

## **NEW ZEALAND INSURANCE CO., LTD., PLAINTIFF AND APPELLANT, VS. ADRIANO CHOA JOY, ETC., DEFENDANT AND APPELLEE.**

*G.R. No. L-7311. September 30, 1955*

Ponente: BAUTISTA ANGELO, J.

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### **BAUTISTA ANGELO, J.:**

This is an action for the recovery of the sum of P5,196.20 with legal interest thereon from the date of the filing of the complaint.

On May 20, 1950, the ship "Jupiter", on her voyage No. 149, received on board at Carangian, Samar, in good order and condition, 107 bundles of first class loose weight hemp weighing 8,273 kilos, of 130.80 piculs, valued at P6,736.20, from Lee Teh & Co., Inc., for transportation and delivery to Manila, under a bill of lading issued by the carrier to the shipper. The ship was owned by Adriano Choa" Joy, doing business under the name of South Sea Shipping Line, while the cargo was shipped by the branch office of Lee Teh & Co., Inc. at Carangian, Samar, for transportation and delivery to its main office at Manila.

The cargo failed to arrive in Manila because the vessel ran aground while entering the Laoang Bay, Samar, on May 20, 1950, due to the negligence of its captain, Jose Molina, who, in the investigation conducted by the Marine Board of Inquiry, was found negligent of his duties and was suspended from office for a period of three months. Of the cargo, only 7,590 kilos, or 120 piculs of hemp, were saved and because of their damaged condition, they were sold for the sum of P2,040, the consignor having spent P500 for their salvage, thereby causing Lee Teh & Co., Inc. losses in the sum of P5,196.20.

The cargo was insured by the New Zealand Insurance Co., Ltd., and because of the damage caused to said cargo while in transit, the losses were paid by said company to the shipper. The carrier having refused to reimburse these damages despite demands made to that effect, the insurance company, as subrogee of the shipper instituted the present action before the Court of First Instance of Manila.

After the parties had presented their evidence, the court found that, while the shipper has suffered damages because of the inability of the carrier to transport the cargo as agreed upon, however, the liability of the carrier did not attach because of the failure of the shipper or of the consignee to file its claim for damages within 24 hours from receipt of the cargo as required by law. Consequently, the court dismissed the case, with costs against the plaintiff. Plaintiff brought this case on appeal directly to this Court.

Appellant poses in this appeal the following issue: "Whether Lee Teh & Co., Inc. of Manila, as consignee, or Lee Teh & Co., Inc., of Catarman, Samar, as consignor, should have filed its claim for damages to the cargo with the shipping company, herein defendant, within twenty four hours from the date the said cargo was salvaged by the consignor, in accordance with Article 366 of the Code of Commerce for this action to prosper, or that neither the said consignee nor the said consignor was under the obligation to file the said claim within the said period, as they are not bound by the provisions of Article 366 of the Code of Commerce."

Article 366 of the Code of Commerce, which was applied by the court, provides:

"Within twenty-four hours following the receipt of the merchandise, the claim against the carrier for damage or average which may be found therein upon opening the packages, may be made, provided that the indications of the damage or average which gives rise to the claim cannot be ascertained from the outside part of such packages, in which case the claim shall be admitted only at the time of receipt.

"After the periods mentioned have elapsed, or the transportation charges have been paid, no claim shall be admitted against the carrier with regard to the condition in which the goods transported were delivered."

It would appear from the above that in order that the condition therein provided may be demanded there should be a consignment of goods, through a common carrier, by a consignor in one place to a consignee in another place. And said article provides that the claim for damages must be made "within twenty-four hours following the receipt of the merchandise" by the consignee from the carrier. In other words, there must be delivery of the merchandise by the carrier to the consignee at the place of destination. In the instant case, the consignor is the branch office of Lee Teh & Co., Inc. at Catarman, Samar, which placed the cargo on board the ship Jupiter, and the consignee, its main office at Manila. The lower court found that the cargo never reached Manila, its destination, nor was it ever delivered to the consignee, the office of the shipper in Manila, because the ship ran aground upon entering Laoang Bay, Samar on the same day of the shipment. Such being the case, it follows that the aforesaid article 366 does not have application because the cargo was never received by the consignee. Moreover, under the bill of lading issued by the carrier (Exhibit C), it was the carrier's undertaking to bring the cargo to its destination—Manila,—and deliver it to consignee, which undertaking was never complied with. The carrier, therefore, breached its contract, and, as such, it forfeited its right to invoke in its favor the conditions required by article 366.

One case parallel to the present is *Roldan vs. Lim Ponzo & Co.*, 37 Phil, 285. In that case, plaintiff sought to recover damages for failure of defendant to transport 2,244 packages of sugar from plaintiff's hacienda to Iloilo. It was proven that the cargo did not reach its destination because the lorch carrying it was wrecked in the river Jalaud through the negligence and lack of skill of the master of the lorch. And of the total cargo of 2,244 packages of sugar, only 1,022 were saved in damaged condition through the efforts made by the shipper. Because plaintiff failed to comply with the requirement of article 366 of the Code of Commerce, the lower court found for defendant and dismissed the case. But this Court held that said article "is limited to cases of claims for damages to goods actually received by the consignee; it has no application in cases wherein the goods entrusted to the carrier are not delivered to the consignee by the carrier in pursuance of the terms of the carriage contract." Elaborating on this point, this Court commented:

"Article 366 of the Commercial Code is limited to cases of claims for damages to goods actually turned over by the carrier and received by the consignee, whether those damages be apparent from an examination of the packages in which the goods are delivered, or of such character that the nature and extent of the damage is not apparent until the packages are opened and the contents examined. Clearly it has no application in cases wherein the goods entrusted to the carrier are not delivered by the carrier to the consignee. In such cases there can be no question of & claim for damages suffered by the goods while in transport, since the claim for damages arises exclusively out of the failure to make delivery." \* \* \*

"We are of opinion, however, that the necessity for making the claim in accordance with that article did not arise if, as it is alleged, these 1,022 packages, of sugar were recovered from the wreck by the plaintiff, himself in an effort, by his own activities, to save his property from total loss. The measures to be taken under the terms of Article 367 of the Code when the parties are unable to arrive at an amicable settlement of claims for damages set up in accordance with Article 866, quite clearly indicate that the necessity for the presentation of claims under this article arises only in those cases wherein the carrier makes delivery and the consignee

receives the goods in pursuance of the terms of the contract."

It is true that in the instant case there is some disagreement as to whether the salvage of the portion of the cargo that was saved was due to the efforts of the carrier itself or to the combined efforts of the latter and the shipper as a result of which the salvaged cargo was placed in possession of the shipper who sold it and deducted its proceeds from the liability of the carrier. But this discrepancy, in our opinion, would seem to be immaterial because the law as well as the contract contemplates delivery of the cargo to the consignee at its port of destination in order that the benefit of the law may be availed of. The liability of the carrier must be determined in the light of the carriage contract, and since that contract calls for reciprocal obligations, the carrier cannot demand fulfillment of its part from the shipper or consignee unless it first complies with its own obligation. (Article 1100, old Civil Code.) The fact that the consignor is but the branch office of the company that shipped the goods, and the consignee is the main office at Manila, is of no moment, because the duties of each party under the law are different. Moreover, even if the consignor and the consignee be considered as one and the same party, still the carrier cannot disclaim responsibility under its contract for the simple reason that it failed to comply with its obligation to bring the cargo to its destination. This breach alone justifies its liability under the carriage contract.

Wherefore, the decision appealed from is hereby reversed, and another one will be entered ordering the defendant to pay the plaintiff the sum of P5,196.20, with legal interest thereon from the filing of the complaint, with costs against appellee.

Bengzon, Acting C.J., Padilla, Montemayor, Jugo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

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### DISSENTING OPINION

REYES, A., J., dissenting:

I dissent. While there is dispute as to whether the cargo of hemp was salvage through the efforts of the shipper or through those of the carrier, the lower court found that what was saved of the hemp was actually received by the shipper's agent at Catarman, who, however, did not file a claim for damages within 24 hours thereafter as provided in Article 366 of the Code of Commerce. The appellant contends that this article did not apply because "there was no delivery of goods by the carrier to the consignee." Upholding the contention, the majority opinion holds that the article has application only when the goods transported are delivered to the consignee at the port of destination but not otherwise, this on the theory that where the carrier breaches his contract by failing to take the goods to their destination he forfeits his right to invoke the article. To this I cannot agree.

The Article reads:

"Art. 366. Within the twenty-four hours following the receipt of the merchandise, the claim against the carrier for damages or average which may be found therein upon opening of the packages, may be made, provided that the indications of the damage or average which gives rise to the claim cannot be ascertained from the outside part of such packages in which case the claim shall be admitted only at the time of receipt.

"After the periods mentioned have elapsed, or the transportation charges have been paid, no claim shall be admitted against the carrier with regard to the condition in which the goods transported were delivered."

Nowhere in this article is it said or even hinted that prompt claim with regard to the condition in which the goods transported were delivered is required only when the delivery is made to the consignee at destination. And on principle I do not see why the article should not apply also where delivery is made to the shipper or consignor whether at the port of destination or of embarkation or at any other place where the cargo is discharged.

Especially would this be true in the present case where consignor and consignee are the same person or entity and where damage to the cargo was not necessarily to be expected because the ship did not sink but merely ran aground, so that if any such damages were in fact noted upon delivery the same should have been promptly brought to the attention of the carrier.

The majority cites the case of *Roldan vs. Lim Ponzo*, 37 Phil, 255. That case should be authority against rather than in favor of their conclusion. For it is to be noted that in that case the claim was for 2,244 bayones of sugar of which 1,222 bayones did not reach destination because the lorchia on which it was loaded was wrecked on the way, while the remaining 1,022 bayones were saved in a more or less damaged condition, and this Court there held that as to the part of the sugar totally lost article 366 did not apply, but that as to the 1,022 bayones of sugar that were saved, although in a damaged condition, there was need for determining under what conditions the same came into the possession of the plaintiff, because while there was allegation that the said 1,022 bayones of sugar "were recovered from the wreck by the plaintiff himself, in an effort, by his own activities, to save his property from total loss", the defendant had not had an opportunity to submit his evidence to the court. This court, therefore, remanded the case to the court below for a new trial in order to determine whether it was the carrier or the shipper that salvaged the sugar. The reason for this is to be found in the following excerpts from the decision:

"In so far as this action is founded on a claim for damages resulting from the wetting of the 1,022 packages of sugar which were saved from the wreck, it seems clear that if these 1,022 packages of sugar were delivered by the carrier and received by the consignee under and in pursuance of the terms of the contract, this claim for damages could be defeated by the plaintiff's failure to make claim therefor in accordance with the term of article 866 of the Code.

\* \* \* \* \*

"Until the defendant has had an opportunity to submit his evidence it is impossible to determine under what conditions these 1,022 packages of sugar came into the possession of the plaintiff, or to determine whether his claims for damages by the wetting of this sugar, if well founded in every other respect, is or should be defeated by his failure to make claim for such damages in the manner and from indicated in Article 366 of the Commercial Code."

If we really mean to follow the decision of this Court in that former case, I think the proper thing to do is to first determine whether the hemp in this case was salvaged by the carrier or by the shipper. But as that is a disputed question of fact, the case should be certified to the Court of Appeals since it does not involve a purely legal question.

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