

INSURANCE COMPANY OF NORTH AMERICA, PLAINTIFF AND APPELLANT, VS. UNITED STATES LINES COMPANY AND/OR MANILA PORT SERVICE AND/OR MANILA RAILROAD COMPANY, DEFENDANTS AND APPELLEES.

G.R. No. L-17032. March 31, 1964

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from a decision of the Court of First Instance of Manila. Originally, the appeal was made to the Court of Appeals but upon certification by the latter that only questions of law are involved, the same was forwarded to us.

There is no dispute as to the facts. On or about August 16, 1957, the Firestone International Company at New York, U.S.A., shipped on Board the SS "PIONEER MAIN" of the U.S. Lines Company, and consigned to the order of Firestone Tire and Rubber Company of the Philippines, 18 cases of tire-making machinery and assorted items under B/L No. 186 of the United States Lines Company. The shipment arrived at the port of Manila on September 15, 1957, and shortly thereafter the aforesaid shipment was unloaded and brought into the custody of the Manila Port Service. Later on, it was delivered to the consignee, through its broker, with an alleged shortage of one case consisting of assorted equipment with an alleged value of P1,852.93.

A formal claim for the missing package was filed by the consignee against the Insurance Company of North America for the said loss in its insurance value, and upon payment thereof by said company, the latter was subrogated into the consignee's rights and interests therein.

Hence, the Insurance Company of North America, as subrogee of the consignee, filed with the Court of First Instance of Manila an action for damages against the U.S. Lines Company, the Manila Port Service and/or the Manila Railroad Company.

The parties having presented to court a stipulation of facts, the case was submitted for decision upon its call for trial.

Despite the valid defense set up by the U.S. Lines Company that the whole shipment consigned to the Firestone Tire and Rubber Company of the Philippines was landed complete and in good order into the custody of the Manila Port Service, the lower court nevertheless found that one of the cases in the said shipment was not really delivered to the consignee. The court thus held the defendants Manila Port Service and Manila Railroad Company liable under Section 15 of the Management Contract which pertains to the limited liability of the arrastre to an amount not exceeding P500 per missing bale or package unless the value thereof is otherwise specified or manifested. Accordingly, the award was only for P500 in favor of the insurance company.

Not satisfied, the plaintiff insurance company has appealed, claiming that the defendants are liable not only for P500 but for the whole value of the missing cargo. And in raising this issue, the said plaintiff contends that the

Management Contract entered into between the Manila Port Service and the Bureau of Customs, covering the operation of the arrastre service for the Port of Manila, does not apply to it who was not a party to the contract.

The question has already been settled in a long line of decisions where this Court ruled that the Management Contract above referred to is binding to a consignee who, though not a party thereto, has taken delivery of the goods upon presentation of a pass and a delivery permit making reference to said management contract and reproducing substantially the provisions thereof, as one of the conditions of said pass and delivery permit.[1] In one of these cases[2] this Court stated:

"Even therefore, if appellant was not a signatory to said management contract, it legally became a party thereto when it through its broker, the Luzon Brokerage Co, Inc. obtained the delivery permit and gate pass in the above manner prescribed by law and, making use of them, demanded from appellee the delivery of the 33 cases, pursuant to the appellee's undertaking in virtue of the very same Management Contract. Again, it became bound when it brought court action against appellee, also by virtue of the latter's obligations as the arrastre contractor Is under the management contract, for the purpose of recovering the reasonable value of the missing auto spare parts and accessories."

There is no question that the consignee here, thru its broker, had taken possession or delivery of the goods in upon presentation of a gate pass and delivery permit from the arrastre's premises, and that said delivery permit, on its dorsal part, contains an "Important Notice reproducing pertinent portions of section 15 of the Management Contract, which reads:

"IMPORTANT NOTICE

"This permit is presented subject to all the terms and conditions If of the Management Contract between the Bureau of Customs and Manila Port Service and amendments thereto or alterations thereof, particularly but not limited 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, providing exemptions of restrictions from liability unless suit is brought within one year from the date of discharge of the goods, or from date when the claim for the value of the goods has been rejected, provided, such claim shall have been filed with the Company within 15 days from the date of discharge of the last package from the carrying vessel."

It is also agreed between the parties that a provisional claim was filed with the Manila Port Service for the shortlanded cargo within fifteen days from the date of discharge of the last package from the carrying vessel."

There is no showing, however, that the value of the missing package was specified or manifested. The facts and circumstances of the present case clearly warrant an application of the provisions of the Management Contract as held by this Court in the decisions cited.

IN VIEW THEREOF, the decision appealed from is hereby affirmed. Costs against the plaintiff-appellant.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes J. B. L., Barrera, Paredes and Dizon JJ., concur.

[1]See Insurance Co. of North America v. Manila Port Service, G. R. No. L-17331, Nov. 29, 1961; Commercial Union Assurance Co. v. Manila Port Service, G.R. No. L-14972, Oct. 31, 1961; Atlantic Natural Insurance Co. Manila Port Service, et al., G.R. No. L-16271, Oct. 31, 1961; Jose Bernabe & Co. v. Delgado Bros, L-12058, April 27, 1960; and Northern Motors v. Prince Line, L-13884, February 29, 1960.

[2]Northern Motors v. Prince Line, supra.

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