

MALAYAN INSURANCE CO., INC., PLAINTIFF-APPELLEE, VS. MANILA PORT SERVICE AND/OR MANILA RAILROAD COMPANY, DEFENDANTS-APPELLANTS.

G.R. No. L-23128. September 30, 1978

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Appeal by the defendants from the judgment of the Court of First Instance of Manila in Civil Case No. 53930, ordering them to pay the plaintiff various sums of money, with interest thereon at the rate of 60% per annum from the filing of the complaint, as well as attorney's fees in the amount of P300.00, and to pay the costs of suit.

The facts, as found by the trial court, are as follows:

"There were six shipments of flour on board different vessels, one coming from a port in the United States and five others from Vancouver, B.C., consigned to different persons, with Manila as the port of discharge. All the shipments were insured against all risks with the plaintiff. Upon arrival of the carrying vessels in the port of Manila, the cargo was discharged into the custody of the Manila Port Service, the Arrastre Contractor of this port and a subsidiary of the Manila Railroad Company. In due time, the cargo was delivered by the Manila Port Service to the customs broker of the respective consignees.

"In all the shipments, different numbers of bags of flour were received by the consignees in bad order while that covered by the first, third, fourth and fifth causes of action, there were also short deliveries. Upon request of the consignees, examinations were made by employees of the Manila Port Service of the portion of the damaged cargo, after which the corresponding reports were made of the result thereof. Similarly, the Arrastre Contractor issued certificates indicating the number of bags of flour delivered by it to and received by the consignees.

"The consignees filed provisional claims with the Manila Port Service, which were supplemented by formal claim specifying the nature, extent and value of the damage suffered. Similarly, claims were filed with the plaintiff, as insurer of the different shipments. After processing the claims, the plaintiff paid the consignees the damages they respectively suffered and the former was then subrogated to the rights of the latter with respect to the payment of their claims against the Manila Port Service."[1]

When the Manila Port Service rejected the claims, the insurance company filed an action before the Municipal Court of Manila for the recovery of the various sums of money it paid to the consignees. After trial, the court found for the plaintiff and ordered the defendants to pay the amounts claimed in the complaint. Consequently, the defendants appealed to the Court of First Instance of Manila, where they filed an answer denying the material

allegations of the complaint and claiming, by way of special defense, that the defendant Manila Port Service, as arrastre contractor, delivered to the consignees the same number of bags of flour in the same condition as when it received them from the carrying vessels, and that the consignees failed to file their claims within fifteen (15) days from the date of discharge of the last package from the carrying vessel.

On December 10, 1963, the Court of First Instance of Manila issued a decision, the dispositive portion of which reads, as follows:

"WHEREFORE, judgment is hereby rendered sentencing the defendants to pay the plaintiff the following amounts with interests thereon at the rate of 6% per annum from the date of the filing of the complaint:

"1. In the first cause of action, the sum of P1,063.24 (Exh. G);

"2. In the second cause of action, the sum of P142.14 (Exh. K-1);

"3. In the third cause of action, the sum of P1,751.45 (Exh. L-2);

"4. In the fourth cause of action, the sum of P460.13 (Exhs. D-3, G-3 and 8);

"5. In the fifth cause of action, the sum of P750.52 (Exh. H-4);

"6. In the sixth cause of action, the sum of P397.29 (Exh. K-5);

"7. The defendants shall also pay to the plaintiff the sum of P300.00 as attorney's fees plus the costs of suit." [2]

Hence, this appeal.

1. The appellants contend that the provisional claims filed by the consignees did not constitute claims for value required to be filed under paragraph 15 of the Management Contract for they did not state the value of the particular packages alleged to have been lost or damaged; hence, the provisional claims are invalid.

The contention is without merit. The filing of a provisional claim within 15 days from the discharge of the goods from the carrying vessel is sufficient compliance with the requirement of Sec. 15 of the Management Contract. In the case of *Philippine Education Co., Inc. vs. Manila Port Service, et al.*, [3] this Court said:

"The first issue that appellant tenders is the alleged insufficiency of the provisional claim, for failure to state the money value of the damage sustained. We have overruled this contention in numerous decisions rendered previously, particularly *Atlantic Mutual Insurance Co. vs. United Lines and Manila Port Service*, L-21546, March 31, 1966; *State Bonding & Insurance Co. vs. Manila Port Service*, L-21838, February 28, 1966 and *Domestic Insurance Co. vs. Manila Railroad Co.*, L-24066, August 30, 1967, wherein we ruled that the

purpose of a provisional claim being to afford the arrastre operator a reasonable opportunity to check the validity of the claim while the facts are still fresh the absence of a statement therein as to the precise amount of the loss does not render the claim invalid as a substantial compliance with the terms of Section 15 of the arrastre management contract, so long as the claim is filed after the discharge of the cargo and within 15 days thereafter."

The rule was reiterated in the case of *Tabacalera Insurance Co. vs. Manila Railroad Co., et al.*,^[4] wherein this Court said:

"The rule is now well settled that the filing of a provisional claim within 15 days from the discharge of the goods from the carrying vessel is a sufficient compliance of the requirement of Sec. 15 of the Management Contract heavily relied upon by herein appellants. (*United Insurance Company, Inc. v. Royal Inter-Ocean Lines, et al.*, L-22688, April 27, 1967; *Domestic Insurance Co. of the Phil. v. Manila Railroad, et al.*, L-24066, August 30, 1967; *Atlantic Mutual Insurance Co., et al. v. Manila Port Service*, L-21907, April 29, 1966; *State Bonding & Insurance Co., Inc. v. Manila Port Service*, L-21833, Feb. 28, 1966; *Yu Kimteng Construction Corp. v. Manila Railroad*, L-17027, Nov. 29, 1965; *G.S.I.S. vs. MRR*, L-20342, Nov. 29, 1965). The circumstances that the said provisional claim did not specify the value of the loss, still substantially complies with the requirement of the contract aforesaid, and is not a defense against the claim of the consignee after it shall have ascertained later the value of its actual loss or damage (*State Bonding & Insurance Co. v. Manila Port Service*; *Domestic Insurance Co. of the Phil. v. Manila Port Service*, *supra*). And the rule is not without reason. While claims should be filed within the period provided to afford the carrier or depository 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 the documents are still available (*David Consunji, et al. v. Manila Port Service*, L-15551, Nov. 29, 1960; *Phil. Education Co., Inc. vs. Manila Port Service, et al.*, L-24091, Sept. 20, 1967), the consignee should likewise be given reasonable opportunity to examine and determine with certainty the extent of the loss or damage to its goods after the same shall have been delivered by the arrastre operators which may or may not be within the 15-day period stipulated. Meanwhile therefore, that a consignee has not actually received the goods consigned to it, the filing of a provisional claim should be allowed to beat the short period granted under the contract, provided that at the time the provisional claim is submitted the consignee has acquired some general knowledge or information that its shipment has been damaged or lost."

2. The appellants next claim that Sec. 15 of the Management Contract expressly provides that the claim should be filed within fifteen (15) days from the date of discharge of the last package from the carrying vessel; consequently, the provisional claims filed by the consignees under the appellee's second, fourth, and sixth causes of action, which were received by the appellant arrastre operator two (2) days before the discharge of the last package of the shipments, were imaginary, speculative, and misleading.

Indeed, under Sec. 15 of the Management Contract, the claim should be made after the discharge of the last cargo from the carrying vessel. However, it has been held that if the consignee or broker was informed of a shortage or damage to the goods before the unloading of the last package, or even during the unloading, a provisional claim may properly be presented. Thus, in the case of *Switzerland General Insurance Co. Ltd. vs. Java Pacific and Hoegh Lines, et al.*,^[5] the Court said:

"The contention that the provisional claim filed by appellee infringes Section 15 of the Management Contract simply because it was filed one day before the date of the last discharge of the shipment is untenable because such filing may be considered as a substantial compliance with said section which provides that it should be filed within 15 days from the date of discharge of the last package from the carrying vessel. If upon the examination of the shipment certain shortages were found and that examination took place in the presence of

the representatives of both parties, the notice given to appellant regarding a claim for certain loss or damage, even if premature, should be deemed to controvert the shortcoming that has been actually discovered. Since the purpose of the claim is merely to put the party affected on guard so that it may protect its interest, we find no error on the part of the court a quo to consider said provisional claim as a substantial compliance with the requirement above-referred to."

Moreover, the provisional claims filed in the instant case cannot be considered speculative since short deliveries were confirmed after the bad order examinations were made.

3. The appellants also contend that no proof, documentary or oral, was presented to show the number and/or condition of the merchandise as actually unloaded unto appellants' custody; hence, appellants cannot be held liable.

The contention is without merit. In the instant case, the trial court found that there was short delivery in that the number of bags delivered to the consignees was less than the quantity of the manifested cargo.[6] This case being a direct appeal from the Court of First Instance, the review must be confined to points of law and the findings of fact of the court below can no longer be questioned.

4. It is further contended that the award should be limited to the established invoice value of the damaged goods, not its CIF[7] value.

This contention is without merit. In *Caltex (Phil.) Inc. vs. Manila Port Service, et al.*,[8] this Court held that the arrastre operator is responsible not only for the invoice value of the goods damaged or lost, but also for all damages that may be suffered by the consignee on account of their loss, destruction or injury.

5. Finally, the appellants contend that the trial court erred in awarding to the appellee an amount higher than that prayed for in the complaint.

The contention is meritorious. In its complaint, the appellee asked for the "sum of P3,236.46 on all causes of action, plus interest thereon from the time of first demand until complete and full payment thereof the sum of P500.00 by way of attorney's fees, and costs." [9] The trial court, however, awarded to the appellee the total amount of P4,564.77, with interests thereon at the rate of 6% per annum from the filing of the complaint; attorney's fees in the amount of P300.00; and the costs of suit.[10] In the case of *J.M. Tuason & Co. vs. Santiago*,[11] this Court ruled that where the plaintiff failed to amend the prayer of its complaint as to the amount of damages so as to make it conform to the evidence, the amount demanded in the complaint should be awarded as damages. There having been no amendment to the prayer in the complaint to conform with the evidence, the award to the appellee should be reduced to the sum of P3,235.46, on all causes of action, plus interest thereon at the rate of 6% per annum from the filing of the complaint.

With the modification above indicated, the judgment appealed from should be, as it is hereby, affirmed in all other respects, with costs against the appellants.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Aquino, and Santos, JJ., concur.

[1] Record on Appeal, pp. 21-22.

[2] *Id.*, p. 27.

[3] L-23811, Oct. 30, 1967, 21 SCRA 603, 604.

[4] L-23636, Oct. 31, 1967, 21 SCRA 709, 715.

[5] L-21760, April 30, 1966, 16 SCRA 916, 920.

[6] Record on Appeal, p. 24.

[7] Cost, insurance, and freight.

[8] L-21055, Aug. 31, 1966, 17 SCRA 1073.

[9] Record on Appeal, p. 10.

[10] *Id.*, p. 27.

[11] 99 Phil. 615, 632.

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