

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

G.R. No. L-26700. May 15, 1969

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

In a suit for recovery of money arising out of short delivery and pilferage of goods - which came into the Philippines under four importations - while in the possession of the Manila Port Service, judgment was rendered by the City Court of Manila against defendants. The latter appealed. In the Court of First Instance of Manila, the case came up for decision upon a stipulation of facts.[1] Judgment was thereafter rendered sentencing defendants to pay plaintiff "the sum of in, P1447.51 with legal interest thereon from the date the com-plaint was filed on December 28, 1962 until full payment is made, plus the sum of P200 by way of attorney's fees" and the costs.

Defendants appealed on points of law.

On November 30, 1961, Pacific Electrical Supply, Inc. imported from the United States a shipment of 342 cartons and two crates of electrical surface raceways and fittings. This was placed on board the SS "Pioneer Ming". On December 31, 1961, the "Pioneer Ming" arrived at the port of Manila and discharged the shipment into the custody of the Manila Port Service. One carton was pilfered of its contents while six cartons were not delivered. Plaintiff's loss arising therefrom is the subject of the first cause of action.

On November 29, 1961, Brunette Shoe Factory imported from the United States three cases upper leather carried on board the same SS "Pioneer Ming" in that same voyage. SS "Pioneer Ming" discharged the cargo into the custody of the Manila Port Service. The leather delivered was short of 111-3/4 square feet. This is covered by plaintiff's second cause of action.

For the third cause of action, plaintiff's case is predicated upon the facts following: On November 27, 1961, Dupro (Philippines), Inc. imported from the United States 18 cases of auto parts shipped on board the SS "Pioneer Ming". This vessel arrived in Manila on December 28, 1961. The shipment was discharged into the custody of the Manila Port Service. One case of that shipment was pilfered of its contents. Loss was occasioned to plaintiff.

The fourth cause of action refers to a shipment of 15 cases black umbrella cloth imported by Chua Luan and Co., Inc. from Japan on September 7, 1962, per SS "Narra" which arrived in Manila on September 15, 1982. The shipment was discharged into the custody of the Manila Port Service. It turned out, however, that two cases of the shipment were pilfered of contents resulting in loss to the consignee.

Having paid for the losses to the different importers upon covering insurance policies, plaintiff became the subrogee of the consignees.

1. It is now futile for defendants to pass on liability to the carriers which are not parties to this action. Paragraph 7 of the Stipulation of Facts will stop them. It reads: "VII. That the goods were discharged complete into the

custody of the defendant." Not that the stipulation stands alone. Defendants in their brief[2] categorically state that the opinion of the lower court "that the shipments in question were discharged into the custody of the defendant Manila Port Service complete with respect to quantity, is not disputed."

But defendants argue that the fact that the shipments were received by defendant Manila Port Service complete, does not mean that the goods were received in "good order". Defendants miss the point. This is immaterial. Because plaintiff's claim is for short delivery and pilferage.[3]

Consequently, liability cannot be shifted to the carriers.

2. Seizing upon the trial court's finding that there is "no proof that said shortages or damages with respect to the said goods were due to the negligence of the defendant, Manila Port Service",[4] defendants now put forth disclaimer of liability.

We start with the presumption in Article 1265 of the Civil Code that whenever "the thing is lost in the possession of the debtor, it shall be presumed that the loss was due to his fault, unless there is proof to the contrary." As early as 1907, this Court held that under Article 1183 of the Spanish Civil Code (Article 1265 of the new Code), "the burden of explanation of the loss rested upon the depositary and under article 1769 [of the Spanish Civil Code - now Article 1981 of the new Civil Code], the fault is presumed to be his." [5] It has been said that the legal relationship created between the consignee and the arrastre operator "is sufficiently akin to that existing between the consignee or owner of shipped goods and the common carrier or that between a depositor and the warehouseman." [6] And as custodian of the goods discharged from the vessel, it is the duty of the arrastre operator to take good care of the goods and turn them over to the party entitled to their possession. [7] It would seem quite elementary that since the care to be used in the safekeeping of the goods rests peculiarly within the knowledge of the Manila Port Service, it is incumbent upon said defendant to prove that the losses were not due to its negligence or that of its employees.

Because there is no proof that the losses occurred either without defendants' fault or by reason of caso fortuito, defendants are liable. [8]

3. Nor will defendants escape liability by pleading that no claim was filed within 15 days from "the date of discharge of the last package from the carrying vessel", [9] a condition precedent to recovery, as set forth in the said Section 15 of the Management Contract. It is correct to say that there is no proof of the date of discharge of each of the four shipments. But then, there is no necessity for such proof. There is the fact that provisional claims on each of the shipments were filed well within the 15-day period following the arrival of each of the vessels. Naturally, those claims were presented within 15 days from the date of delivery. The sufficiency of these provisional claims is not challenged. And although the provisional claims do not specify the value of the goods lost and were not accompanied by supporting papers, the jurisprudence is that such claims substantially fulfill the requirements. [10]

4. Defendants' next point is that they are not liable for the sum of P1,447.51 adjudged in the decision below. They say that their admission in paragraph VI of the Stipulation of Facts was delimited by the words "if any" recoverable, [11] Paragraph VI of the Stipulation of Facts reads:

"VI. That the value of the alleged claims recoverable, if any, by the plaintiff from the defendants is as follows:

1. P 355.00-First cause of action
2. P 66.92-Second cause of action
3. P 25.59-Third cause of action

4. P1, 000.00-Fourth cause of action."

Since the value of each claim is admitted and considering that plaintiff is entitled thereto as earlier expressed in this opinion and upon the terms of the stipulation just quoted, the lower court was correct in sentencing defendants to pay the total amount therein stated.[12]

5. Defendants next question the award of legal interest from the date the complaint was filed until full payment is made.[13] They also object to the award, of attorneys' fees.[14]

Interest upon an obligation which calls for the payment of money, absent a stipulation, is the legal rate. Such interest normally is allowable from the date of demand, judicial or extra-judicial.[15] The trial court opted for judicial demand as the starting point.

But then upon the provisions of Article 2213 of the Civil Code, interest "cannot be recovered upon unliquidated claims or damages, except when the demand can be established with reason-able certainty," And as was held by this Court in *Rivera vs. Perez*, L-6998, February 29, 1956, if the suit were for damages, "unliquidated and not known until definitely ascertained, assessed and determined by the courts after proof (*Montilla v. Corporacion de P.P. Agustinos*, 25 Phil. 447; *Lichauco v. De Guzman*, 38 Phil. 302)", then, interest "should be from, the date of the decision."

Defendants are correct in that Article 2213 of the Civil Code and the ruling in *Rivera vs. Perez* should govern the present case. The total of plaintiff's unliquidated claim for the value of the undelivered goods, as set forth in its complaint, amounted to P3,947.20. This demand was not established in its totality. It was not definitely ascertained. Indeed, plaintiff settled for an amount (P1,447.51) very much less than that demanded - in fact less than fifty percent (50%) of the claim. This amount of P1,447.51 was not known until definitely agreed upon in the stipulation of facts, Said stipulation was entered into in lieu of proof. These are the facts which place the present case within the coverage of the rule set forth in Article 2213 of the Civil Code and elaborated in *Rivera vs. Perez*. For which reason, interest should start from the date of the decision.

No reason exists why we should disturb the award of attorneys' fees. The court's authority to grant such attorneys' fees is well within the compass of Article 2208(11) of the Civil Code providing that attorneys' fees may be recovered in "any other case where the court deems it just and equitable."

For the reasons given, the judgment under review is hereby modified in the sense that the amount of P1,447.51 shall bear legal interest from the date of the decision below. Thus modified, the judgment under review is affirmed in all other respects.

Without costs.

SO ORDERED.

Reyes, J.B.L. (Acting C.J.), Dizon, Makalintal, Zaldivar, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

Concepcion, C.J., and Ruiz Castro, J., on official leave.

[1] Civil Case 55461, entitled "Malayan Insurance Company, Inc., Plaintiff, versus Manila Port Service and Manila Railroad Com-pany, Defendants."

[2] At p. 20.

[3] Complaint, R.A. pp. 3, 5, 6, 7.

[4] Appellants' brief, p. 17.

[5] *Palacio vs. Sudario*, 7 Phil. 275, 276.

[6] *Northern, Motors, Inc. vs. Prince Line*, 107 Phil. 253, 258.

[7] *Macondray & Co., Inc. vs. Delgado Bros., Inc.*, 107 Phil. 779, 782, See also: Section 21 of the Warehouse Receipts Law, which reads:

"SECTION 21. Liability for care of goods. - A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care."

[8] Article 1734, Civil Code.

[9] Appellants' brief, p. 10.

[10] *Atlantic Mutual Insurance Company vs. Manila Port Service*, 16 SCRA 698, 700.

[11] Appellants' brief, p. 22.

[12] Section 2, Rule 30, Revised Rules of Court.

[13] Appellants' brief, p. 23.

[14] Appellants' brief, p. 24.

[15] *V. Tolentino*, Civil Code of the Philippines, 1959 ed., p. 552, citing, cases.

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