

**FIREMEN'S FUND INSURANCE COMPANY,
PLAINTIFF-APPELLEE, VS. CIA. GENERAL DE TABACOS DE
FILIPINAS, ET AL., DEFENDANTS, MANILA PORT SERVICE AND OR
MANILA RAILROAD COMPANY, DEFENDANT...**

G.R. No. L-29338. August 15, 1970

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

In their appeal from the supplemental decision of the Court of First Instance of Manila in this case, defendants Manila Port Service and Manila Railroad Co. pray that the sum of P1,898.66 they were sentenced therein to pay to plaintiff-appellee, the Firemen's Fund Insurance Co., with interest and costs, be reduced to P500.

The facts are not disputed. Out of 15 cartons, shipped, at the port of New York, on board the vessel "Susan Maersk," and insured against damage or loss with the Firemen's Fund Insurance Co. - hereinafter referred to as the Insurer - only 14 cartons - part of the contents of one of which (case No. 218) was missing - were delivered by the Manila Railroad Co., through its subsidiary, the Manila Port Service, as arrastre operator for the Port of Manila, to the consignee, the General Electric Co. (PI), Inc. Hence, the latter seasonably filed its claim for the undelivered carton - Case No. 6652 - valued at P1,898.66, and for the missing contents of one of the delivered cartons - Case No. 218 - against the Manila Railroad Co. and the Manila Port Service, as well as against the Compañia General de Tabacos de Filipinas, the vessel's agent in the Philippines, hereinafter referred to as the Carrier.

As subrogee of the consignee, upon payment thereto of said sum of P1,898.66, for the missing carton, the Insurer commenced, in the Court of First Instance of Manila, the present action against the Carrier, the Manila Railroad Co. and the Manila Port Service, to recover the value of the missing goods, with interests, and costs.

After due hearing, said court rendered judgment finding that the entire shipment of 15 cartons had been unloaded from the MS "Susan Maersk" unto the custody of the Manila Port Service, which, however, failed to deliver to the consignee the carton in question - Case No. 6652 - but dismissing the complaint against the Manila Port Service and the Manila Railroad Co., upon the ground that, since the amount of plaintiff's claim is less than P5,000 the cause of action against said defendants is not within the original jurisdiction of the Court of First Instance. Upon the theory that, insofar as the Carrier is concerned, the action was, however, one in admiralty, this defendant was sentenced to pay the Insurer the sum of P38.25, for the missing contents of case No. 218, with interest thereon. On appeal, taken by the Insurer, the Supreme Court reversed said decision, insofar as it dismissed the action of the former against the Manila Port Service and the Manila Railroad Co., and directed the lower court to proceed further with the case, with costs against such defendants.

Upon subsequent retrial, the lower court rendered a supplemental decision for the plaintiff, and against the Manila Port Service and the Manila Railroad Co., in the aforementioned sum of P1,898.66, with interest and costs. Hence, this appeal by said defendants, who maintain that the judgment against them should be reduced to the sum of P500, pursuant to Section 15 of the Management Contract, Exhibit "10-MPS", the pertinent part of which reads:

"x x x and the CONTRACTOR, shall be solely responsible as an independent contractor for, and promptly pay to the steamship company, consignee, consignor, or other interested party or parties the invoice value of each package but which in no case shall be more than five hundred pesos (P500.00) for each package unless the value is otherwise specified or manifested, x x x." [1]

In support of their contention, appellants quote from the Domestic Insurance Company of the Philippines v. Manila Port Service:[2]

"The question thus presented is not new, the same having been squarely decided by us in Jose Bernabe, Inc. vs. Delgado Brothers, Inc.* G.R. No. L-14360, February 29, 1960; Atlantic Mutual Insurance Co. vs. Manila Port Service; et al., G.R. No. L-16271, October 31, 1961; The Insurance Company of North America vs. Manila Port Service; et al., G.R. No. L-17331, November 29, 1961, our ruling in said cases being substantially to the effect that, the consignee having taken delivery by virtue of a delivery permit to which was incorporated the provision of the management contract limiting the liability of the arrastre service operator for each package not delivered to P500.00, said consignee. is bound by such provision, unless he can prove that the value of the missing cargo is otherwise specified or manifested -which is not the case in the present action."

It should be noted, however, that this ruling and the cases cited therein are based upon the premise that the consignee had "taken delivery by virtue of a delivery permit to which was incorporated the provision of the management contract limiting the liability of the arrastre service operator for each package not delivered to P500.00." In the case at bar, the delivery permit, marked as Exhibit "E", does not incorporate or make any reference to the aforementioned provision of the Management Contract. No gate pass or other evidence has been introduced to show that the consignee had made use of any document incorporating said provision or making any reference thereto. Not being a party to said contract and not having availed of the provisions thereof, the Insurer is not bound by the-limitation therein contained.[3]

WHEREFORE, the decision appealed from should be, as it is hereby affirmed, with costs against defendants-appellants, (he Manila Port Service and the Manila Railroad Company.

IT IS SO ORDERED.

Reyes, J.B.L, Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee Barredo and Villamor, JJ., concur. Makasiar, J., did not take part.

[1] Appellants' Brief, pp. 4-5.

[2] G. R. No. L-13439, January 31, 1962.

[3] Sun Brothers v; Manila Port Service, 107 Phil. 988, 994; Reliance Surety & Insurance Co. v. Manila Railroad Co., L-19589, April 30, 1964; Lexal Pure Drug Laboratories v. Manila Railroad Co., L-20155, April 30, 1966; Manila Port Service v. Court of Appeals, L-22618, Aug. 31, 1967.

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