

**FIREMAN'S FUND INSURANCE COMPANY,
PLAINTIFF-APPELLEE, VS. MANILA RAILROAD COMPANY AND ITS
SUBSIDIARY MANILA PORT SERVICE, DEFENDANTS-APPELLANTS.**

G.R. No. L-24166. April 25, 1969

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal by the Manila Railroad Company and its subsidiary, Manila Port Service, from the decision of the Court of First Instance of Manila in its Civil Case No. 53510, holding them liable to pay appellee Fireman's Fund Insurance Company the sum of P3,000.52 - the invoice value of 15 bales of crude natural rubber which appellants failed to deliver to the consignee thereof.

In a nutshell, the antecedent facts are as follows: On March 25, 1962, the SS "ZEELAND" arrived at the port of Manila. On the same date, it unloaded unto the custody of the Manila Port Service, subsidiary of the arrastre operators Manila Railroad Company, 858 bales of crude natural rubber shipped under four(4) separate invoices from the ports of Swettenham and Singapore, consigned to B. F. Goodrich (Phil.), Inc. Of the shipment, only 832 bales were thereafter delivered by appellant Manila Port Service to said consignee thereof who, within 15 days from the discharge of the last bale or package of the goods from the above-named carrying vessel, filed with said appellant a "provisional claim" concerning 15 of the total of 26 bales undelivered.[1] About three months later, or on July 23, 1962, the said consignee then presented a "formal claim" particularly indicating the quantity, marks, counter-marks and value of its lost merchandise.

Appellee Fireman's Fund Insurance Company, insurer of the goods, was obliged to pay the value of the lost merchandise, and was thereby subrogated to the rights of said consignee. It then commenced action against appellants in the court a quo to recover the loss, along with claims for damages and attorney's fees. Upon joining of issues, the parties entered into a stipulation of facts containing the circumstances already set forth above, on the basis of which, the court, on December 24, 1964, issued the decision appealed from; and as earlier stated, the Manila Railroad and its subsidiary, Manila Port Service, interposed the present appeal.

The lone law question posed for resolution is: whether or not the so called "provisional claim" - without any statement of the marks, number of packages, contents, nor their value[2] - is a sufficient compliance with the provisions of Section 15 of the Management Contract providing as follows:

"x x x in any event the CONTRACTOR shall be released of any and all responsibility for loss, damage, misdelivery, and/or non-delivery of goods, unless suit in the court of proper jurisdiction is brought within a period of one(1) year from the date of the discharge of the goods, or from the date when the claim for 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 discharge of the last package from the carrying vessel. x x x."

No elaborate discussion is necessary to show that the instant appeal cannot prosper. It is definitely settled by this

Court that upon facts parallel to the present, the so-called provisional claim is a sufficient compliance with the provisions of the Management Contract above-quoted. Suffice it to quote here, for purposes of emphasis, the holding of this Court in one of the latest of these precedents:[3]

"It thus appears that the provisional claims in connection with each one of these seven shipments were filed within 15 days from the discharge of the last package. Defendants maintain, however, that inasmuch as said period had expired before the filing of the formal claims, plaintiff should be deemed barred from recovering the corresponding indemnity. This pretense is predicated upon the theory that the aforementioned provisional claims are not claims 'for the value' of the goods lost, damaged or not delivered to the plaintiff.

"Such a theory is manifestly untenable, for: (1) it assumes that the claim must state the value of said goods, which the above-quoted paragraph 15 does not require; and (2) a provisional claim may be sufficient, even if the value of the goods involved were not stated therein, if it describes said goods sufficiently to permit its identification by the operator and the determination by the latter of the facts relevant thereto, such as the name of the carrying vessel, its date of arrival, the corresponding bill of lading or other shipping documents in which the value of the goods is set forth, etc., 'while the facts are still fresh in the minds of the persons who took part in the transaction and while the pertinent documents are still available.'[4]

"Thus, in *Domestic Insurance Co. vs. Manila Railroad Co.* (L-24066, August 30, 1967), We explicitly declared that 'x x x The circumstances that the provisional claim did not specify the value of the loss' does not detract from the fact that said claim 'still substantially fulfills the requirements of the contract aforementioned (*State Bonding & Insurance Co. vs. Manila Port Service*, supra), and is not a defense against the claim of the consignee for recovery after it shall have ascertained later its actual loss or damage.' x x x."

It is not pretended by appellants that in the form the provisional claim was presented said claim did not contain sufficient information to permit them to identify the goods involved and to determine the facts relative to said claim. Very aptly, the trial court pointed out that the said provisional claim "is a sufficient notice or warning to the defendant, and affords him the opportunity to check up the claim for loss. To require the consignee to state in detail the description, nature, and value of the goods missing, or short delivered, would require consignee to do the impossible as it is a matter of public knowledge that before the goods are released by the Bureau of Customs, more than 15 days elapsed from the time that they are delivered to the arrastre service."

WHEREFORE, the instant appeal is dismissed, with costs against appellants.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, and Teehankee, JJ., concur. Castro and Capistrano, JJ., did not take part.

[1] The consignee failed to file any claim, written or oral, with respect to the other 11 bales that were not delivered to it, apparently because they were shipped under a separate invoice. At any rate, these 11 bales are not involved in this case.

[2] The goods appear to be identified in the "provisional claim" (pp. 9-10, Appellee's Brief) by means of the name of the carrying vessel, Reg. No., and B/L No.

[3] *Filipro, Inc. vs. Manila Port Service and/or Manila Railroad Company*, L-25724, October 8, 1968, 25 SCRA 457.

[4] *Id.* citing *Liverpool & London & Globe Insurance vs. Manila Port Service*, L-23338, Nov. 18, 1967; *Tabacalera vs. Manila Railroad*, L-23636, Oct. 31, 1967; *Phil. Education Co. vs. Manila Port Service*, L-2409, Sept. 20, 1967; *Atlantic Mutual Insurance vs. Manila Port Service*, L-21907, April 29, 1966; *United Insurance vs. Royal Inter Ocean Lines*, L-22688, April 27, 1967; *State Bonding Inc. vs. Manila Port Service*, L-21833, Feb.

28, 1966; Yu Kimteng Construction Corp. vs. Manila Railroad, L-17027, Nov. 29, 1965; GSIS vs. Manila Railroad, L-20342, Nov. 29, 1965; Bernabe vs. Delgado Brothers, 58 O. G. 1104.

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