

**BANKERS & MANUFACTURERS ASSURANCE CORP.,
PETITIONER, VS. COURT OF APPEALS, F.E. ZUELLIG & CO., INC.
AND E. RAZON, INC., RESPONDENTS.**

G.R. No. 80256. October 02, 1992

Ponente: MELO, J.

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MELO, J.:

After the Court of Appeals in CA-G.R. CV No. 08226 (July 8, 1987, Kapunan, Puno (P), Marigomen, JJ.) affirmed the dismissal by Branch XVI of the Regional Trial Court of Manila of petitioner's complaint for recovery of the amount it had paid its insured concerning the loss of a portion of a shipment, petitioner has interposed the instant petition for review on certiorari.

Petitioner presents the following bare operative facts: 108 cases of copper tubings were imported by Ali Trading Company. The tubings were insured by petitioner and arrived in Manila on board the vessel S/S "Oriental Ambassador" on November 4, 1978, and turned over to private respondent E. Razon, the Manila arrastre operator upon discharge at the waterfront. The carrying vessel is represented in the Philippines by its agent, the other private respondent, F. E. Zuellig and Co., Inc. Upon inspection by the importer, the shipment was allegedly found to have sustained losses by way of theft and pilferage for which petitioner, as insurer, compensated the importer in the amount of P31,014.00.

Petitioner, in subrogation of the importer-consignee and on the basis of what it asserts had been already established - that a portion of the shipment was lost through theft and pilferage - forthwith concludes that the burden of proof of proving a case of non-liability shifted to private respondents, one of whom, the carrier, being obligated to exercise extraordinary diligence in the transport and care of the shipment. The implication of petitioner's statement is that private respondents have not shown why they are not liable. The premises of the argument of petitioner may be well-taken but the conclusions are not borne out or supported by the record.

It must be underscored that the shipment involved in the case at bar was "containerized". The goods under this arrangement are stuffed, packed, and loaded by the shipper at a place of his choice, usually his own warehouse, in the absence of the carrier. The container is sealed by the shipper and thereafter picked up by the carrier. Consequently, the recital of the bill of lading for goods thus transported ordinarily would declare "Said to Contain", "Shipper's Load and Count", "Full Container Load", and the amount or quantity of goods in the container in a particular package is only prima facie evidence of the amount or quantity which may be overthrown by parol evidence.

A shipment under this arrangement is not inspected or inventoried by the carrier whose duty is only to transport and deliver the containers in the same condition as when the carrier received and accepted the containers for transport. In the case at bar, the copper tubings were placed in three containers. Upon arrival in Manila on November 4, 1978, the shipment was discharged in apparent good order and condition and from the pier's docking apron, the containers were shifted to the container yard of Pier 3 for safekeeping. Three weeks later, one of the

container vans, said to contain 19 cases of the cargo, was “stripped” in the presence of petitioner's surveyors, and three cases were found to be in bad order. The 19 cases of the van stripped were then kept inside Warehouse No. 3 of Pier 3 pending delivery. It should be stressed at this point, that the three cases found in bad order are not the cases for which the claim below was presented, for although the three cases appeared to be in bad order, the contents remained good and intact.

The two other container vans were not moved from the container yard and they were not stripped. On December 8, 1978, the cargo was released to the care of the consignee's authorized customs broker, the RGS Customs Brokerage. The broker, accepting the shipment without exception as to bad order, caused the delivery of the vans to the consignee's warehouse in Makati. It was at that place, when the contents of the two containers were removed and inspected, that petitioner's surveyors reported, that checked against the packing list, the shipment in Container No. OOLU2559269 was short of seven cases (see p. 18, Rollo).

Under the prevailing circumstances, it is, therefore, not surprising why the Court of Appeals in sustaining the trial court, simply quoted the latter, thus:

“It must be also considered that the subject container was not stripped of its contents at the pier zone. The two unstripped containers (together with the 19 cases removed from the stripped third container) were delivered to, and received by, the customs broker for the consignee without any exception or notation of bad order or shortlanding (Exhs. 1, 2 and 3-Vessel). If there was any suspicion or indication of irregularity or theft or pilferage, plaintiff's or consignee's representatives should have noted the same on the gate passes or insisted that some form of protest form part of the documents concerning the shipment. Yet, no such step was taken. The shipment appears to have been delivered to the customs broker in good order and condition and complete save for the three cases noted as being apparently in bad order.

Consider further that the stripping of the subject container was done at the consignee's warehouse where, according to plaintiff's surveyor, the loss of the seven cases was discovered. The evidence is not settled as whether the defendants' representatives were notified of, and were present at, the unsealing and opening of the containers in the bodega. Nor is the evidence clear how much time elapsed between the release of the shipment from the pier and the stripping of the containers at consignee's bodega. All these fail to discount the possibility that the loss in question could have taken place after the containers had left the pier.”

(pp. 20-21, Rollo)

Verily, if any of the vans were found in bad condition, or if any inspection of the goods was to be done in order to determine the condition thereof, the same should have been done at pierside, the pier warehouse, or at any time and place while the vans were under the care and custody of the carrier or of the arrastre operator. Unfortunately for petitioner, even as one of the three vans was inspected and stripped, the two other vans were not similarly gone over. Rather, these two vans and the contents of the one previously stripped were accepted without exception as to any supposed bad order or condition by petitioner's own broker. To all appearances, therefore, the shipment was accepted by petitioner in good order.

It logically follows that the case at bar presents no occasion for the necessity of discussing the diligence required of a carrier or of the theory of prima facie liability of the carrier, for from all indications, the shipment did not suffer loss or damage while it was under the care of the carrier, or of the arrastre operator, it must be added.

WHEREFORE, the petition is hereby DISMISSED and the decision of the Court of Appeals AFFIRMED, with costs against petitioner.

SO ORDERED.

Bidin, Davide, Jr., and Romero, JJ., concur.

Gutierrez, Jr., J., (Chairman), on leave.

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