

**ATLANTIC MUTUAL INSURANCE CO. PLAINTIFF AND APPELLANT,
VS. MANILA PORT SERVICE AND/OR MANILA RAILROAD COMPANY,
DEFENDANTS AND APPELLEES.***G.R. No. L-16271. October 31, 1961*

Ponente: CONCEPCION, J.

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Appeal by plaintiff Atlantic Mutual Insurance Company from a decision of the Court of First Instance of Manila sentencing defendants Manila Port Service and the Manila Railroad Company to pay P1,500.00 to said plaintiff, without pronouncement as to costs. The appeal is before us the case having been submitted for decision, in the lower court, upon a stipulation of facts and the only issue raised by appellant being one of law.

In April, 1952, the South Seas Trading Corporation of New York City shipped, on board the "SS Tudor", several bundles, cartons, bales and cases of assorted goods consigned to the South Seas Trading Corporation of Manila. The shipment was insured by the shipper with plaintiff herein. The "SS Tudor" arrived at the port of Manila on May 13, 1957, and the aforementioned shipment was unloaded into the custody of defendant Manila Port Service—a subsidiary of its codefendant Manila Railroad Company, and the arrastre service operator of said port—and, subsequently, delivered to the consignee, except, according to the latter, three (3) bales of cotton piece goods allegedly valued P5,020.89. The consignee likewise, claimed that one (1) of the cases delivered thereto was in bad order and had suffered damages in the sum of P109.25, but this is not involved in the appeal.

The only question therein raised is whether plaintiff—which, upon claim filed by the consignee, paid thereto the aforementioned sums of P5,020.89 and P109.25—is entitled to recover said sum of P5,020.89 from defendants herein, or is subject to the provisions of paragraph 15 of the management contract by and between the Manila Port Service and the Bureau of Customs, pursuant to which paragraph the liability of the arrastre service operator, for each package not delivered to the consignee, shall not exceed P500, unless the value of the missing package is "otherwise specified or manifested", which was not done in the case at bar. Plaintiff maintains that, not being a party to the management contract, the consignee—into whose shoes plaintiff had stepped in consequence of said payment—is not subject to the provisions of said stipulation, and that the same is furthermore invalid. The lower court correctly rejected this pretense because, having taken delivery of the shipment aforementioned by virtue of a delivery permit, incorporating thereto, by reference, the provisions of said management contract, particularly paragraph 15 thereof, the gist of which was set forth in the permit, the consignee became bound by said provisions, and because it could have avoided the application of said maximum limit of P500.00 per package by stating the true value thereof in its claim for delivery of the goods in question, which admittedly, the consignee failed to do (*Tomas Grocery vs. Delgado Brothers, Inc.*, 105 Phil., 549; 56 Off. Gaz. (27) 4422; *Jose Bernabe & Co. vs. Delgado Brothers, Inc.*, 107 Phil., 287; *Northern Motors, Inc., vs. Prince Line et al.*, 107 Phil. 253; *Jose Bernabe & Co. vs. Delgado Brothers, Inc.*, 107 Phil., 679; 58 Off. Gaz. (6) 1104).

Wherefore, the decision appealed from is hereby affirmed, with costs against plaintiff Atlantic Mutual Insurance

Company. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Paredes, Dizon, and De Leon, JJ., concur.

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