

DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MANILA PORT SERVICE AND MANILA RAILROAD COMPANY, DEFENDANTS AND APPELLANTS.

G.R. No. 13439. January 31, 1962

Ponente: DIZON, J.

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DIZON, J.:

Appeal from the decision of the Court of First Instance of Manila ordering the Manila Port Service and the Manila Railroad Company, jointly and severally, to pay the Domestic Insurance Company of the Philippines the sum of P1,586.45 representing the alleged reasonable value of a missing bale of printed cotton piece goods, with costs.

During the time material to this action Barber Line, a common carrier, was the operator of the SS Taiwan plying between the United States and Manila, while Macondray & Co., Inc. was its agent in the latter city. The Manila Port Service was the operator of the arrastre service at the port of Manila, and as such was authorized to deliver cargo discharged into its custody from vessels in port, on presentation of the corresponding release papers.

On or about January 30, 1956, the SS Taiwan took board at the port of New York City, New York, U.S.A., for shipment to Manila, 13 bales of printed cotton piece goods, for which Barber Line issued Bill of Lading No. 116 in the name of E. Awad & Sons, Inc., as shipper, consigned to the order of the Security Bank & Trust Company, with arrival notice to Vistan, Geraldez & Co., Ltd. of Manila. Upon the vessel's arrival in Manila on or about March 9, 1956, the 13 bales already mentioned were discharged into the custody of the Manila Port Service. The shipping documents were endorsed and sent to Vistan, Geraldez & Co., Ltd. who cleared the same with Macondray & Co., Inc., the Manila Port Service and the Bureau of Customs. Out of the 13 bales described in the bill of lading aforementioned, however, one was not delivered to Vistan, Geraldez & Co., Ltd.

The 13 bales of cotton piece goods already mentioned were insured with appellee herein against loss and/or damage. Upon demand of the insured, appellee paid the latter's claim in the sum of P1,586.45 and subsequently filed the present action to recover from appellants.

Upon the above facts—which were the subject of stipulation by the parties—the lower court dismissed the case as against the Barber Line and Macondray & Co., Inc., but rendered judgment, as stated above, against the Manila Port Service and the Manila Railroad Company.

Appellants do not deny their liability, but claim that the same should not be for more than P500.00 by reason of the management contract (Exhibit 1-MPS) entered into by and between the Bureau of Customs, pursuant to the provisions of Commonwealth Act No. 286, as amended, and the Manila Port Service, a subsidiary of its co-appellant.

It is not denied that delivery of 12 of the 13 bales of cotton piece goods mentioned heretofore was made by appellants to Vistan, Geraldez & Co., Ltd. by virtue of the Delivery Permit Exhibit 2-MPS and the Gate Pass Exhibits 3-MPS, duly signed by the Bureau of Customs, the Manila Port Service and the consignee.

On the dorsal side of the Delivery Permit the following appeared stamped:

"This 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, providing exemptions of restrictions from liability; and releasing the Company from liability unless suits is brought within one (1) 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 date of discharge of the last package from carrying vessels."

On Exhibit 3-MPS the following appeared printed:

"The undersigned, duly authorized to respectively represent the Bureau of Customs, the above named CONSIGNEE, and the Arrastre Service Operator, hereby certify to the correctness of the above description of the goods covered by this Gate Pass. Issuance of this Gate Pass constitutes delivery to, and receipt by CONSIGNEE of the goods as described herein. The presentation of the permit to deliver the shipment consisting, wholly or partly of the above goods, is subject to all the terms and conditions contained in the Management Contract between the Bureau of Customs and Manila Port Service and all amendments thereto or alterations thereof, particularly but not limited to Paragraph 15 hereof limiting the Company liability to P500.00 per package, unless the value of the goods is otherwise specified or manifested, providing exemptions from liability and releasing the Company from liability unless suit is brought within one (1) year from the date of discharge of the goods, or from date when the claim for 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."

The question thus presented is not new, the same having been squarely decided by us in *Jose Bernabe, Inc. vs. Delgado Brothers, Inc.*, 107 Phil., 287; *Atlantic Mutual Insurance Co. vs. Manila Port Service et al.*, G. R. No. L-16271, October 31, 1961; the *Insurance Company of North American vs. Manila Port Service et al.*, G. R. No. L-17331, November 29, 1961, our ruling in said cases being substantially to the effect that, the consignee having taken delivery by virtue of a delivery permit to which was incorporated the provision of the management contract limiting the liability of the arrastre service operator for each package not delivered to P500.00, said consignee is bound by such provision, unless he can prove that the value of the missing cargo is otherwise specified or manifested—which is not the case in the present action.

Wherefore, the decision appealed from is hereby modified in the sense that appellants shall pay appellee, jointly and severally, the sum of P500.00 only. Without pronouncement as to costs.

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

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