

**THE NEW ZEALAND INSURANCE COMPANY, INC. PETITIONER, VS.
THE HONORABLE INTER-MEDIATE APPELLATE COURT AND E.
RAZON, INC., RESPONDENTS.**

G.R. No. 66596. August 28, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition to review the decision of the Intermediate Appellate Court in AC-G.R. CV No. 64002 with the following factual background:

A cargo of oats was consigned to Muller and Phipps (Manila) Ltd. The cargo was insured against all risks by The New Zealand Insurance Co., Ltd., the petitioner herein. When the cargo was discharged several cartons which contained the oats were in bad order. The consignee filed a claim against the insurer for the value of the damaged goods which the latter paid in the amount of P18,148.69. The insurer as subrogee of the consignee sued E. Razon, Inc., the respondent herein, who was the arrastre operator. The insurer demanded reimbursement in the amount of P17,025.87. The lower figure is due to the fact that the carrier responded for its share of the loss in the sum of P1,121.02. The Court of First Instance of Manila gave judgment in favor of the plaintiff. It ordered "the defendant to pay to the plaintiff P17,025.87 with 6% interest from April 23, 1973, until same is paid, P1,000.00 as attorney's fees, and the costs." (Rollo, p. 23.)

E. Razon, Inc. appealed the adverse decision to the Court of Appeals. The Intermediate Appellate Court which succeeded the Court of Appeals reversed the decision of the trial court "On the ground of prescription, appellee has no cause of action against the appellant." (Rollo, p. 28.)

The instant petition seeks a reversal of the appellate court's decision.

In deciding the case, the appellate court cited a provision of the Revised Management Contract in respect of claims against the arrastre operator. The provision reads:

"that a formal claim together with the necessary copies of the bill of lading invoice, certified packing list, bank certificate showing the rate of ex-change at the time of purchase or opening of letter of credit, and the computation arrived at covering the loss, damage, or non-delivery of such goods shall have been filed with the CONTRACTOR within thirty (30) days from the date of filing of entry; PROVIDED FURTHER, that if the loss, injury or damage is discovered within the last fifteen (15) days of said period of thirty (30) days, then the formal claim shall be filed within fifteen (15) days from the date of discovery of the loss, injury or damage." (Rollo, p. 28.)

According to the appellate court:

"Coming now to the Formal Claim or so-called amended claim of appellee (Exh. "H" or 69), the evidence shows that it was filed with the Philip-pine Control Office on May 17, 1972, or more than 70 days from March 17, 1972, the date the Import Entry was filed.

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"Even if the loss, injury or damage was discovered within the last fifteen (15) days of the thirty-day period, nevertheless, prescription has set in after the appellee decided to file its formal claim only on May 17, 1972." (Id.)

The New Zealand Insurance Co. argued in the appellate court that the bad order certificates which were issued by E. Razon, Inc. on March 23 and 24, 1972, served the purpose of a formal claim so that the claim was not filed out of time. It cited the case of *Fireman's Fund Ins. Co. vs. Manila Port Service Co., et al.*, L-22454, April 29, 1966, 16 SCRA 795. (See Appellee's Brief, pp. 10-11.) The appellate court did not bother to discuss this argument in its decision. But it should have.

In the above-mentioned case, this Court, through Justice J.B.L. Reyes, said:

"However, the trial court has overlooked the significance of the request for, and the result of, the bad order examination, which were filed and done within fifteen days from the haulage of the goods from the vessel. Said request and result, in effect, served the purpose of a claim, which is -

'to afford the carrier or depositary reasonable opportunity and facilities to check the validity or claims while facts are still fresh in the minds of the person who took part in the transaction and the documents are still available.' (*Consunji vs. Manila Port Service*, L-15551, 29 Nov. 1960)

Indeed, the examination undertaken by the defendant's own inspector not only gave the defendant an opportunity to check the goods but is itself a verification of its own liability (Cf. *Parsons Hardware vs. Manila Railroad Co.*, L-15173, May 30, 1961)." (At pp. 797-798.)

In fact the respondent obliquely concedes the validity of the petitioner's argument by stating that if the petition be given due course its liability should be in the reduced amount of P5,344.13 only and not the amount found by the lower court. Considering that the instant petition is meritorious and the amount to be awarded is a question of fact said amount cannot be reduced at this stage.

WHEREFORE, the petition is hereby granted; the decision of the Intermediate Appellate Court is set aside and that of the trial court is reinstated. Costs against the respondent.

SO ORDERED.

Concepcion, Jr., Escolin, and Cuevas, JJ., concur.

Makasiar, J., (Chairman), on official leave.

Aquino, J., in the result.

Guerrero, J., no part.

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