

**FEARNLEY & EGER AND MACONDRAY & CO., INC.,
PLAINTIFFS AND APPELLEES, VS. MANILA RAILROAD COMPANY
AND/OR MANILA PORT SERVICE, DEFENDANTS AND APPELLANTS.**

G.R. No. 15164. May 31, 1961

Ponente: PADILLA, J.

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PADILLA, J.:

Fearnley & Eger, a foreign shipping company with principal place of business in Oslo, Norway, and Macondray & Company, Inc., its agent in the Philippines, brought an action in the Court of First Instance of Manila against the Manila Railroad Company and/or Manila Port Service for recovery of various sums of money based on four causes of action, to wit: (1) P1,708.23, the total CIF value of two bales of cotton piece goods, missing and undelivered to the owner; (2) P244.96, the total value of 4 drums x 55 AG Shell Spirax 140 (22 AG) and 1 carton (6 x 1 AG) Shell Dentax 140 (6 AG), missing and undelivered to the owner; (3) P111.89; the balance due and unpaid of the value of 30 cartons of lubricating oil that were lost; and (4) P500 as attorney's fees and expenses of litigation (civil No. 36719). The defendants answered the complaint denying liability for the sums claimed by the plaintiffs under the first and last causes of action but admitting liability for the sums claimed under the second and third causes of action. Their main and special defense is that "under the provisions of the Management Contract entered into in pursuance of law, by and between the Bureau of Customs and defendant Manila Port Service on February 29, 1956, the liability on cargoes lost or damaged, if any, of herein defendant Manila Port Service as arrastre operator for the Port of Manila is limited only to the invoice value of the cargo which, in no case shall be more than P500.00 each package."

On 13 August and 11 September 1958 the parties entered into a stipulation and supplemental stipulation of facts which they submitted to the Court. The amount of P111.99 claimed by the plaintiffs under the third cause of action of their complaint had been paid to them by the defendants and the parties agreed not to proceed any further on the matter.

On 29 December 1958 the Court rendered judgment ordering the defendants to pay to the plaintiffs the sum of P1,708.23, with interest thereon at the rate of 6% per annum from the date of the filing of the complaint until fully paid; P244.96, with interest thereon at the same rate and duration of time; P400 as attorney's fees; and the costs of the suit. The defendants have appealed. The errors they have assigned in their brief are only of law.

The amount of P244.96, claimed by the appellees in their second cause of action and ordered paid to them by the trial court already had been paid by the appellants. Hence this appeal concerns only those parts of the judgment awarding to the appellees the sum of P1,708.23, the total CIF value of the two bales of cotton piece goods, interest thereon, and P400 as attorney's fees.

The pertinent facts, as gathered from the stipulations of facts submitted by the parties, are: On 25 March 1957, Getz Bros. & Company of San Francisco, California, U.S.A., shipped on board the MS "Mandeville," operated by the appellee Fearnley & Eger, five bales of cotton piece goods consigned to the order of the Philippine Bank of

Communications, Cebu branch, with arrival notice addressed to Go Tao & Company, Cebu City, as evidence by bill of lading No. 4, dated 25 March 1957 in San Francisco (Annex A). Go Tao & Company paid for and became the owner of the said cargo. On 15 May 1957 the vessel arrived in Manila and the bales of cotton were discharged into the possession and custody of the Manila Port Service, complete and in good order and condition, for delivery to the owner in Cebú City. However, two bales of the shipment in question with a total CIF value of P1,708.23 were not actually delivered to the owner and the appellees paid to the owner the total value thereof. Thus the appellees were subrogated to the rights of the owner. Despite demand, the appellants refused and failed to pay to the appellees the value of the missing cargo that they had paid to the owner.

The question raised in this appeal is the same as that raised in *Northern Motors, Inc. vs. Prince Line*, 107 Phil., 253; *Delgado Bros., Inc. vs. Li Yao & Company*, 107 Phil., 939; and *Smith, Bell & Co., Ltd. vs. Manila Port Service*, 111 Phil., 611, where this Court has held that section 15 of the management contract entered into by and between the appellants and the Bureau of Customs on 29 February 1956 pursuant to the provisions of Act No. 3002, as amended by Act No. 3851, Commonwealth Act No. 285 and Republic Act No. 140, limiting the liability of the herein appellants for loss, destruction or damage to any cargo while under their custody or control to P500 for each package, unless the value be otherwise specified or manifested and the corresponding arrastre charges have been paid, is valid and binding upon the herein appellees who were not parties thereto or signatories thereof. In the bill of lading, Annex A, the value of the two bales of cotton piece goods is not specified or manifested. Hence, the liability of the appellants for loss is limited only to P500 for each bale, or a total of P1,000 for the two bales. For that reason, the appellants are not liable for attorney's fees and the sum of P400 for attorney's fees ordered by the Court to be paid by the appellants to the appellees should be stricken from the judgment appealed from.

The judgment appealed from is modified by ordering the appellants to pay to the appellees the sum of P1,000, without pronouncement as to costs.

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

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