

THE AMERICAN INSURANCE CO., INC., PLAINTIFF-APPELLEE, VS. MACONDRAY & CO., INC., DEFENDANT-APPELLANT.*G.R. No. L-23222. June 10, 1971*

Ponente: DIZON, J.

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The following facts were the subject of a stipulation submitted by the parties to the trial court:

On or about September 12, 1962, certain cargoes, covered by the bill of lading now in the record as Exhibit "A", were imported by Atlas Consolidated Mining and Development Corporation and were loaded by the shipper, Ansor Corporation of New York on board the S/S "Toledo" at the port of New York for delivery to Atlas at Cebu City via Manila. The freight up to Cebu City was paid in advance. The American Insurance Company insured the cargoes against damage up to Cebu City for \$5,700.00 in favor of the consignee. The S/S "Toledo" discharged them at the port of Manila on October 17, 1962. For their transshipment to Cebu City they were loaded on board the M/S "Bohol". Upon the vessel's arrival in Cebu City on November 12, 1962, the cargoes were discharged and delivered to the consignee minus one skid of truck parts which was not loaded on the M/S "Bohol". The missing cargo was valued at \$482.96 CIF Cebu, equivalent at that time to P1,889.58. In view of its loss, the consignee filed the corresponding claim with herein appellant who disclaimed liability therefore alleging that the cargoes had been discharged in full at the port of Manila. Appellant, at all times material to this case, was the agent in the Philippines of the S/S "Toledo", a common carrier in foreign trade between the United States and Philippine ports.

A claim for the insured value of the missing cargo amounting to P2,087.20 plus the sum of P87.30 as expenses of survey was filed with appellee under the covering insurance policy and the same was duly paid, thereby acquiring, by subrogation, the rights of the consignee. Thereafter the corresponding action was filed in the lower court to recover from appellant what appellee had paid to the consignee.

Appellant's defenses below were firstly, that it was not liable upon the complaint because the cargoes covered by the bill of lading Exhibit "A" had been fully discharged at the port of Manila from the S/S "Toledo"; secondly, that its liability, if any, does not exceed P500.00; thirdly, that the court had no jurisdiction over the case because the amount involved is only the sum of P1,889.58; fourthly, that the loss, if any, occurred while the cargo was in the custody of the Manila Port Service and, through the latter's negligence, and finally, that the latter was not in any manner its agent in the receiving, handling and custody of the cargoes discharged at the port of Manila.

Upon the issues thus joined, the case was tried and thereafter the lower court rendered the appealed judgment sentencing appellant to pay appellee the amount of P1,889.58, with interest at the legal rate from October 14, 1963 when the complaint was filed, until full payment, and to pay the costs.

Not satisfied with the above judgment, Macondray & Co., Inc. interposed the present appeal claiming that the lower court committed the following errors:

"I

THE LOWER COURT ERRED IN NOT HOLDING THAT PLAINTIFF-APPELLEE HAS NO CAUSE OF ACTION AGAINST DEFENDANT-APPELLANT.

II

THE LOWER COURT ERRED IN NOT FINDING THAT DEFENDANT-APPELLANT IS NOT THE REAL PARTY-IN-INTEREST - AND THAT THE ACTION SHOULD HAVE BEEN BROUGHT AGAINST THE SHIPPER.

III

THE LOWER COURT ERRED IN TAKING COGNIZANCE OF THE CASE AT BAR AND IN NOT DISMISSING IT FOR LACK OF JURISDICTION.

IV

THE LOWER COURT ERRED IN FINDING DEFENDANT-APPELLANT LIABLE AND IN SENTENCING IT TO PAY PLAINTIFF-APPELLEE THE AMOUNT OF P1,889.58 WITH INTEREST, AT THE LEGAL RATE, FROM OCTOBER 14, 1963, UNTIL FULLY PAID AND TO PAY THE COSTS OF SUIT."

The third assignment of error wherein appellant raises the question of the lower court's alleged lack of jurisdiction is without merit.

True the case involved only the sum of P1,889.58, but it is also true that appellee's action against appellant is one involving admiralty jurisdiction, the exercise of which pertains originally and exclusively to Courts of First Instance.

In support of the first assignment of error, appellant relies on the provisions of paragraph 22 of the bill of lading to the effect that the carrying vessel, her owner and agent, are not liable for loss or damage occurring after the discharge of the goods. Appellant's contention rests entirely upon the erroneous assumption that the carrying vessel had discharged all the goods covered by the bill of lading Exhibit "A" in accordance with its obligation. Under the Carriage Contract covering the cargoes in question, it was the duty of the carrying vessel to discharge them at the port of Cebu City, via the port of Manila. It is clear, therefore, that the discharge effected at the latter port did not terminate the carrying vessel's responsibility which included the transshipment of the cargoes from the port of Manila to the port of Cebu City. While it complied with its obligation with respect to most of the cargoes covered by the bill of lading Exhibit "A", it failed to do so in relation to the one skid of truck parts which, according to the stipulation of facts, was not loaded on board the M/S "Bohol". In truth and in fact, the same has never been found.

Invoking the provisions of paragraph 11 of the bill of lading, appellant advances the theory (second assignment of error) that appellee's action should have been directed not against it but against the shipper, Ansor Corporation of New York, the latter being allegedly the real party defendant-in-interest.

Appellant is correct in saying that actions must be prosecuted not only in the name of the real party-in-interest but also against the real party-in-interest. It is in error, however, in contending that it is not liable for the loss of the skid of truck parts mentioned heretofore. If the fact were that said cargo was loaded and thereafter lost on board the M/S "Bohol" or upon its discharge at the port of Cebu City, We would agree that appellant is not liable. It was stipulated in this case, however, that the said skid of truck parts was not loaded at all on board the M/S "Bohol."

In accepting the same on board the S/S "Toledo" at the port of New York for shipment to Cebu City, via the port of Manila, it became precisely appellant's duty to see to it that it was loaded in Manila on board the M/S "Bohol" or any other vessel, for the port of Cebu City. Not having complied with this duty, its liability for the loss is unavoidable.

On the other hand, the shipper complied with its part of the transaction by delivering the lost cargo to the S/S "Toledo" at the port of New York; thereafter paragraph 11 of the bill of lading operated to make appellant the shipper's forwarding agent whose duty precisely was to have the cargo, upon arrival at the port of Manila, transshipped to the port of Cebu City.

Moreover, appellant admits in its brief that, as a general rule, under the provisions of the Code of Commerce, the consignee of a cargo carried by a vessel has a cause of action against the latter's agent for the undelivered cargo or any portion thereof. This being the case, it is its duty to compensate appellee for the loss suffered.

The fourth assignment of error is merely a corollary of the previous three and requires no further discussion.

WHEREFORE, the decision appealed from being in accordance with law, the same is hereby affirmed.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Ruiz Castro, J., took no part.

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