

HARTFORD FIRE INSURANCE CO., PLAINTIFF-APPELLEE, VS. E. RAZON, INC., DEFENDANT-APPELLANT.*G.R. No. L-43748. February 28, 1979*

Ponente: MELENCIO-HERRERA, J.

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This case was decided both by the City Court of Manila, and, on appeal, by the Court of First Instance of Manila on the basis of stipulations of fact and memoranda submitted by the parties with no oral evidence presented. On appeal to the Court of Appeals, that Court resolved to certify the case to us on the ground that where an action is submitted upon agreed stipulations of fact and the issue is the correctness of the conclusion drawn therefrom, the question is one of law, upon the authority of *Cunanan vs. Lazatin* (74 Phil. 719), and *Ng Young vs. Villa, et als.* (93 Phil. 21).

The following facts were stipulated upon by the parties: On January 11, 1968, Union Carbide Corporation shipped from New York, U.S.A., fifty (50) drums of "brake fluid" on board the vessel SS "Johannes Maersk" consigned to Union Carbide Phil., Inc. The shipment was insured for P19,283.00 against all risks under plaintiff's Open Policy No. OC-H-126. The shipment arrived in Manila on February 19, 1968 and, on the same date, was discharged from the vessel unto the control, custody and safekeeping of defendant, complete and in good order. On February 28, 1968, the shipment was released from the custody of defendant and transferred to the Luzon Brokerage Corporation for delivery to the consignee. Out of the fifty (50) drums comprising the shipment, three (3) drums were released from defendant's custody in the condition described in defendant's "Request for Bad Order Survey" No. B-1881, that is, "in apparent good order, contents complete except each dented at rims".[1] Upon inspection at the consignee's warehouse, the Mariner's Adjustment Corporation reported that "the dents on the top lids and topmost portion of the body stock created cracks and from their appearance it was evident that the contents had leaked as shown by stain marks on various parts of the containers, and that, in their opinion, "loss was due to rough handling presumably during transit while goods were in the custody of the Arrastre Contractor (E. Razon, Inc.)".[2] Contending that the "brake fluid" was "no longer salable in the local market at its normal price", the consignee filed a claim against defendant for the recovery of P909.15 as its damage but the latter refused to pay. Plaintiff insurance company paid the consignee the sum of P1,145.40 and thereafter instituted this action as subrogee of the consignee.

Originally filed before the City Court of Manila, plaintiff seeks the recovery of the sum of P1,145.40 representing the value of the damaged three drums. In its Answer, defendant maintains that the "drums in question were delivered in good order to the consignee, hence, any damage on the cargo after leaving the pier premises, is no longer the responsibility of defendant" and that "in filing this complaint the plaintiff did not comply with the pertinent provisions of the Revised Management Contract".[3]

On January 6, 1969, the parties submitted their "Stipulations of Fact", and on dates subsequent thereto, their "Formal Offer of Exhibits".

On July 12, 1969, the City Court of Manila, relying on documentary evidence and memoranda and as agreed upon by the parties, dismissed the case stating, in part:

"After a careful deliberation on the evidence adduced after a perusal of the parties' respective memoranda, this Court finds that the defendant is not liable for the dents sustained by the three (3) drums of "brake fluid" under the Revised Management Contract inasmuch as Exhibit "1" (Exh. "G" for the plaintiff), the Request for Bad Order Survey No. 1881, indicates that said three drums were "in apparent good order, contents complete except each dented at rim". So, actually the consignee did not suffer any damage from the loss of the contents in the drums due to leakage or spillage. It is to be presumed therefore, in the absence of proof to the contrary, that the spillage or leakage occurred after the shipment in question left the custody of the defendant.

"WHEREFORE, in view of the foregoing findings, this case is hereby ordered dismissed. Without pronouncement as to costs.

"SO ORDERED."[4]

On February 18, 1970, the Court of First Instance of Manila, on appeal, and relying on the same documentary evidence and memoranda presented before the City Court, reversed the latter's Decision after finding that:

"There is, therefore, sufficient evidence that the three (3) drums of brake fluid subject of plaintiff's claim was damaged while in the possession of the defendant and, therefore, it is liable to the plaintiff for such damage the same having been caused by the negligence of defendant's employees."

The dispositive portion of the judgment of the Court of First Instance reads:

"WHEREFORE, the Court renders judgment ordering the defendant to pay to plaintiff the amount of P1,145.40 and the cost in both instances. The defendant is entitled to get from the consignee the three (3) damaged drums of brake fluid and whatever remains of its contents."

On appeal to the Court of Appeals, defendant-appellant had assigned the following errors:

"I

THE HONORABLE COURT OF FIRST INSTANCE OF MANILA ERRED IN HOLDING THAT THE DEFENDANT-APPELLANT WAS BOUND BY THE SURVEY REPORT OF THE MARINER'S ADJUSTMENT CORPORATION DATED APRIL 15, 1968 (EXH. H) IN THE EXECUTION OF WHICH IT WAS NOT A PARTY THERETO.

"II

THE HONORABLE COURT OF FIRST INSTANCE OF MANILA ERRED IN NOT GIVING CREDENCE AND PROBATIVE VALUE TO THE REQUEST FOR BAD ORDER SURVEY NO. 1881 (EXHS. "G" AND "I" RESPECTIVELY) EXECUTED BY THE DEFENDANT-APPELLANT ON FEBRUARY 28, 1968 WHEREIN THE CONSIGNEE OR ITS REPRESENTATIVE WAS A SIGNATORY.

"III

THE HONORABLE COURT OF FIRST INSTANCE OF MANILA ERRED IN RENDERING JUDGMENT AGAINST THE DEFENDANT-APPELLANT."[5]

And as heretofore stated, that appellate Tribunal certified the case to us on the ground that the question involved is purely legal.

Upon the Stipulations of Fact and the documentary evidence submitted by the parties, we find that the

conclusion drawn therefrom in the appealed judgment calls for reversal. The real issue to resolve is, did the loss of the contents of the three drums of brake fluid occur while the drums were in the custody of defendant arrastre operator?

Of crucial significance is the condition of the cargo as described in defendant's Request for Bad Order Survey[6] pre-pared before the release of the goods to the consignee's broker as follows:

"3 drums brake fluid, in apparent good order contents complete except each dented at rims." (Underscoring supplied).

The said Certificate was signed not only by defendant's inspector but also by the consignee's representative. It shows that while the rims of the drums were dented the contents thereof were complete. If, as the marine survey showed, "it was evident that the contents had leaked as shown by stain marks on various parts of the containers", then, those stain marks should have been evident as well when defendant's Bad Order Certificate was prepared. The consignee's representative would surely have noticed it and would have caused a notation to that effect to have been made in the Bad Order Certificate. The fact that the Certificate was silent on that point but that instead it specifically indicated that the contents were complete cannot but lead to the conclusion that the leakage of the contents, as detected upon survey at the consignee's warehouse, must have occurred after the cargo had left defendant's custody. The burden was upon plaintiff to prove that the cracks on the three drums and the consequent leakage of their contents could be traced to the dents on the rims of the drums, a question of fact which was not conclusively answered in the stipulations agreed upon by the parties. It follows that defendant cannot be held liable for the value of the damage sought to be reco-vered by plaintiff.

WHEREFORE, the judgment appealed from is reversed, and the Decision of the City Court dismissing the complaint hereby affirmed.

No costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and De Castro, JJ., concur.

[1] Exhibits "G" and "I".

[2] Exhibit "H".

[3] Exhibits "6", "6-A", and "6-B".

[4] pp. 20-21, Record on Appeal.

[5] p. 12, Appellant's Brief.

[6] Exhibits "G" and "I".

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