

SOUTHERN LINES, INC., PETITIONER, VS. COURT OF APPEALS AND CITY OF ILOILO, RESPONDENTS.

G.R. No. L-16629. January 31, 1962

Ponente: DE LEON, J.

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DE LEON, J.:

This is a petition to review on certiorari the decision of the Court of Appeals in CA—G. R. No. 15579-R affirming that of the Court of First Instance of Iloilo which sentenced petitioner Southern Lines, Inc. to pay respondent City of Iloilo the amount of P4,931.41.

Sometime in 1948, the City of Iloilo requisitioned for rice from the National Rice and Corn Corporation (hereinafter referred to as NARIC) in Manila. On August 24 of the same year, NARIC, pursuant to the order, shipped 1,726 sacks of rice consigned to the City of Iloilo on board the SS "General Wright" belonging to the Southern Lines, Inc. Each sack of rice weighed 75 kilos and the entire shipment as indicated in the bill of lading had a total weight of 129,450 kilos. According to the bill of lading, the cost of the shipment was P63,115.50, itemized and computed as follows:

Unit price per bag P36.25

.....

P62,567.50

Handling at P0.13 per bag

.....

224.38

Trucking at P2.50 per bag

.....

323.62

Total

63,115.50

On September 3, 1948, the City of Iloilo received the shipment and paid the amount of P63,115.50. However, it was noted at the foot of the bill of lading that the City of Iloilo "Received the above mentioned merchandise apparently in same condition as when shipped, save as noted below: actually received 1685 sacks with a gross

weight of 116,131 kilos Upon actual weighing. Total shortage ascertained 13,319 kilos." The shortage was equivalent to 41 sacks of rice with a net weight of 13,319 kilos, the proportionate value of which was P6,486.35.

On February 14, 1951, the City of Iloilo filed a complaint in the Court of First Instance of Iloilo against NARIC and the Southern Lines, Inc. for the recovery of the amount of P6,486.35 representing the value of the shortage of the shipment of rice. After trial, the lower court absolved NARIC from the complaint, but sentenced the Southern Lines, Inc. to pay the amount of P4,931.41 which is the difference between the sum of P6,486.35 and P1,554.94 representing the latter's counterclaim for handling and freight.

The Southern Lines, Inc. appealed to the Court of Appeals which affirmed the judgment of the trial court. Hence, this petition for review.

The only question to be determined in this petition is whether or not the defendant-carrier, the herein petitioner, is liable for the loss or shortage of the rice shipped.

Article 361 of the Code of Commerce provides:

"ART. 361.—The merchandise shall be transported at the risk and venture of the shipper, if the contrary has not been expressly stipulated.

As a consequence, all the losses and deteriorations which the goods may suffer during the transportation by reason of fortuitous event, force majeure, or the inherent nature and defect of the goods, shall be for the account and risk of the shipper.

Proof of these accidents is incumbent upon the carrier."

Article 362 of the same Code provides:

"ART. 362.—Nevertheless, the carrier shall be liable for the losses and damages resulting from the causes mentioned in the preceding article if it is proved, as against him, that they arose through his negligence or by reason of his having failed to take the precautions which usage has established among careful persons, unless the shipper has committed fraud in the bill of lading, representing the goods to be of a kind or quality different from what they really were.

If, notwithstanding the precautions referred to in this article, the goods transported run the risk of being lost, on account of their nature or by reason of unavoidable accident, there being no time for their owners to dispose of them, the carrier may proceed to sell them, placing them for this purpose at the disposal of the judicial authority or of the officials designated by special provisions."

Under the provisions of Article 361, the defendant-carrier in order to free itself from liability, was only obliged to prove that the damages suffered by the goods were "by virtue of the nature or defect of the articles." Under the provisions of Article 362, the plaintiff, in order to hold the defendant liable, was obliged to prove that the damages to the goods by virtue of their nature, occurred on account of its negligence or because the defendant did not take the precaution adopted by careful persons. (*Government vs. Ynchausti & Co.*, 40 Phil., 219, 223).

Petitioner claims exemption from liability by contending that the shortage in the shipment of rice was due to such factors as the shrinkage, leakage or spillage of the rice on account of the bad condition of the sacks at the time it received the same and the negligence of the agents of respondent City of Iloilo in receiving the shipment. The contention is untenable, for, if the fact of improper packing is known to the carrier or his servants, or apparent upon ordinary observation, but it accepts the goods notwithstanding such condition, it is not relieved of liability for loss or injury resulting therefrom. (9 Am. Jur., 869.) Furthermore, according to the Court of Appeals, "appellant (petitioner) itself frankly admitted that the strings that tied the bags of rice were broken; some bags were with holes and plenty of rice were spilled inside the hull of the boat, and that the personnel of the boat

collected no less than 26 sacks of rice which they had distributed among themselves." This finding, which is binding upon this Court, shows that the shortage resulted from the negligence of petitioner.

Invoking the provisions of Article 366 of the Code of Commerce and those of the bill of lading, petitioner further contends that respondent is precluded from filing an action for damages on account of its failure to present a claim within 24 hours from receipt of the shipment. It also cites the cases of *Government vs. Ynchausti & Co.*, 24 Phil., 315 and *Triton Insurance Co. vs. Jose*, 33 Phil., 194, ruling to the effect that the requirement that the claim for damages must be made within 24 hours from delivery is a condition precedent to the accrual of the right of action to recover damages. These two cases above-cited are not applicable to the case at bar. In the first cited case, the plaintiff never presented any claim at all before filing the action. In the second case, there was payment of the transportation charges which precludes the presentation of any claim against the carrier. (See Article 366, Code of Commerce.) It is significant to note that in the American case of *Hoye vs. Pennsylvania Railroad Co.*, 13 Ann. Cas. 414, it has been said:

"... 'It has been held that a stipulation in the contract of shipment requiring the owner of the goods to present a notice of his claim to the carrier within a specified time after the goods have arrived at their destination is in the nature of a condition precedent to the owner's right to enforce a recovery, and that he must show in the first instance that he has complied with the condition, or that the circumstances were such that to have complied with it would have required him to do an unreasonable thing. The weight of authority, however, sustains the view that such a stipulation is more in the nature of a limitation upon the owner's right to recovery, and that the burden of proof is accordingly on the carrier to show that the limitations was reasonable and in proper form or within the time stated.' (Hutchinson on Carrier, 3rd ed., par. 447)." Italics Supplied.

In the case at bar, the record shows that petitioner failed to plead this defense in its answer to respondent's complaint and, therefore, the same is deemed waived (Section 10, Rule 9, Rules of Court) and cannot be raised for the first time at the trial or on appeal. (*Maxilom vs. Tabotabo*, 9 Phil., 390.) Moreover, as the Court of Appeals has said:

"* * * the records reveal that the appellee (respondent) filed the present action, within a reasonable time after the short delivery in the shipment of the rice was made. It should be recalled that the present action is one for the refund of the amount paid in excess, and not for damages or the recovery of the shortage; for admittedly the appellee (respondent) had paid the entire value of the 1726 sacks of rice, subject to subsequent adjustment, as to shortages or losses. The bill of lading does not at all limit the time for filing an action for the refund of money paid in excess."

Wherefore, the decision of the Court of Appeals is hereby affirmed in all respects and the petition for certiorari denied. With costs against the petitioner.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, and Dizon, JJ., concur.

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