

**TRAVELERS INDEMNITY COMPANY, PLAINTIFF-APPELLANT, VS.
BARBER STEAMSHIP LINES, INC., MACONDRAY & CO., INC.,
REPUBLIC OF THE PHILIPPINES AND CUSTOMS ARRASTRE SERVICE,
DEFENDANTS-A...**

G.R. No. L-27019. May 06, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

The Court of First Instance of Manila in Civil Case No. 62976 found that a cargo of nylon and cotton piece goods was damaged before it was discharged from the vessel Tagaytay in the port of Manila in February, 1965. The damage amounted to \$18.50 (equivalent to fifty pesos).

The lower court ordered defendants Barber Steamship Lines and Macondray & Co., Inc., as agents of the carrying vessel, to pay fifty pesos to plaintiff Travelers Indemnity Company. That entity had insured the cargo against all risks. It had paid to the consignee, Royal Undergarment Corporation of the Philippines, Inc., the sum of \$807.68, which was the amount of the loss and damage claimed by the said consignee. The insurance company was subrogated to the consignee's right to claim the damage (Exh. H).

The lower court also found that the Customs Arrastre Service failed to deliver to the consignee a part of the said cargo. The value of the missing cargo was \$56.23.

But the lower court did not order defendants Republic of the Philippines and Customs Arrastre Service to pay the Travelers Indemnity Company the sum of \$56.23. The court sustained the government's contention that the State is exempt from suit. The court further observed that the Customs Arrastre Service, an agency of the Bureau of Customs in the port of Manila, is not a juridical person and that any suit against it is a suit against the State.

The Travelers Indemnity Company appealed from the lower court's decision to this Court "insofar only as it dismisses the case against defendants Republic of the Philippines and Customs Arrastre Service".

Appellant Travelers Indemnity Company did not confine its brief to that legal issue. It insisted that the consignee had suffered a loss in the sum of \$807.68 and that the arrastre operator should pay the sum of \$789.18 which is the difference between \$807.68 and the sum of \$18.50 that was adjudged against the agents of the carrying vessel.

We hold that appellant insurance company is precluded from raising in its third assignment of error the factual issue of whether the liability of the arrastre operator for the missing cargo is \$789.18 and not \$56.23, as found by the trial court.

Appellant company is bound by the fact found by the trial court that the loss occasioned by the shortage or nondelivery amounts only to \$56.23 (Sec. 2, Rule 42, Rules of Court; *Millar vs. Nadres*, 74 Phil. 307).

As to the question of the suability of the State (the arrastre operator), which is the legal issue raised in appellant's first and second assignments of error, the trial court did not err in dismissing the company's action for the

recovery of loss or damage amounting to \$789.18.

It is settled that the Bureau of Customs, acting as part of the machinery of the national government in the operation of the arrastre service, is immune from suit under the doctrine of nonsuability of the State. The claimant's remedy to recover the loss or damage to the goods under the custody of the customs arrastre service is to file a claim with the Commission on Audit as contemplated in Act No. 3083 and Commonwealth Act No. 327 (Gloren, Inc. vs. Republic, L-26811, July 31, 1970, 34 SCRA 26 and cases cited in Vol. 1, SCRA Quick Index Digest, pp/ 165-7).

WHEREFORE, the trial court's judgment is affirmed. No costs.

SO ORDERED.

Fernando, (Chairman), Antonio, Muñoz Palma, and Martin, JJ., concur.
Barredo and Concepcion, Jr., JJ., no part.

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