

ATLANTIC MUTUAL INSURANCE CO., PLAINTIFF AND APPELLEE, VS. MACONDRAY & CO., INC., ET AL., DEFENDANTS AND APPELLEES. MANILA PORT SERVICE AND/OR MANILA RAILROAD COMPANY, DEFENDANT...

G.R. No. 17050. May 31, 1961

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

The Atlantic Mutual Insurance Company commenced this suit in the Court of First Instance of Manila to recover from the Macondray & Co., Inc. and/or the Manila Port Service (a subsidiary of the Manila Railroad Company), as alternative defendants, the sum of P532.86 representing the damage said to have been caused to a cargo of Holy Scriptures shipped from New York City, U.S.A., on board the "S.S. Leoville" of the Barber Steamship Lines, Inc. (of which the defendant Macondray & Co. is the agent in the Philippines), consigned to the Bible House, Philippines, and unloaded at the Port of Manila by the Manila Port Service between May 29 and June 2 of 1956. The shipment was insured with plaintiff firm, which paid the corresponding loss and then brought this action in subrogation of the rights and interests of the consignee.

The parties submitted the case to the lower court for decision solely on the basis of their stipulation of facts, from which it appears that on or about April 20, 1956, the American Bible Society of New York shipped to Manila 312 cartons and cases of Holy Scriptures, on board the "S.S. Leoville" of the Barber Steamship Lines, Inc., consigned to the order of the Philippine Agency, Bible House, Manila; that said shipment was insured by the shipper with the plaintiff; that as shown by good order tally sheets, out of said cargo, 309 cases and cartons were discharged "complete and in good order" at the Port of Manila from May 29 to June 2, 1956, into the possession and custody of defendant Manila Port Service in its capacity as arrastre contractor; that the remaining three (3) cases were discharged on June 1, 1956, apparently in bad order, but examination by marine surveyors showed that their contents were in good order, except that the cover of one copy of Holy Scripture was slightly torn and pressed on the edge and another copy slightly soiled on the edge; that on June 6, 1956, the consignee requested for the inspection of 162 other cases, whereupon it was revealed that all were in apparent good condition but with signs of having been wet; that upon subsequent examination requested on June 9, 1956, the surveyors discovered that another five (5) cases and contents showed signs of having been wet with fresh water and injured. The damage was placed at P532.86. It is likewise admitted that the responsibility of the Manila Port Service over the damaged goods started on the dates they were respectively unloaded into its custody, i.e., from May 29 to June 2, 1956.

Upon the foregoing admissions, the lower court rendered judgment, ordering defendants Manila Port Service and Manila Railroad Company to pay the plaintiff the sum of P532.86, with legal interest thereon from the filing of the complaint until fully paid, and absolving defendant Macondray & Co., Inc. from the complaint.

After the denial of their motion for reconsideration, defendants Manila Port Service and Manila Railroad Company interposed their appeal to the Court of Appeals; but as the case only involved questions of law, the

appellate court certified the same to this Court. The certification is proper, considering that the case had been submitted for decision by the parties on stipulation of facts.

There is no merit in the appeal. Here and below, the only issue raised revolves around the question as to when the damage arose to the cases received in good order by appellants; for if it occurred while the goods were still on board the vessel, then the liability should attach to the carrier; but if the damage happened when said goods were already discharged by and taken into the custody of the Manila Port Service, then the latter should answer for the loss. Resolving the question solely upon the stipulation of facts of the parties, there is no alternative but to hold the appellants liable. It was admitted that, except for three cases noted as received in bad order (and which are not now in question), the entire shipment was received from the carrier by the appellant Port Service "complete and in good order" Stip., par. 2(a) and not merely in apparent good condition, as it now urges. Later examination of these goods upon request of the consignee before taking delivery having showed that the contents of some of the cases were actually damaged, but without any showing when such damage occurred, the inference obviously is that it happened while in the appellants' possession, since the cases in question were received by it in good order when unloaded from the ship. It may be noted that the questioned shipment was in the possession of the appellants for about ten days, more or less, prior to its delivery to the consignee. By law, loss or damage while in the possession of an obligor is presumed due to its fault in the absence of contrary proof (Civil Code, Art. 265). It was incumbent upon appellant Port Service to rebut this legal presumption, and it has failed to do so.

The terms of the management contract entered into by and between the Bureau of Customs and the appellants have nothing to do with this case, because they were not properly presented in the court below, and therefore cannot be considered for the first time on appeal.

The judgment appealed from is affirmed, with costs against the appellants.

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

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