was filed beyond the fifteen (15) day period.

III

The respondent judge erred in dismissing the complaint with costs against the plaintiff."

In both the Comment[11] on the Petition and the Brief[12] it filed with this Court, respondent Razon no longer raised as an issue the matter regarding its responsibility for the loss of 111 bags of soybean meal, the value of which petitioner New Zealand now seeks to collect in this suit. Respondent Razon, however, maintained its refusal of liability for such loss, solely on the basis of petitioner's alleged failure to file a formal claim within fifteen (15) days from the date of last delivery of the soybean meal to the consignee's warehouse, in accordance with Article VI, Section 1 (supra) of the Management Contract.

In *Consunji v. Manila Port Service and Manila Railroad Co.*, [13] this Court in 1960 stated:

"x x x Carriers or depositaries sometimes require presentation of claims within a short time after delivery as a condition precedent to their liability for losses. Such requirement is not empty formalism. It has a definite purpose, i.e., to afford the carrier or depositary reasonable opportunity and facilities to check the validity of the claims while facts are still fresh in the minds of the persons who took part in the transaction and documents are still available. x x x"[14]

We took special note of the above pronouncement six (6) years later in *Fireman's Fund Insurance Co. v. Manila Port Service Co., et al.*[15] There, fifteen (15) cases of nylon merchandise had been discharged from the carrying vessel and received by defendant Manila Port Service Co., the arrastre operator, on 7 July 1961. Out of those fifteen (15) cases, however, only twelve (12) had been delivered to the consignee in good condition. Consequently, on 20 July 1961, the consignee's broker requested a bad order examination of the shipment, which was later certified by defendant's own inspector to be short of three (3) cases. On 15 August 1961, a formal claim for indemnity was then filed by the consignee, who was later replaced in the action by plaintiff Fireman's Fund Insurance Co., the insurer of the goods. Defendant, however, refused to honor the claim, arguing that the same had not been filed within fifteen (15) days from the date of discharge of the shipment from the carrying vessel, as required under the arrastre Management Contract then in force between itself and the Bureau of Customs. The trial court upheld this argument and hence dismissed the complaint. On appeal by the consignee, this Court, speaking through Mr. Justice J.B.L. Reyes, reversed the trial court and found the defendant arrastre operator liable for the value of the lost cargo, explaining as follows:

"However, the trial court has overlooked the significance of the request for, and the result of, the bad order examination, which were filed and done within fifteen days from the haulage of the goods from the vessel. Said request and result, in effect, served the purpose of a claim, which is —

'to afford the carrier or depositary reasonable opportunity and facilities to check the validity of the claims while facts are still fresh in the minds of the persons who took part in the transaction and documents are still available.' (*Consunji vs. Manila Port Service*, L-15551, 29 November 1960)

Indeed, the examination undertaken by the defendant's own inspector not only gave the defendant an opportunity to check the goods but is itself a verification of its own liability x x x.[16]

In other words, what the Court considered as the crucial factor in declaring the defendant arrastre operator liable for the loss occasioned, in the *Fireman's Fund* case, was the fact that defendant, by virtue of the consignee's

request for a bad order examination, had been able formally to verify the existence and extent of its liability within fifteen (15) days from the date of discharge of the shipment from the carrying vessel -- i.e., within the same period stipulated under the Management Contract for the consignee to file a formal claim. That a formal claim had been filed by the consignee beyond the stipulated period of fifteen (15) days neither relieved defendant of liability nor excused payment thereof, the purpose of a formal claim, as contemplated in Consunji, having already been fully served and satisfied by the consignee's timely request for, and the eventual result of, the bad order examination of the nylon merchandise shipped.

Relating the doctrine of Fireman's Fund to the case at bar, the record shows that delivery to the warehouse of consignee Monterey Farms Corporation of the 5,974 bags of soybean meal, had been completed by respondent Razon (arrastre operator) on 9 July 1974. On that same day, a bad order examination of the goods delivered was requested by the consignee and was, in fact, conducted by respondent Razon's own inspector, in the presence of representatives of both the Bureau of Customs and the consignee. The ensuing bad order examination report -- what the trial court considered a "certificate of loss" -- confirmed that out of the 5,974 bags of soybean meal loaded on board the M/S "Zamboanga" and shipped to Manila, 173 bags had been damaged in transitu while an additional 111 bags had been damaged after the entire shipment had been discharged from the vessel and placed in the custody of respondent Razon. Hence, as early as 9 July 1974 (the date of last delivery to the consignee's warehouse), respondent Razon had been able to verify and ascertain for itself not only the existence of its liability to the consignee but, more significantly, the exact amount thereof -- i.e., P5,746.61, representing the value of 111 bags of soybean meal. We note further that such verification and ascertainment of liability on the part of respondent Razon, had been accomplished "within thirty (30) days from the date of delivery of last package to the consignee, broker or importer" as well as "within fifteen (15) days from the date of issuance by the Contractor [respondent Razon] of a certificate of loss, damage or injury or certificate of non-delivery" -- the periods prescribed under Article VI, Section 1 of the Management Contract here involved, within which a request for certificate of loss and a formal claim, respectively, must be filed by the consignee or his agent. Evidently, therefore, the rule laid down by the Court in Fireman's Fund finds appropriate application in the case at bar.

In its questioned decision, however, the trial court held:

"The Fireman's Fund Insurance Co. case is not authoritative in the case at bar. The request for, and the result of, the bad order examination cannot be considered as a claim within the contemplation of Article VI, No. 1, of the Management Contract (Exhibit 34), for being, in effect, a certificate of loss, damage, injury or non-delivery, the said result, precisely tolls the commencement of the 15 days within which the formal claim should be filed. It, therefore, cannot serve a claim. Otherwise, it would have been an empty formalism for the contract to require that a formal claim be filed from the issuance of said result of a request for bad order examination, or certificate of loss, damage, injury or non-delivery, for that matter." [17]

There appears no dispute that the certificate of ss referred to in the Management Contract here involved is very similar to if not identical with the report issued as a result of a bad order examination. We think that the trial court took an unreasonably restrictive view of the applicable provisions of the Management Contract (quoted earlier). Under the Management Contract, the consignee had a period of thirty (30) days from the last delivery of the goods within which to request a certificate of loss from the arrastre operator. From the date of such request for a certificate of loss, the arrastre operator had a period of fifteen (15) days within which to issue a certificate of loss either actually or constructively. And from such date of issuance of a certificate of loss, the consignee had fifteen (15) days within which to file a formal claim with all accompanying documentation against the arrastre operator. In other words, the consignee had a period ranging from 45 to 60 days from the date of last delivery of the goods within which to submit a formal claim to the arrastre operator. In the case at bar, as already pointed out, the request for a bad order examination and the issuance of a report flowing from such bad order examination, both

occurred on the very date of last delivery of the goods to the consignee, i.e., 9 July 1974. The formal documented claim of the consignee was filed just thirty-one (31) days after final delivery of the goods to the consignee and after verification and ascertainment by the arrastre operator of its own liability for misdelivery or delivery in bad order of the 111 bags of soybean meal. Thus, the consignee literally complied with the second proviso of Article VI, Section 1 of the Management Contract that:

"The request for certificate of loss shall be made within thirty (30) days from the date of delivery of last package to the consignee, broker or importer."

Of course, the consignee had not literally complied with the other proviso of Article VI, Section 1 of the Management Contract which, in addition, required the formal claim to be filed with the contractor "within fifteen (15) days from date of issuance by the contractor of a certificate of loss, damage or injury or certificate of non-delivery." But the whole purpose of time limitations for the filing of claims - and this is the thrust of Fireman's Fund - had already been fully satisfied by the demand of the consignee for a bad order examination and by the report of the arrastre operator on the results thereof; the operator had become aware of and had verified the facts giving rise to its liability. The arrastre operator thus suffered no prejudice at all by the lack of literal compliance with the fifteen (15) day limitation.

Under these circumstances, the Court is compelled to hold that the consignee had substantially complied with the second time requirement of Article VI, Section 1 of the Management Contract and that to release the arrastre operator from liability the reality and substantive legitimacy of which he does not, and indeed cannot, dispute, is intolerable to the conscience of the Court. In fact, the reasonableness and hence the enforceability of the second (15-day) time limitation appears open to serious question, when conjoined with the first (30-day) prescriptive period; but this it is not absolutely necessary to determine.

The Court must stress that respondent E. Razon, being an arrastre operator, is a public utility, discharging functions which are heavily invested with public interest. Provisions limiting the liability of a public utility operator through the imposition of multiple prescriptive periods for the filing of claims by members of the general public who must deal with the public utility operator, must be carefully scrutinized and reasonably construed so as to protect the legitimate interest of the public which the public utility must serve.

WHEREFORE, the Court Resolved to GRANT the Petition for Review and to SET ASIDE the trial court's Decision in Civil Case No. 97581. Private respondent E. Razon, Inc. is hereby ORDERED to pay petitioner New Zealand Insurance Co., Ltd. the amount of P5,746.61 in satisfaction of petitioner's claim for indemnity. Costs against private respondent.

SO ORDERED.

Fernan, C.J., (Chairman), Bidin, and Cortes, JJ., concur.
Gutierrez, Jr., J., on leave.

[1] Rollo, pp. 41-46, Annex "C" of Petition.

[2] Original Exhibits, pp. 1, 2, 46 and 47.

[3] Id., pp. 3, 11, 12, 13 and 15.

[4] Id., pp. 5, 6, 43 and 44.

[5] Id., pp. 4 and 45.

[6] Id., p. 10, Exhibit "G."

[7] Rollo, pp. 28-31, Annex "A" of Petition. The Complaint was filed on 30 April 1975 with Branch 31 of the then Court of First Instance of Manila and there docketed as Civil Case No. 97581.

[8] Id., pp. 32-34, Annex "B" of Petition.

[9] Original Exhibits, pp. 55-87.

[10] Decision, pp. 4-5.

[11] Rollo, pp. 51-58.

[12] Id., p.75.

[13] 110 Phil. 231 (1960).

[14] 110 Phil. at 233; underscoring supplied.

[15] 16 SCRA 795 (1966).

[16] 16 SCRA at 797-798; underscoring supplied.

[17] Decision, pp. 5-6.

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