

E. RAZON, INC., PETITIONER, VS. THE COURT OF APPEALS AND PIONEER INSURANCE & SURETY CORPORATION, RESPONDENTS.

G.R. No. 50242, May 21, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review by certiorari the decision of the Court of Appeals in CA-G.R. No. 56751-R, affirming in toto the decision of the Court of First Instance of Manila in Civil Case No. 81460, entitled "Pioneer Insurance and Surety Corporation v. Northern Lines, Inc. and/or E. Razon, Inc. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered ordering defendant E. Razon, Inc. to pay plaintiff the sum of P10,899.28 with legal interest from date of filing of the complaint. November 13, 1970. until fully paid, and costs.

"The complaint is dismissed as against defendant Northern Lines, Inc." (Rollo, p. 13)

Civil Case No. 81460 was filed by respondent Pioneer Insurance as insurer-subrogee, to recover from either or both defendants, jointly and severally, the sum of P21,937.75 representing the invoice value, freight costs and other importation expenses of three (3) cases of radio and phonograph parts short-delivered from a total of eighty-six (86) cases of said articles from Kobe, Japan, shipped aboard the SS "Don Jacinto II" of the defendant Northern Lines, Inc., for delivery to the consignee MGM Importers Corporation at Manila. The total shipment was insured by Pioneer.

On November 14, 1969, the shipment was discharged from the carrying vessel into the custody of E. Razon, Inc., one of the arrastre operators in the Port of Manila, charged with the obligation of handling, custody and delivery of all cargo discharged at the government piers of Manila. The shipment was delivered to its consignee, MGM Importers with losses and damages valued at P21,937.75.

On December 12, 1969, E. Razon certified that out of 86 cases of radio parts loaded on board the SS "DON JACINTO H" under Bill of Lading No. KM-18, only 83 cases had been delivered to the consignee.

Formal claims were thus filed by MGM Importers with Northern Lines and E. Razon, as well as the Pioneer Insurance Company. The latter indemnified the assured in the sum of P21,937.75 covering the full value of the lost cargo.

In its Answer, E. Razon denied liability on the grounds that (a) the whole cargo was not received from the carrying vessel and (b) the shipment was delivered to the consignee in the same quantity and condition that E. Razon, Inc. received the same from the vessel. However, it alleged that in the remote possibility it is held liable, its liability must be limited to the amount fixed under the provisions of the Revised Management Contract, that is, P2,000 per package.

On the other hand. Northern Lines alleged that the shipment had been completely unloaded and received by E. Razon, Inc.; that it exercised extraordinary diligence: and that the complaint has no cause of action.

Thereafter, the parties entered into a stipulation of fact, under which the defendants Northern Lines and E. Razon, Inc. admitted, among others, that (a) the entire shipment of 86 radio parts were unloaded from the vessel "DON JACINTO II" unto the custody of E. Razon as shown by the Statement of Deliveries and the cargo receipts; (b) E. Razon certified that out of 86 cases only 83 cases had been delivered to the consignee; (c) on November 25, 1969, the consignee, MGM Importers, filed a formal claim for the missing cases; and (d) Plaintiff Pioneer indemnified the consignee in the sum of P21,937.75.

On July 24, 1972, after filing their respective memoranda, defendant Northern Lines, Inc. filed a Motion to Dismiss on the ground that under the Stipulation of Facts, E. Razon admitted that it received from the vessel the complete shipment as follows:

"III. Plaintiff and defendant E. Razon admit that the entire shipment of 86 cases radio parts were unloaded from the vessel 'Don Jacinto II' unto the custody of E. Razon as shown by the summary of deliveries (Statement of deliveries) a copy of which being herewith attached and Exh. "I" (Northern Lines) and under the cargo receipts stated herein which are likewise attached herewith and marked as Exh. "2" to Exh. "2-V (Northern Lines.)" (Rollo, p. 25)

After hearing, the Court of First Instance of Manila rendered its decision ordering defendant E. Razon to indemnify plaintiff Pioneer the sum of P10,899.28 with legal interest and dismissing the case against defendant Northern Lines, leaving the controversy against E. Razon, Inc. alone.

On December 18, 1974, E. Razon, Inc. filed its appeal with the Court of Appeals which rendered its decision on January 4, 1978, affirming in toto the trial court's decision. On March 9, 1979, the Court of Appeals denied the petitioner's motion for reconsideration. Hence, this petition.

The sole issue raised by the petitioner is the general limitation of its liability to P2.000 per case lost or destroyed as provided in Paragraph or Clause XX of the Revised Management Contract it had entered into with the Bureau of Customs which reads:

"The CONTRACTOR shall at its own expense handle all merchandise upon or over said piers, wharves, and other designated places and at its own expense perform all work undertaken by it hereunder diligently and in a skillful workman like and efficient manner; that the contractor shall be solely responsible as an independent CONTRACTOR, and hereby agrees to accept liability and to promptly pay to the steamship company, consignee consignor, or other interested party or parties for the loss, damage, or non-delivery of cargoes to the extent of the actual invoice value of each package which in no case shall be more than Two Thousand Pesos (P2.000.00) for each package unless the value of the importation is otherwise specified or communicated in writing together with the invoice value and supported by a certified packing list to the CONTRACTOR by the interested party or parties before the arrival of the goods, as well as all damages that may be suffered on account of loss, damage or destruction of any merchandise while in custody or under the control of the CONTRACTOR upon any pier, wharf or other designated place under the supervision of the Bureau, but said CONTRACTOR shall not be responsible for the condition of any package received nor for the weight, nor for any loss, injury or damage to the said cargo before or while the goods are being received or remain on the piers or wharves, or if the loss, injury or damage is caused by force majeure. or other causes beyond the CONTRACTOR'S control, or capacity to prevent or remedy." (Rollo. p. 26)

It is the petitioner's contention that the unequivocal text of the aforequoted provision of the Revised Management Contract denotes a clear rule in the limited liability of E. Razon, Inc., that is, it should not exceed P2.000 per package, except only in case the value of the importation is specified, manifested or communicated in writing

together with the certified packing list to the contractor before the arrival of the goods. Petitioner reads the same to mean notification before arrival of the vessel. Thus, not having been notified prior to the docking of the SS "Don Jacinto II," E. Razon denies its liability to MGM Importers or to its subrogee Pioneer Insurance.

The respondent maintains otherwise. It argues that "Under the provisions of the Tariff and Customs Code, for purposes of clearing cargo from the Bureau of Customs, the Invoice, Packing List, Bill of Lading and other documents must be submitted for processing and computation of customs duties, arrastre charges," satisfying the condition of exception to the P2.000 limitation of liability of the arrastre operator.

We rule in favor of the respondents.

It is un rebutted that MGM Importers, upon arrival of the shipment, declared the same for tax purposes, as well as for the assessment of arrastre charges and other fees (Plaintiffs Memorandum), Civil Case No. 81460, page 26, CA, Record on Appeal of E. Razon, Inc.). For the purpose, the invoice, packing list and other shipping documents were presented to the Bureau of Customs as well as to petitioner E. Razon for the proper assessment of the arrastre charges and other fees. Such manifestation satisfies the condition of declaration of the actual invoices of the value of the goods before arrival of the goods, to overcome the limitation of liability of the arrastre operator.

Indeed, the provision in the management contract regarding the declaration of the actual invoice value "before the arrival of the goods" must be understood to mean a declaration before the arrival of the goods in the custody of the arrastre operator, whether it be done long before the landing of the shipment at port, or immediately before turn-over thereof to the arrastre operator's custody. What is essential is knowledge beforehand of the extent of the risk to be undertaken by the arrastre operator, as determined by the value of the property committed to its care that it may define its responsibility for loss or damage to such cargo and to ascertain compensation commensurate to such risk assumed {Northern Motors, Inc. v. Prince Lines, 107 Phil. 203}. Having been duly informed of the actual invoice value of the merchandise under its custody and having received payment of arrastre charges based thereon, E. Razon, Inc., as arrastre operator, cannot in justice insist on a limitation of its liability, under the contract, to less than the value of each undelivered case or package consigned to MGM Importers, Inc. The lower courts judgment finding the petitioner liable for the full declared value of the three (3) undelivered cases in question must be upheld. The petitioner further contends that only two (2) cases of radio parts were missing, the third case having been delivered with some shortages, thus reducing its liability. There is nothing on record to sufficiently sustain such allegation.

The petitioner's own certification of delivery refutes its claim. Exhibit "E" (p. 8 Folder of Exhibits) shows that out of the manifested quantity of Eighty-Six (86) cases of radio parts, speaker parts and phonograph parts, only (83) cases were delivered by E. Razon as of said date, in accordance with its records. No further deliveries were made to the consignee MGM Importers, Inc.

Finally, we reiterate the Court of Appeals pronouncements regarding the petitioner's obligation as arrastre operator. The petitioner avers that:"

"xxx The reason for the requirement of advance notice in writing before the arrival of the goods is to put the defendant-appellant arrastre operator on the alert about the arrival of the goods so that they could exert extraordinary care and supervision in seeing that the goods should be taken care of and ultimately delivered to the consignee. xxx"

Reacting thereto, the respondent court held:

". . . under appellant's interpretation, the contractor would only exercise care and caution in the handling of goods announced to it beforehand to be of sizeable value. Appellant, in other words, spurns the public service nature of its business. What difference, in care and consideration, should there be between a package

containing goods worth, say. one hundred pesos and one containing goods worth one thousand pesos, for as long as the charges are duly paid? Why should appellant require consignors/consignees to undergo extra time and expenses to advise/warn him beforehand to handle his cargo 'with care' because it is worth more than P2,000.00? Would failure to so notify the contractor give the latter the license to treat the cargo with less than the attention ordinarily expected of it? xxx (Rollo, pp. 29-30)

Rightly so.

The stipulation requiring a consignee to inform the contractor or arrastre operator and give the advance notice of the actual invoice value of the goods to be put in its custody is for the purpose of determining its liability, that it may obtain compensation commensurable to the risk it assumes, not for the purpose of determining the degree of care or diligence it must exercise as a depository or warehouseman (*Lua Kian v. Manila Railroad, Co., et al.*, 19SCRA5). Article 1163, vis-a-vis Article 1972 of the Civil Code on obligations of the depository provides:

"Every person obliged to give something is also obliged to take care of it with the proper diligence of a good father of a family, unless the law or stipulation of the parties requires another standard of care."

With its further responsibility as a public service operator, the obligation of the petitioner to exercise care and diligence can be no less.

WHEREFORE, in view of the foregoing, the petition is hereby DISMISSED. The judgment appealed from ordering the petitioner to pay the respondent Pioneer Insurance and Surety Corporation "the sum of P10,899.28 with legal interest from the date of filing of the complaint, November 13, 1970, until fully paid and costs" is hereby AFFIRMED.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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