

**ST. PAUL FIRE & MARINE INSURANCE COMPANY,
PLAINTIFF-APPELLEE, VS. MACONDRAY & CO., INC., ET AL.,
DEFENDANTS, MANILA PORT SERVICE AND/OR MANILA RAILROAD
COMPANY, DEFENDANTS?APPEL...**

G.R. No. L-24826. March 20, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

Plaintiff-appellee, St. Paul Fire & Marine Insurance Company, was the insurer of a shipment consisting of 218 packages of medicinal and pharmaceutical products consigned to Winthrop Stearns, Inc., Manila, loaded on the vessel SS Tai Ping, "which arrived in Manila on August 7, 1960, and discharged unto the custody of the arrastre operator, the Manila Port Service, on August 11, 1960.

For loss and damage sustained by the abovementioned shipment, the consignee demanded and collected from the insurer the reasonable value thereof, including other expenses, amounting to \$1,071.58.

The insurance company, as subrogee of the consignee, filed complaint with the Court of First Instance of Manila, alleging that the subject loss and damage were due to the fault and/or negligence of the defendants Wilhelm Wilhelmsen and/or its agents Barber Steamship Lines, Inc. and/or Macondray & Co., Inc., prior to the delivery thereof to the Manila Port Service, or in the alternative, that said loss and damage were due to the fault or negligence of the Manila Port Service and the Manila Railroad Company, after delivery thereof of the goods to the latter.

Answering the complaint, the Manila Port Service and Manila Railroad Company denied responsibility of the alleged loss and damage on the ground that the goods have been delivered to the consignee in the same condition as they were received by them from the carrying vessel. At the same time, they pleaded, in defense, the provisions of paragraph 15 of the Management Contract.

In their answer, the other defendants, although denying responsibility and liability, for the loss, alleged that for the purposes of avoiding litigation, they had offered to settle the plaintiff's claim in full by paying the c.i.f. value of the lost and damaged shipment, but the consignee and its subrogee declined the offer.

After trial and the submission of the parties' memoranda, the court found that plaintiff's claim had to do with one undelivered carton and damage on six cartons and one drum, with a total value of P1,109.67; that said shipment of 218 cartons was discharged from the vessel complete and in good order, with the exception of one drum and 3 cartons, hence, any loss or damage thereof are the responsibility of the owner and operator of the vessel and its agents, while the undelivered carton and any damage on the remaining three cartons are the responsibility of the arrastre contractor and its principal company. The court thus rendered judgment in accordance with these findings; and to be more specific, it fixed the liability of the first set of defendants, for the damage on the one drum and three cartons, at P300.00; while that of the second set of defendants, for the undelivered carton and the

damage on the remaining three cartons, for P809.67, both amounts with legal interest from the filing of the complaint until fully paid.

The Manila Port Service and the Manila Rail-road Company have appealed.

It is contended in the first place that the complaint should be dismissed because the provisional claim, for the alleged lost and damaged goods, was not filed within the fifteen-day period fixed by the Management Contract for filing such claims. The contention is meritorious, for the reason that while the carrying vessel discharged its last package on August 11, 1960, the claim adverted to was filed the day before or on August 10, 1960. This Court has re-peatedly held that a stereo-type provisional claim for "any shortage or damage that may after examina-tion be found to exist" filed against the arrastre operator before the discharge of the last package from the carrying vessel is not a compliance with the provision of the said Management Contract entered in-to between the consignee of the goods and the arras-tre operator, such claim being premature and speculative.[1] To allow it would swamp the arrastre service with advance claims of brokers for all goods consign-ed to their customers.

Of course, this ruling is not without any ex-ception. In *Switzerland General Insurance Co., Ltd. vs. Java Pacific & Hoegh Lines, et al.*, G. R. No. L--21760, April 30, 1966, a claim filed in advance was held to have constituted substantial compliance with the provision of Section 15 of the Management Con-tract. But this, under the conditions that, upon the examination of the shipment before the discharge of the last package from the boat, certain shortages were found and that examination took place in the presence of the representatives of both parties, which conditions do not appear to obtain here. The bare allegation of the plaintiff-appellee that claim-ant had knowledge of the loss and damage before the boat or vessel had finally unloaded all its cargo, which allegation is not supported by the evidence, and without any showing under what circumstances the alleged know-ledge had come about, would not cause Us to deviate from the general ruling on the matter.

In view of these findings, We need not go into the other issue raised by appellant, which merely refers to the amount for which the defendant-appellee would be held liable should recovery appears to be proper.

WHEREFORE, the decision appealed from is hereby re-versed. No costs at this instance.

Reyes, Acting C.J., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro, and Fernando, JJ., concur.
Concepcion, C.J., on leave.

[1] *Shell Co. vs. Compañia General de Tabacos*, G.R. No. L--20230, July 30, 1965; *Fireman's Fund Ins. Co. vs. Manila Port Service*, G.R. No. L-22454, April 29, 1966, 16 S. C. Rep. Anno. p. 795; *Domestic Ins. Co. vs. Manila Railroad Co.*, G.R. No. L-24066, August 30, 1967, 20 S.C. Rep. Anno. 1090; *Rizal Surety & Ins. Co. vs. Manila Railroad Co.*, G.R. No. L-22409, April 27, 1967, 1967 B CHILD 206; and *Philippine Education Company, Inc. vs. Manila Port Service, et al.*, G.R. No. L-24287, January 24, 1968.

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