

**LU DO & LU YM CORPORATION, PETITIONER AND DEFENDANT,
VS. I. V. BINAMIRA, RESPONDENT AND PLAINTIFF.***G. R. No. L-9840. April 22, 1957*

Ponente: BAUTISTA ANGELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/5fcd9fa09a9d/>**BAUTISTA ANGELO, J.:**

On April 4, 1954, plaintiff filed an action in the Court of First Instance of Cebu against defendant to recover the sum of P324.63 as value of certain missing shipment, P150 as actual and compensatory damages, and P600 as moral and pecuniary damages. After trial, the court rendered judgment ordering defendant to pay plaintiff the sum of P216.84, with legal interest. On appeal, the Court of Appeals affirmed the judgment, hence the present petition for review.

On August 10, 1951, the Delta Photo Supply Company of New York shipped on board the M/S "Fernside" at New York, U.S.A., six cases of films and/or photographic supplies consigned to the order of respondent I. V. Binamira. For this shipment, Bill of Lading No. 29 was issued. The ship arrived at the port of Cebu on September 23, 1951 and discharged her cargo on September 23 and 24, 1951, including the shipment in question, placing it in the possession and custody of the arrastre operator of said port, the Visayan Cebu Terminal Company, Inc.

Petitioner, as agent of the carrier, hired the Cebu Stevedoring Company, Inc. to unload its cargo. During the discharge, good order cargo was separated from the bad order cargo on board the ship, and a separate list of bad order cargo was prepared by Pascual Villamor, checker of the stevedoring company. All the cargo unloaded was received at the pier by the Visayan Cebu Terminal Company, Inc., arrastre operator of the port. This terminal company had also its own checker, Romeo Quijano, who also recorded and noted down the good cargo from the bad one. The shipment in question was not included in the report of bad order cargo of both checkers, indicating that it was discharged from the ship in good order and condition.

On September 26, 1951, three days after the goods were unloaded from the ship, respondent took delivery of his six cases of photographic supplies from the arrastre operator. He discovered that the cases showed signs of pilferage and, consequently, he hired marine surveyors, R. J. del Pan & Company, Inc. to examine them. The surveyors examined the cases and made a physical count of their contents in the presence of representatives of petitioner, respondent and the stevedoring company. The finding of the surveyors showed that some films and photographic supplies were missing valued at P324.63.

It appears from the evidence that the six cases of films and photographic supplies were discharged from the ship at the port of Cebu by the stevedoring company hired by petitioner as agent of the carrier. All the unloaded cargo, including the shipment in question, was received by the Visayan Cebu Terminal Company, Inc., the arrastre operator appointed by the Bureau of Customs. It also appears that during the discharge, the cargo was checked both by the stevedoring company hired by petitioner as well as by the arrastre operator of the port, and the shipment in question, when discharged from the ship, was found to be in good order and condition. But after it was delivered to respondent three days later, the same was examined by a marine surveyor who found that some

films and supplies were missing valued at P324.63.

The question now to be determined is is the carrier responsible for the loss considering that the same occurred after the shipment was discharged from the ship and placed in the possession and custody of the customs authorities?

The Court of Appeals found for the affirmative, making on this point the following comment:

"In this jurisdiction, a common carrier has the legal duty to deliver goods to a consignee in the same condition in which it received them. Except where the loss, destruction or deterioration of the merchandise was due to any of the causes enumerated in Article 1734 of the new Civil Code, a carrier is presumed to have been at fault and to have acted negligently, unless it could prove that it observed extraordinary diligence in the care and handling of the goods (Article 1785, supra). Such presumption and the liability of the carrier attach until the goods are delivered actually or constructively, to the consignee, or to the person who has a right to receive them (Article 1736, supra), and we believe delivery to the customs authorities is not the delivery contemplated by Article 1736, supra, in connection with the second paragraph of Article 1498, supra, because, in such a case, the goods are then still in the hands of the Government and their owner could not exercise dominion whatever over them until the duties are paid. In the case at bar, the presumption against the carrier, represented by appellant as its agent, has not been successfully rebutted."

It is now contended that the Court of Appeals erred in its finding not only because it made a wrong interpretation of the law on the matter, but also because it ignored the provisions of the bill of lading covering the shipment wherein it was stipulated that the responsibility of the carrier is limited only to losses that may occur while the cargo is still under its custody and control.

We believe this contention is well taken. It is true that, as a rule, a common carrier is responsible for the loss, destruction or deterioration of the goods it assumes to carry from one place to another unless the same is due to any of the causes mentioned in Article 1734 of the new Civil Code, and that, if the goods are lost, destroyed or deteriorated, for causes other than those mentioned, the common carrier is presumed to have been at fault or to have acted negligently, unless it proves that it has observed extraordinary diligence in their care (Article 1735, Idem.), and that this extraordinary liability lasts from the time the goods are placed in the possession of the carrier until they are delivered to the consignee, or "to the person who has the right to receive them" (Article 1736, Idem.), but these provisions only apply when the loss, destruction or deterioration takes place while the goods are in the possession of the carrier, and not after it has lost control of them. The reason is obvious. While the goods are in its possession, it is but fair that it exercise extraordinary diligence in protecting them from damage, and if loss occurs, the law presumes that it was due to its fault or negligence. This is necessary to protect the interest of the owner who is at its mercy. The situation changes after the goods are delivered to the consignee.

While we agree with the Court of Appeals that while delivery of the cargo to the customs authorities is not delivery to the consignee, or "to the person who has a right to receive them", contemplated in Article 1736, because in such case the goods are still in the hands of the Government and the owner cannot exercise dominion over them, we believe however that the parties may agree to limit the liability of the carrier considering that the goods have still to go through the inspection of the customs authorities before they are actually turned over to the consignee. This is a situation where we may say that the carrier loses control of the goods because of a custom regulation and it is unfair that it be made responsible for what may happen during the interregnum. And this is precisely what was done by the parties herein. In the bill of lading that was issued covering the shipment in question, both the carrier and the consignee have stipulated to limit the responsibility of the carrier for the loss or damage that may be caused to the goods before they are actually delivered by inserting therein the following provisions :

1. " * * * The Carrier shall not be liable in any capacity whatsoever for any delay, nondelivery or misdelivery, or loss of or damage to the goods occurring while the goods are not in the actual custody of the Carrier. * * *"
(Italics ours.)

(Paragraph 1, Exhibit "1")

2. " * * * The responsibility of the Carrier in any capacity shall altogether cease and the goods shall be considered to be delivered and at their own risk and expense in every respect when taken into the custody of customs or other authorities. The Carrier shall not be required to give any notification of disposition of the goods. * * *"
(Italics ours.)

(Paragraph 12, Exhibit "1")

3. "Any provisions herein to the contrary notwithstanding, goods may be * * * delivered by Carrier at ship's tackle * * * and delivery beyond ship's tackle shall be entirely at the option of the Carrier and solely at the expense of the shipper or consignee."

(Paragraph 22, Exhibit "1")

It therefore appears clear that the carrier does not assume liability for any loss or damage to the goods once they have been "taken into the custody of customs or other authorities", or when they have been delivered at ship's tackle. These stipulations are clear. They have been adopted precisely to mitigate the responsibility of the carrier considering the present law on the matter, and we find nothing therein that is contrary to morals or public policy that may justify their nullification. We are therefore persuaded to conclude that the carrier is not responsible for the loss in question, it appearing that the same happened after the shipment had been delivered to the customs authorities.

Wherefore, the decision appealed from is reversed, without pronouncement as to costs.

Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Conception, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.