

**RIZAL SURETY & INSURANCE COMPANY,
PLAINTIFF-APPELLANT, VS. MANILA RAILROAD COMPANY AND
MANILA PORT SERVICE, DEFENDANTS-APPELLEES.**

G.R. No. L-24043. April 25, 1968

Ponente: FERNANDO, J.

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FERNANDO, J.:

In this suit for the recovery of the amount paid by the plaintiff, Rizal Surety and Insurance Company, to the consignee based on the applicable Civil Code provision,[1] which speaks to the effect that the Insurance Company "shall be subrogated to the rights of the insured," it is its contention that it is entitled to the amount paid by it in full, by virtue of the insurance contract. The lower court, however, relying on the limited liability clause on a management contract with the defendants, could not go along with such a theory. Hence this appeal.

The facts were stipulated. The more pertinent follows: That on or about November 29, 1960, the vessel, SS Flying Trader, loaded on board at Genoa, Italy for shipment to Manila, Philippines, among other cargoes, 6 cases OMH, Special Single Colour Offset Press Machine, for which Bill of Lading No. 1 was issued, consigned to Suter, Inc.; that such vessel arrived at the Port of Manila, Philippines on or about January 16, 1961 and subsequently discharged complete and in good order the aforementioned shipment into the custody of defendant Manila Port Service as arrastre operator; that in the course of the handling, one of the six cases identified as Case No. 2143 containing the OMR, Special Single Colour Offset Press, while the same was being lifted and loaded by the crane of the Manila Port Service into the consignee's truck, it was dropped by the crane and as a consequence, the machine was heavily damaged for which plaintiff as insurer paid to the consignee, Suter, Inc. the amount of P16,500.00, representing damages by way of costs of replacement parts and repairs to put the machine in working condition, plus the sum of P180.70 which plaintiff paid to the International Adjustment Bureau as adjuster's fee for the survey conducted on the damaged cargo or a total of P16,680.70 representing plaintiff's liability under the insurance contract; and that the arrastre charges in this particular shipment was paid on the weight or measurement basis whichever is higher, and not on the value thereof.[2]

Clause 15 of the management contract which as admitted by the plaintiff appeared "at the dorsal part of the Delivery Permit" and was used in taking delivery of the subject ship-ment from the defendants' (Manila Port Service and Manila Railroad Co.) custody and control, issued in the name of con-signee's broker," contained what was referred to as "an important notice." Such permit "is presented subject to all the terms and conditions of the Management Contract between the Bureau of Customs and Manila Port Service and amendments thereto or alterations thereof, particularly but not limited to paragraph 15 thereof limiting the Company liability to P500.00 per package, unless the value of the goods is otherwise, specified, declared or manifested and the corresponding arrastre charges have been paid, * * *." [3]

On the above facts and relying on *Bernabe & Co. v. Delgado Brothers, Inc.*, [4] the lower court rendered the judgment "ordering defendants, jointly and severally, to pay plaintiff the amount of Five Hundred Pesos

(P500.00), with legal interest thereon from January 13, 1962, the date of the filing of the complaint, with costs against said defendants." [5]

As noted at the outset, in this appeal, the point is pressed that under the applicable Civil Code provision, plaintiff-appellant Insurance Company could recover in full. The literal language of Article 2207, however, does not warrant such an interpretation. It is there made clear that in the event that the property has been insured and the Insurance Company has paid the indemnity for the injury or loss sustained, it "shall be subrogated to the rights of the insured against the wrong-doer or the person who has violated the contract."

Plaintiff-appellant Insurance Company, therefore, cannot recover from defendants an amount greater than that to which the consignee could lawfully lay claim. The management contract is clear. The amount is limited to Five Hundred ,Pesos (P500.00). Such a stipulation has invariably received the approval of this Court from the leading case of *Bernabe & Co. v. Delgado Bros., Inc.* [6] Such a decision was quoted with approval in the following subsequent cases: *Atlantic Mutual Insurance Co. v. Manila Port Service*, [7] *Insurance Service Co. of North America v. Manila Port Service*, [8] *Insurance Company of North America v. U.S. Lines, Co.*, [9] and *Insurance Company of North America v. Manila Port Service*. [10]

In one of them, *Atlantic Mutual Insurance Company v. Manila Port Service*, this Court, through the then Justice, now Chief Justice, Concepcion, restated the 'doctrine thus: "Plaintiff maintains that, not being a party to the manage-ment 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 afore-mentioned by virtue of a delivery permit, incorporating there-to, 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 * * *." [11]

Plaintiff-appellant Rizal Surety and Insurance Company having been subrogated merely to the rights of the consignee its recovery necessarily should be limited to what was recoverable by the insured. The lower court therefore did not err when in the decision appealed from, it limited the amount which defendants were jointly and severally to pay plaintiff-appellant to "Five Hundred Pesos (P500.00) with legal interest thereon from January 31, 1962, the date of the filing of the complaint, * * *."

WHEREFORE, the decision appealed from is affirmed. With costs against Rizal Surety and Insurance Company.

Reyes, J.B.L., (Acting C.J.), Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, and Angeles, JJ., concur.

[1] "Art. 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrong-doer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury."

[2] Record on Appeal, pp. 38-39.

[3] Record on Appeal, p. 37.

[4] 58 O. G. 1104 (1960).

[5] Record on Appeal, p. 44.

[6] 58 O. G. 1104 (1960).

[7] L-16271, October 31, 1961.

[8] L-17331, November 29, 1961.

[9] L-17032, March 31, 1964.

[10] L-23124, October 11, 1967.

[11] The decision cited the following cases: Tomas Grocery v. Delgado Brothers, Inc., L-11154, April 29, 1959; Jose Bernabe & Co. v. Delgado Brothers, Inc., L-14360, February 29, 1960; Northern Motors, Inc. v. Prince Line, L-13884, February 29, 1960; and Jose Bernabe & Co. v. Delgado Brothers, Inc., L-12058, April 27, 1960.

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