

**COMMUNICATIONS INS. CO., INC., PLAINTIFF-APPELLEE, VS.
MANILA PORT SERVICE AS SUBSIDIARY OF MANILA RAILROAD
COMPANY, DEFENDANT-APPELLANT.**

G.R. No. L-22656. June 10, 1971

Ponente: DIZON, J.

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DIZON, J.:

Appeal from a decision of the Court of First Instance of Manila in Civil Case No. 53461 the dispositive part of which is of the following tenor:

"WHEREFORE, judgment is hereby rendered, ordering, the defendant to pay the plaintiff the following sums; with interest at the legal rate from March 20, 1963, until full payment:

(a) On the first cause of action, the sum of \$148.60 converted into pesos at the prevailing rate of exchange on November 3, 1961;

(b) On the second cause of action, the sum of \$247.50 converted into pesos at the prevailing rate of exchange on January 23, 1962, not to exceed P500.00;

(c) On the third cause of action, the sum of \$28.72 converted into pesos at the prevailing rate of exchange on May 12, 1962;

(d) On the fourth cause of action, the sum of \$51.60 converted into pesos at the prevailing rate of exchange on April 15, 1962;

(e) On the fifth cause of action, the sum of \$31.35 converted into pesos at the prevailing rate of exchange on April 14, 1962; and

(f) On the sixth cause of action, the sum of \$26.40 converted into pesos at the prevailing rate of exchange on December 29, 1961.

The defendant shall pay the costs."

It appears that on November 23, 1962, plaintiff-appellee commenced an action against the defendant-appellant in the Municipal Court of Manila, praying that judgment be rendered against the latter as follows:

"1. Pay the plaintiff the aggregate sum of P3,245.11 as representing the value of goods lost and/or pilfered while in the custody of and due to the inexcusable negligence of defendant, with legal interest from dates of their first demands until full payment;

2. Pay the sum of P1,000.00 as attorney's fees; and

3. Pay costs."

Judgment in favor of appellee having been rendered in said court, appellant appealed to the Court of First Instance of Manila who, after due trial, rendered the appealed judgment.

The total amount appellee sought to recover represents the value of goods either lost or pilfered while under appellant's custody. Said goods came in six different shipments from the United States and Japan destined for the Port of Manila where appellant - a subsidiary of the Manila Railroad Company - was the arrastre contractor. Upon arrival of the vessels at said port, the cargoes were discharged unto appellant's custody. Upon their delivery to the respective consignees, the latter found that some of the goods were either in damaged condition or short of the quantity manifested in the corresponding bills of lading. The losses thus sustained by the consignees were, upon demand, paid by herein appellee, their insurer, who later filed the necessary suit to recover from appellant the amounts it had paid to the consignees.

The short-deliveries and the damage to some of the goods delivered are admitted to have taken place while the cargoes were under appellant's custody. The latter, however, invoking the provisions of Section 15 of the Management Contract, disclaims liability therefor upon the ground that the consignees of the shipments had failed to file the requisite claim within 15 days from the date of the discharge of the last package from the carrying vessel. Appellant further claims that, if liable at all, its liability was for sums much less than those claimed by appellee.

It is an established fact, however, that appellee filed provisional claims in connection with the missing or damaged goods after the discharge of several of the packages although before the discharge of the last package from the respective carrying vessels. These provisional claims - appellant contends - are ineffective in law because they were not in accordance with the provision of the Management Contract mentioned heretofore.

We are unable to accept the view that the contractual provision relied upon does not allow a consignee of goods discharged from a vessel to file a claim based on damage or short-landing until after the discharge of the last package from the carrying vessel. While We agree that a claim filed before the actual commencement of the discharge of goods carried by a vessel is legally ineffective under the provision of the Management Contract relied upon, because it would be a pure-ly speculative claim (*Universal Insurance etc., vs. Manila Railroad Company*, L-24600, April 27, 1970, 32 SCRA 364), We see no cogent reason to outlaw a claim similar to the ones involved in this case filed after the discharge of several or a majority of the packages carried by the vessel, belonging to the same consignee. We have heretofore upheld this view in *Malayan Insurance Co. Inc. vs. Manila Port Service et al.*, L-22687, March 28, 1969; *Switzerland etc. vs. Manila Railroad etc. et al.*, L-22150, April 22, 1968; *Insurance Company etc. vs. Manila Port Service*, L-24887, April 22, 1968, 23 SCRA 114.

We have held heretofore that some features of Section 15 of the Management Contract mentioned heretofore appear to be harsh and unreasonable (*Sun Bros. Co. vs. Manila Port Service*, G. R. No. L-13500, April 29, 1960). It is, therefore, our duty to tone them down and give them a reasonable and humane interpretation.

As regards the value of the goods short-landed or damaged, We are satisfied that the finding of both lower courts is sufficiently sustained by the evidence.

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., no part.

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