

GOVERNMENT SERVICE INSURANCE SYSTEM (AS ADMINISTRATOR OF THE PROPERTY INSURANCE FUND UNDER R. A. NO. 656), PLAINTIFF AND APPELLEE VS. MANILA RAILROAD COMPANY, ET AL., DEFENDANTS...

G.R. No. L-20342. November 29, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

On April 16, 1956 one (1) box and forty (40) pieces of tractor parts were shipped at California, U.S.A., aboard S.S. "STEEL ARCHITECT", consigned to the National Marketing Corporation (NAMARCO) in Manila. S.S. "STEEL ARCHITECT" arrived in Manila on May 19, 1956. The shipment was discharged from the vessel on May 22, 1956, into the possession of the Manila Port Service, arrastre operator.

J. De Vera Brokerage, broker of NAMARCO, submitted on June 2, 1956 all papers for the shipment, expressing readiness to take delivery of the same. Said papers were then processed by the Marine division of the Bureau of Customs.

On June 11, 1956 the Customs examiner inspected the consignment and found the entire shipment intact. The following day, however, the cargo was delivered to J. De Vera Brokerage, eleven (11) pieces short, that is, only one (1) box and twenty-nine (29) pieces were delivered.

A provisional claim was filed by J. De Vera Brokerage on June 16, 1956, with the Manila Port Service, for "11 Pieces Tractor Parts (Short)". A corresponding formal claim was filed on July 12, 1956 for the same items.

For the loss of the eleven pieces of tractor parts, the Government Service Insurance System (GSIS), as insurer of the shipment, paid NAMARCO on March 7, 1957 the sum of P2,046.50. After GSIS was refused payment by the Manila Port Service for said amount, suit was filed therefor in the Court of First Instance of Manila on May 11, 1957, against the Manila Railroad Company, its subsidiary the Manila Port Service, and the shipping agent Macleod & Company.

On September 20, 1957, after trial, the Court of First Instance rendered a decision in favor of plaintiff GSIS, ordering defendants Manila Railroad Company and Manila Port Service to pay P1,898.93 plus costs. Said defendants, however, moved for reconsideration. Notwithstanding opposition by GSIS, the trial court rendered on October 15, 1957 an "Amended Decision", dismissing - the complaint for the reason that no claim was filed within 15 days after the discharge of the last package from the carrying vessel, as required by a provision of the management contract between the arrastre operator and the Bureau of Customs.

GSIS appealed to this Court, the appeal being docketed herein as L-13276. On February 25, 1961 this Court rendered decision in L-13276, ruling that the provision of the management contract requiring the claim to be filed within a period of 15 days is binding on the consignee under the facts of the case, but remanding the case to the trial court for evidence as to the date of notice or knowledge of the consignee that the goods had arrived, to

ascertain if there was reasonable opportunity to comply with the aforestated condition.

After further proceedings, the lower court rendered judgment on August 20, 1962, stating that: (1) No evidence was presented to show that the consignee knew or was notified of the arrival of the goods earlier than June 2, 1956; (2) the Customs examiner inspected and found the entire shipment intact on June 11, 1956; (3) the loss occurred only after the Customs inspection, on June 11, 1956 and before delivery to the consignee's broker on June 12, 1956; (4) it was impossible for the consignee to file its claim within 15 days from the discharge of the shipment by the vessel, since the loss took place only on the 20th or 21st day after said discharge; (5) the condition being impossible, it is deemed not imposed. Accordingly, it ordered the Manila Railroad Company and the Manila Port Service to pay GSIS the sum of P2,046.50 plus interest and costs. A second appeal was taken to this Court, this time by the defendants abovementioned.

Appellants invoke Section 15 of the management contract providing for a release of the arrastre operator from liability unless a claim for the value of the goods lost is filed with it within fifteen days from the date of discharge of the last package from the carrying vessel. As ruled by this Court, however, such condition does not strictly apply in all cases, it was not so applied in *Republic vs. Manila Port Service*, 119 Phil. 884; because in said case the consignee was able to take hold of the shipment only after two months and a half from the arrival of the vessel and the subsequent discharge of the goods therefrom.

In *Chiok Ho vs. Compania Maritima*, L-20553, April 30, 1965, we held that what is important is the date when the shipment was actually delivered to the consignee in order that he may be given the chance to discover if there is something missing or lost in the shipment.

As early as *Consunji vs. Manila Port Service*, 110 Phil., 231, this Court stated that it would be unfair and inequitable to apply the 15-day proviso where the consignee comes to know the damage or loss only after the lapse of such 15-day period, for instance, where delivery by the contractor takes place 16 days after the discharge of the last package from the vessel.

The rule to follow, in such cases is that stated in *Yu Kimteng Construction vs. Manila Railroad Co.*, L-17027, November 29, 1965, namely, to count the 15-day period not from the discharge of the last package from the carrying vessel, but from, the date the consignee learned, or could have learned, of the loss, damage or misdelivery.

In the case at bar, as stated, the shipment was delivered to the consignee's broker only on June 12, 1956, after 21 days following its discharge from the carrying vessel; the loss occurred only after the Customs examination on June 11, 1956 but prior to the delivery to the consignee's broker. It is clear that the consignee learned of the loss only on June 12, 1956, when the Manila Port Service effected a delivery that was short by eleven pieces. A provisional claim was filed on June 16, 1956, well within 15 days from such knowledge of the loss. Such claim, therefore, was made on time and is not barred by the provision of Section 15 of the management contract.

Wherefore, the judgment appealed from is affirmed, with costs against appellants. So ordered.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Dizon, Regala, Makalintal, and Zaldivar, JJ., concur.

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