

STATE BONDING & INSURANCE COMPANY, INC., PLAINTIFF AND APPELLEE, VS. MANILA PORT SERVICE AND/OR MANILA RAILROAD CO., DEFENDANTS AND APPELLANTS.

G.R. No. 21833. February 28, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

The present case is an appeal in a suit for recovery of damages upon eight alleged causes of action.

Stated briefly, the facts as to each alleged cause of action are as follows:

First Cause of Action: Seven (7) cases of truck parts were shipped on board SS Ellen Bakke at San Francisco, California, U.S.A., by Muller, Maclean and Co., consigned to Security Bank and Trust Co., with arrival notice to Francisco A. Quisumbing, Manila. State Bonding and Insurance Co. was insurer of the shipment. On November 29, 1959 SS Ellen Bakke arrived in Manila and discharged the aforesaid cargo, in good order, to the Manila Port Service, arrastre operator and subsidiary of the Manila Railroad Company. On December 1, 1959 the last case of said truck parts was discharged. On December 10, 1959 a provisional claim for short landed and/or bad order cargo was filed with the Manila Port Service by the consignee's customs broker, with reservation to file a formal claim later. No amount was stated nor pertinent paper annexed to the provisional claim. Subsequently, only one out of the seven cases was delivered to the consignee by the Manila Port Service. A formal claim for the undelivered cargo was filed on February 29, 1960. State Bonding and Insurance Co., paid P5,975.02 for the lost cargo.

Second Cause of Action: Seventy-five (75) cases of automotive parts were shipped on board SS Molave at Osaka, Japan by Taiyo Shokai Co., Ltd., consigned to Security Bank and Trust Co., with arrival notice to Francisco A. Quisumbing, Manila. State Bonding and Insurance Co. was insurer of the cargo. On August 2, 1959 SS Molave arrived in Manila. On August 5, 1959 it discharged all and the last package of the aforementioned shipment. On August 14, 1959 a provisional claim for short landed and/or bad order cargo was filed with the Manila Port Service by the consignee's customs broker. No amount was specified nor supporting paper attached to the claim, but it reserved the right to subsequently file a formal claim. Seventy-three (73) cases only were delivered by the Manila Port Service. A formal claim for the value of the two (2) missing cases was filed with the Manila Port Service by the consignee's customs broker on October 12, 1959. The State Bonding and Insurance Co. paid to consignee P735.48 for the loss.

Third Cause of Action: Six (6) cases of rayon thread were shipped on board SS Temeraire at New York, U.S.A., by Walson Consolidated Mercantile Co., consigned to Security Bank and Trust Co., with notice of arrival to the Supreme Baby Wear Co., Manila. State Bonding and Insurance Co., was insurer of the shipment. On November 20, 1959 the cargo arrived in Manila. All of it was discharged in good order to the Manila Port Service. On November 23, 1959 the last case was thus discharged. All six (6) cases were delivered by the Manila Port Service to the consignee, but five (5) cases had been tampered and were thirty pounds short. On December 10, 1959 a

provisional claim for the value of the missing thirty pounds of cargo was filed with the Manila Port Service by the Supreme Baby Wear Co. State Bonding and Insurance Co. paid P285.49 for the loss.

Fourth Cause of Action: The parties stipulated that the claim hereunder has been paid by the defendants to the entire satisfaction of the plaintiff.

Fifth Cause of Action: Twenty-one (21) cartons of automotive parts were loaded on board SS Fernbank at New York, U.S.A., by Great Lakes International, Inc., consigned to Security Bank and Trust Co., with notice of arrival to Francisco A. Quisumbing, Manila. It was insured with State Bonding and Insurance Co. SS Fern-Bank arrived in Manila on December 7, 1959. It discharged to the Manila Port Service all the aforesaid shipment in good order, the last carton, on December 14, 1959. A provisional claim for short landed and/or bad order cargo was filed, without accompanying papers, on December 15, 1959 with the Manila Port Service by the consignee's customs broker, reserving the right to file a formal claim later. Only seventeen (17) cartons were delivered by the Manila Port Service to the consignee i.e., short by four (4) cartons. A formal claim was filed with the Manila Port Service on March 2, 1960. State Bonding and Insurance Co. paid P542.52 to the consignee for the undelivered goods.

Sixth Cause of Action: Six (6) drums of synthetic resin, two (2) drums of dental materials and three (8) drums of silica sand were shipped on board SS Steel Architect by Bel Arden, Inc., consigned to Philippine Banking Corporation, with arrival notice to Genato Commercial Corporation, Manila. The shipment arrived in Manila on January 25, 1960 and was received by the Manila Port Service in good order. The last drum was discharged from SS Steel Architect on February 4, 1960. And on the same day, Genato Commercial Corporation filed with the Manila Port Service a provisional claim for short landed and/or bad order cargo. The delivery by the Manila Port Service to the consignee was short by 193 pounds. A formal claim for the deficiency was filed with the Manila Port Service on June 12, 1960. State Bonding and Insurance Co. paid P505.40 to the consignee for the loss.

Seventh Cause of Action: The parties agree that the seventh cause of action has not been established.

Eighth and Ninth Causes of Action: These refer to other incidental damages, such as attorney's fees. The present appeal does not involve this portion of the litigation.

State Bonding and Insurance Co., having been refused payment for the above-mentioned goods by the Manila Port Service, filed the present suit on November 11, 1960 in the Court of First Instance of Manila against Manila Port Service and/or Manila Railroad Company. After the parties stipulated on some of the facts and presented evidence as to the others, the lower court rendered judgment on July 5, 1963, thus:

"Wherefore, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering the latter, jointly and severally, to pay the plaintiff under the first cause of action the sum of P5,975.02; under the second cause of action the sum of P735.48; under the third cause of action the sum of P285.49; under the fourth cause of action the defendants are exempt from the payment thereof. Under the fifth cause of action, the sum of P542.52; sixth cause of action the sum of P606.40; under the seventh cause of action the sum of P190.71; under the 8th and 9th causes of action, the sum of P1,000, plus costs of this action.

"So ordered."

Not satisfied with said judgment, defendants appealed.

The point at issue is whether a provisional claim, without statement of the value and without supporting papers attached thereto, substantially fulfills the requirement under Section 15 of the Arrastre Management Contract.

Said section, which is binding on the consignees for having been stamped on the delivery permits used by them to get the goods, states:

"15. * * * in any event the CONTRACTOR shall be relieved and released of any and all responsibility or liability for loss, damage, mis-delivery, and/or non-delivery of goods, unless suit in the court of proper jurisdiction is brought within a period of one (1) year from the date of the discharge of the goods, or from the date when the claim for the value of such goods have been rejected or denied by the CONTRACTOR, provided that such claim shall have been filed with the CONTRACTOR within fifteen (15) days from the date of discharge of the last package from the carrying vessel. * * *"

The reason underlying Section 15's aforestated requirement of filing a claim within the 15-day period therein provided is to give reasonable opportunity to check the validity of the claim while the facts are still fresh in the minds of the persons who took part in the transaction and while the pertinent documents are still available.[1] Although without statement as to amount and without accompanying documents, the provisional claims herein involved contained descriptions of the importations concerned, sufficient to allow the Manila Port Service reasonable verification. It would not have been difficult for defendant Manila Port Service to check on whether some or all of cargo therein described were in fact missing or in bad order. For it is supposed to have a complete and detailed recording or checking of said cargo (Section 5 of Arrastre Management Contract, Ext. 1). The particulars of the precise amount of indemnity claimed as well as the supporting papers for said claim were properly reserved for the formal claim thereafter filed, since the determination and preparation of the same by the consignee should be done carefully and without haste. The provisional claims in question therefore served the purpose of enabling the arrastre operator to check the goods in its possession, shortly after they had been discharged from their carriers.

Previous rulings of this Court in regard to provisional claims have been in line with the foregoing considerations. Thus in one case we had occasion to state that a provisional claim for damage or short delivery filed before the goods were discharged from the carrying vessel did not comply with Section 15's requirement, the same being premature and speculative.[2] On the other hand, a provisional claim filed after the discharge of the goods from the vessel and within the fifteen-day period mentioned in Section 15, has been considered sufficient compliance with the proviso therein requiring the filing of a claim within said fifteen days.[3]

Applying to the present case the foregoing rule, it follows that appellee Manila Port Service has not been released from liability with respect to the goods it failed to deliver under the first, second, fifth and sixth causes of action. For in these instances a provisional claim was filed within fifteen days from the date of discharge of the last package from the carrying vessel. As to the third cause of action, however, the record shows that the provisional claim was filed only on December 10, 1959 whereas the last package was discharged from the carrying vessel on November 23, 1959. It was therefore filed late so that recovery cannot be had thereunder.

As to the amount recoverable, the parties stipulated that the value of the six (6) cases in question under the first cause of action shall not exceed P3,000 (Record on Appeal, p. 31) and the value of the goods involved under the sixth cause of action shall not exceed P500.35 (Record on Appeal, p. 35). The court a quo therefore, erred in giving awards in excess of said amounts under said causes of action, namely, P5,975.02 and P505.40, respectively. Appellant and appellees agree said error was committed.

Similarly the parties agree that the court a quo erred in awarding P190.71 under the seventh cause of action notwithstanding its finding, which the parties accept, that said cause of action has not been established.

Wherefore, the judgment appealed from is hereby modified so as to eliminate the award of P285.49 under the

third cause of action; to eliminate the award of P190.71 under the seventh cause of action; to reduce the award from P5,975.02 to P3,000 under the first cause of action; and to reduce the award from P505.40 to P500.35 under the sixth cause of action. In all other respects said judgment is hereby affirmed. No costs, in this instance. It is so ordered.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Dizon, Regala, Makalintal, Zaldivar and Sanchez, JJ., concur.

Judgment modified.

[1] *Consunji vs. Manila Port Service*, 110 Phil., 231.

[2] *Shell Company of the Philippines, Ltd. vs. Compania General de Tabacos de Filipinas*, 122 Phil. 94.

[3] *Yu Kimteng Construction Corporation vs. MRR*, 122 Phil. 684; *GSIS vs. MRR*, 122 Phil. 782.

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