

MALAYAN INSURANCE CO., INC., PLAINTIFF-APPELLEE, VS. MANILA PORT SERVICE, ET AL., DEFENDANTS-APPELLANTS.*G.R. No. L-22687. March 28, 1969*

Ponente: ZALDIVAR, J.

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An appeal from the decision of the Court of First Instance of Manila, in its Civil Case No. 53840, on a question of law.

Plaintiff Malayan Insurance Co., Inc., a subrogee of several consignees of goods imported into the Philippines on different occasions between the period from March to June, 1961, brought in by different steamers, filed a complaint, on April 4, 1962, in the city court of Manila, against defendants Manila Port Service and Manila Railroad Company, for the recovery of the aggregate sum of P4,154.80 plus interest. The amount demanded in the complaint represented the total payment made by plaintiff to said several consignees under contracts of insurance covering losses and/or damages suffered by the consignees in connection with the different shipments discharged from the carrying vessels into the custody of defendant Manila Port Service, which is a subsidiary of defendant Manila Railroad Company. The city court of Manila rendered judgment in favor of plaintiff.

The defendants appealed to the Court of First Instance of Manila, reproducing in the latter court the complaint that was filed in the city court. The complaint contained eighteen causes of action. It is alleged in all the causes of action that on account of the inexcusable negligence of defendant Manila Port Service the shipments were delivered by said defendant to the consignees either in bad order or condition or were short of the quantity mentioned in the shipping documents. In all these causes of action, plaintiff alleged that the consignees, or their agents, timely filed claims for loss or damage with defendant Manila Port Service, and that as subrogee of those consignees it had made formal demands on the defendants for payment of the sums that it had paid the consignees under the insurance contract for the losses and/or damages suffered by those consignees. Defendants, in their answer to the complaint, denied the allegations of negligence, and made the special defense that no claim for the value of the shipments in question was filed by the plaintiff or its representative within fifteen days from the discharge of the last package from the carrying vessel pursuant to Section 15 of the management contract entered into by and between the Bureau of Customs and defendant Manila Port Service, such that the claims of the plaintiff had become time barred and/or had prescribed. The defendants further alleged, as a defense, that in the remote event that they would be held liable, their liability should be limited only to the invoice value of the shipments in question, which in no case should exceed P500.00 per package pursuant to Section 15 of the management contract.

The parties entered into a stipulation of facts, and on the bases of said stipulation the Court of First Instance of Manila, on February 28, 1964, rendered a decision. In its decision the lower court declared that the defendants were not liable under the fourth and tenth causes of action, but it held that the defendants were liable under all the sixteen other causes of action. However, the lower court assessed the liability of the defendants on the basis simply of the invoice value of the goods that were lost or damaged. Pertinent portions of the decision of the lower

court read as follows:

"Computed on the basis of the invoice value, it would appear that the total liability of the defendants arrastre operators would amount to P1,767.24.

"WHEREFORE, judgment is rendered sentencing the defendants to pay the plain-tiff the sum of P1,767.24 with interest thereon at the legal rate from the date of the filing of the complaint until the whole amount is paid plus P100.00 as reasonable attorney's fee and the costs of this action."

The defendants appealed from the above-mentioned decision, "with respect to the portion of the said decision dealing on the sixth cause of action of plain-tiff's complaint ordering herein defendants to pay plain-tiff the sum of P461.23, to the Honorable Supreme Court for a review on pure question of law." [1]

The facts that are pertinent to the sixth cause of action of the complaint are as follows: Rosario del Valle was the consignee of 1,667 bags of wheat flour ship-ped from Vancouver, Canada, aboard the S.S. "Varda" which arrived in Manila on May 30, 1961. On May 31, 1961, or one day before the discharge of the shipment from the car-rying vessel into the custody of defendant Manila Port Service, the consignee filed a provisional claim with said defendant. The provisional claim reads as follows:

"Provisional claim is hereby filed against you for bad order/non-delivery of goods, kindly make immediate survey to determine their whereabouts. As an acknow-ledge-ment sign and return the attached copies of this claim." [2]

The shipment was actually discharged into the custody of defendant Manila Port Service on June 1, 1961. When the shipment was delivered to the consignee, 124 bags with an invoice value of P461.23 were lacking.

There is no evidence that when the provisional claim was filed the consignee had already knowledge or notice of any damage or loss regarding the shipment. What is shown by the evidence, simply, is that the pro-visional claim was filed one day before the discharge of the goods from the carrying vessel into the custody of defendant Manila Port Service. As a matter of fact, the lower court in its decision, in connection with the sixth cause of action, says "....It is however admitted that the provisional claim was made one day before the cargo was actually discharged." [3]

It is contended by the defendants in the present appeal that the provisional claim was not filed within the 15-day period as required in Section 15 of the management contract entered into by and between the Mani-la Port Service and the Bureau of Customs, the pertinent provision of which section reads as follows:

"x x x In any event the contractor shall be relieved and released of any and all responsibility or liability for loss, damage, misdelivery and/or non--delivery of goods, unless suit in the court of proper jurisdiction is brought within a period of one (1) year from the date of the discharge of the goods or from the date when the claim for the value of the goods has been rejected or denied by the contractor, provided that such claim shall have been filed with the contractor within fifteen (15) days from the date of discharge of the last package from the carrying vessel.x x. x"

The lower court held in its decision that "the fact that the claim for loss or damage was, made one day before the cargo was actually discharged is a substantial com-pliance with this particular provision of the management contract." [4] It is the contention of the defendants, however, that the provisional claim was speculative and was filed prematurely, upon the ground that when it was filed with the Manila Port Service on May 31, 1961 the shipment of flour in question was still in the possession of the carrying vessel, as it was not yet discharged into the custody of the defendant Manila Port Service.

We find merit in the contention of the defendants. The ruling of this Court, speaking through Mr. Justice

Makalintal, in the case of Switzerland General Insurance Co., Ltd. vs. Manila Railroad, et al.,[5] supports the stand of the defendants. This Court said:

"The question has already been set-tled in a long line of cases, where we held that as a general rule a provisional claim for loss or damage filed before the date of discharge of the last package from the carrying vessel is not a substantial compliance with the requirement of Section 15 of the management contract because it is premature and speculative (Shell Co. of the Phil. Ltd. vs. Compañía General Tabacos de Filipinas, L-20230, July 30, 1965; Firemen's Fund Insurance Co. vs. Mani-la Port Service et al., L-22454, April 29, 1966; Rizal Surety and Insurance Co. vs. Manila Railroad Company and Manila Port Service, L-22409, April 27, 1967; Domestic Insurance Co. of the Philippines vs. Mani-la Port Service, L-24066, August 30, 1967). This rule was however qualified in the case of New Hampshire Fire Insurance Co. vs. Mani-la Port Service et al., L-20938, August 9, 1966, where, this Court made a distinction between two situations. Thus, where the pro-visional claim is filed ahead of the date of the discharge of the last package from the carrying vessel and the consignee has not yet examined or has not been informed of the condition of the shipment, the provisional claim is held to be speculative and pre-mature; but where the consignee, al-though it files the provisional claim before the date of the discharge of the last package from the carrying ves-sel, has in fact discovered or has been informed of a shortage or damage to the goods before the discharge of the last package, or during the unloading, then the provisional claim is deemed to have been properly presented." (Underscoring supplied)[6]

The present case falls in the first situation point-ed out in the above-quoted ruling of this Court. It is not disputed that the consignee filed the provisional claim on May 31, 1961, or one day before the discharge of the shipment into the custody of defendant Manila Port Service. In fact the lower court stated in its decision that it was admitted that the provisional claim was made one day before the cargo was actually discharged. In other words, when the provisional claim was filed with defendant Manila Port Service the shipment of flour in question was still aboard the carrying vessel, and the arrastre operator was not yet in possession, much less in control, of even a part of the shipment. The provisional claim that was filed with defendant Manila Port Service on May 31, 1961 - the wordings of which are reproduced at the earlier part of this opinion - makes no mention of the actual number of bags of flour, nor the value of the cargo intended to be covered by said provisional claim. The provisional claim simply gives notice of claim against the arrastre operator for bad order or non-delivery of goods, and asks for immediate survey to determine their whereabouts. How could defendant Manila Port Service, as arrastre operator, survey or examine the shipment of flour on May 31, 1961 when the shipment was presumably still inside the hatches of the SS "Varga" on that day? As long as the shipment is still aboard the carrying ves-sel, the arrastre operator has no obligation to look after, much less care for, the shipment. There is ab-solutely no showing in the record that when the provisional claim was filed with defendant Manila Port Service on May 31, 1961, the unloading of the shipment of flour had started and that the consignee had discovered or was informed of a shortage or damage to the shipment.

We, therefore, uphold the contention of herein de-fendants-appellants that the filing of the provisional claim in the present case was premature and speculative, and was not in accordance with the provision of Section 15 of the management contract entered into by and between the Bureau of Customs and defendant Manila Port Service - which management contract is binding on the consignee. Accordingly, We rule that the claim of plain-tiff in the sixth cause of action in its complaint in the court below is time-barred.

WHEREFORE, the decision appealed from is reversed in so far as it refers to the sixth cause of action in plaintiff's complaint. The sum of P461.23, which is the award under the sixth cause of action in the decision appealed from, should be deducted from the total award of P1,767.24 mentioned in said decision. Costs against plaintiff-appellee.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Sanchez, Ruiz Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] As quoted from the Notice of Appeal, page 56, Record on Appeal.

[2] Exhibit 1-MPS, p. 6, Appellants' brief.

[3] Record on Appeal, p. 54.

[4] Record on Appeal, p. 55.

[5] L-22150, April 22, 1968; 23 SCRA 111, 113.

[6] See also Insurance Co. of North. America vs. Mani-la Port Service, L-24887, April 22, 1968; 23 SCRA 114.

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