

SUMMA INSURANCE CORPORATION, PETITIONER, VS. COURT OF APPEALS AND METRO PORT SERVICE, INC., RESPONDENTS.*G.R. No. 84680. February 05, 1996*

Ponente: PANGANIBAN, J.

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Is an arrastre operator legally liable for the loss of a shipment in its custody? If so, what is the extent of its liability? These are the two questions that this Court faced in this petition for review on certiorari of the Decision[1] of the Court of Appeals[2] in CA-G.R. No. CV 04964 promulgated on April 27, 1988, which affirmed with modification the decision of the Court of First Instance of Manila in Civil Case No. 82-13988, ordering petitioner to pay private respondent a sum of money, with legal interest, attorney's fees and the costs of the suit.

The Facts

On November 22, 1981, the S/S "Galleon Sapphire", a vessel owned by the National Galleon Shipping Corporation (NGSC), arrived at Pier 3, South Harbor, Manila, carrying a shipment consigned to the order of Caterpillar Far East Ltd. with Semirara Coal Corporation (Semirara) as "notify party." The shipment, including a bundle of PC 8 U blades, was covered by marine insurance under Certificate No. 82/012-FEZ issued by petitioner and Bill of Lading No. SF/MLA 1014. The shipment was discharged from the vessel to the custody of private respondent, formerly known as E. Razon, Inc., the exclusive arrastre operator at the South Harbor. Accordingly, three good-order cargo receipts were issued by NGSC, duly signed by the ship's checker and a representative of private respondent.

On February 24, 1982, the forwarder, Sterling International Brokerage Corporation, withdrew the shipment from the pier and loaded it on the barge "Semirara 8104." The barge arrived at its port of destination, Semirara Island, on March 9, 1982. When Semirara inspected the shipment at its warehouse, it discovered that the bundle of PC8U blades was missing.

On March 15, 1982, private respondent issued a shortlanded certificate stating that the bundle of PC8U blades was already missing when it received the shipment from the NGSC vessel. Semirara then filed with petitioner, private respondent and NGSC its claim for P280,969.68, the alleged value of the lost bundle.

On September 29, 1982, petitioner paid Semirara the invoice value of the lost shipment. Semirara thereafter executed a release of claim and subrogation receipt. Consequently, petitioner filed its claims with NGSC and private respondent but it was unsuccessful.

Petitioner then filed a complaint (Civil Case No. 82-13988) with the Regional Trial Court, Branch XXIV, Manila, against NGSC and private respondent for collection of a sum of money, damages and attorney's fees.

On August 2, 1984, the trial court rendered a decision absolving NGSC from any liability but finding private respondent liable to petitioner. The dispositive portion of the decision reads as follows:

"PREMISES CONSIDERED, judgment is hereby rendered ordering defendant Metro Port Service, Inc. to pay plaintiff Summa Insurance Corporation the sum of P280,969.68 with legal interest from November 22, 1982, the date of the filing of the complaint, until full payment, and attorney's fees in the sum of P20,000.00, with costs of suit.

"The complaint as against defendant National Galleon Shipping Corporation and the counterclaim interposed by said defendant are hereby dismissed." (Rollo, p. 32).

In resolving the issue as to who had custody of the shipment when it was lost, the trial court relied more on the good-order cargo receipts issued by NGSC than on the short-landed certificate issued by private respondent. The trial court held:

"As between the aforementioned two documentary exhibits, the Court is more inclined to give credence to the cargo receipts. Said cargo receipts were signed by a checker of defendant NGSC and a representative of Metro Port. It is safe to presume that the cargo receipts accurately describe the quantity and condition of the shipment when it was discharged from the vessel. Metro Port's representative would not have signed the cargo receipts if only four (4) packages were discharged from the vessel and given to the possession and custody of the arrastre operator. Having been signed by its representative, the Metro Port is bound by the contents of the cargo receipts.

"On the other hand, the Metro Port's shortlanded certificate could not be given much weight considering that, as correctly argued by counsel for defendant NGSC, it was issued by Metro Port alone and was not countersigned by the representatives of the shipping company and the consignee. Besides, the certificate was prepared by Atty. Servillano V. Dolina, Second Deputy General Manager of Metro Port, and there is no proof on record that he was present at the time the subject shipment was unloaded from the vessel and received by the arrastre operator. Moreover, the shortlanded certificate bears the date of March 15, 1982, more than three months after the discharge of the cargo from the carrying vessel.

"Neither could the Court give probative value to the marine report (Exhibit "J", also Exhibit "1"-Razon). The attending surveyor who attended the unloading of the shipment did not take the witness stand to testify on said report. Although Transnational Adjustment Co.'s general manager, Mariano C. Remorin, was presented as a witness, his testimony is not competent because he was not present at the time of the discharge of the cargo.

"Under the foregoing considerations, the Court finds that the one (1) bundle of PC8U blade in question was not lost while the cargo was in the custody of the carrying vessel. Considering that the missing bundle was discharged from the vessel unto the custody of defendant arrastre operator and considering further that the consignee did not receive this cargo from the arrastre operator, it is safe to conclude from these facts that said missing cargo was lost while same was in the possession and control of defendant Metro Port. Defendant Metro Port has not introduced competent evidence to prove that the loss was not due to its fault or negligence. Consequently, only the Metro Port must answer for the value of the missing cargo. Defendant NGSC is absolved of any liability for such loss."

On appeal, the Court of Appeals modified the decision of the trial court and reduced private respondent's liability to P3,500.00 as follows[3]:

"WHEREFORE, the judgment appealed from is MODIFIED in that defendant Metro Port Service, Inc., is ordered to pay plaintiff Summa Insurance Corporation:

- (1) the sum of P3,500.00, with legal interest from November 22, 1982, until fully paid; and
- (2) the sum of P7,000.00, as and for attorney's fees.

"Costs against defendant Metro Port Service, Inc."

Petitioner moved for reconsideration of the said decision but the Court of Appeals denied the same. Hence, the instant petition.

The Issues

The issues brought by the parties could be stated as follows:

- (1) Is the private respondent legally liable for the loss of the shipment in question?
- (2) If so, what is the extent of its liability?

The First Issue: Liability for Loss of Shipment

Petitioner was subrogated to the rights of the consignee. The relationship therefore between the consignee and the arrastre operator must be examined. This relationship is much akin to that existing between the consignee or owner of shipped goods and the common carrier, or that between a depositor and a warehouseman.[4] In the performance of its obligations, an arrastre operator should observe the same degree of diligence as that required of a common carrier and a warehouseman as enunciated under Article 1733 of the Civil Code and Section 3(b) of the Warehouse Receipts Law, respectively. Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession.

In this case, it has been established that the shipment was lost while in the custody of private respondent. We find private respondent liable for the loss. This is an issue of fact determined by the trial court and respondent Court, which is not reviewable in a petition under Rule 45 of the Rules of Court.

The Second Issue: Extent of Liability

In the performance of its job, an arrastre operator is bound by the management contract it had executed with the Bureau of Customs. However, a management contract, which is a sort of a stipulation pour autrui within the meaning of Article 1311 of the Civil Code, is also binding on a consignee because it is incorporated in the gate pass and delivery receipt which must be presented by the consignee before delivery can be effected to it.[5] The insurer, as successor-in-interest of the consignee, is likewise bound by the management contract.[6] Indeed, upon taking delivery of the cargo, a consignee (and necessarily its successor-in-interest) tacitly accepts the provisions of the management contract, including those which are intended to limit the liability of one of the contracting parties, the arrastre operator.[7]

However, a consignee who does not avail of the services of the arrastre operator is not bound by the management contract.[8] Such an exception to the rule does not obtain here as the consignee did in fact accept delivery of the cargo from the arrastre operator.

Section 1, Article VI of the Management Contract between private respondent and the Bureau of Customs[9] provides:

1. Responsibility and Liability for Losses and Damages - The CONTRACTOR shall, at its own expense handle all merchandise in the piers and other designated places and at its own expense perform all work undertaken by it hereunder diligently and in a skillful workmanlike 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 Three Thousand Five Hundred Pesos (P3,500.00) for each package unless the value of the importation is otherwise specified or manifested 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 discharge of the goods, as well as all damage that may be suffered on account of loss, damage, or destruction of any merchandise while in custody or under the control of the CONTRACTOR in any pier, shed, warehouse, facility or other designated place under the supervision of the BUREAU, x x x (*Italics supplied*).

Interpreting a similar provision in the management contract between private respondent's predecessor, E. Razon, Inc. and the Bureau of Customs, the Court said in *E. Razon Inc. vs. Court of Appeals*:^[10]

"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 x x x."

In the same case, the Court added that the advance notice of the actual invoice of the goods entrusted to the arrastre operator is "for the purpose of determining its liability, that it may obtain compensation commensurate to the risk it assumes, (and) not for the purpose of determining the degree of care or diligence it must exercise as a depository or warehouseman"^[11] since the arrastre operator should not discriminate between cargoes of substantial and small values, nor exercise care and caution only for the handling of goods announced to it beforehand to be of sizeable value, for that would be spurning the public service nature of its business.

On the same provision limiting the arrastre operator's liability, the Court held in *Northern Motors, Inc. v. Prince Line*^[12]:

"Appellant claims that the above quoted provision is null and void, as it limits the liability of appellee for the loss, destruction or damage of any merchandise, to P500.00 per package, contending that to sustain the validity of the limitation would be to encourage acts of conversion and unjust enrichment on the part of the arrastre operator. Appellant, however, overlooks the fact that the limitation of appellee's liability under said provision, is not absolute or unqualified, for if the value of the merchandise is specified or manifested by the consignee, and the corresponding arrastre charges are paid on the basis of the declared value, the limitation does not apply. Consequently, the questioned provision is neither unfair nor arbitrary, as contended, because the consignee has it in his hands to hold, if he so wishes, the arrastre operator responsible for the full value of his merchandise by merely specifying it in any of the various documents required of him, in clearing the merchandise from the customs. For then, the appellee arrastre operator, by reasons of the payment to it of a commensurate charge based on the higher declared value of the merchandise, could and should take extraordinary care of the special or valuable cargo. In this manner, there would be mutuality. What would, indeed, be unfair and arbitrary is to hold the arrastre operator liable for the full value of the merchandise after the consignee has paid the arrastre charges only (on) a basis much lower than the true value of the goods."

In this case, no evidence was offered by petitioner proving the amount of arrastre fees paid to private respondent so as to put the latter on notice of the value of the cargo. While petitioner alleged that prior to the loss of the package, its value had been relayed to private respondent through the documents the latter had processed, petitioner does not categorically state that among the submitted documents were the pro forma invoice value and the certified packing list. Neither does petitioner pretend that these two documents were prerequisites to the issuance of a permit to deliver or were attachments thereto. Even the permit to deliver, upon which petitioner anchors its arguments, may not be considered by the Court because it was not identified and formally offered in evidence.^[13]

In civil cases, the burden of proof is on the party who would be defeated if no evidence is given on either side. Said party must establish his case by a preponderance of evidence, which means that the evidence as a whole adduced by one side is superior to that of the other.^[14] Petitioner having asserted the affirmative of the issue in this case, it should have presented evidence required to obtain a favorable judgment.

On the other hand, on top of its denial that it had received the invoice value and the packing list before the

discharge of the shipment, private respondent was able to prove that it was apprised of the value of the cargo only after its discharge from the vessel, ironically through petitioner's claim for the lost package to which were attached the invoice and packing list. All told, petitioner failed to convince the Court that the requirement of the management contract had been complied with to entitle it to recover the actual invoice value of the lost shipment.

Anent the attorney's fees, we find the award to be proper considering that the acts and omissions of private respondent have compelled petitioner to litigate or incur expenses to protect its rights.[15] However, as to the amount of the award, we find no reason to re-examine the appellate court's determination thereon in view of the amount of the principal obligation. Otherwise, we would be disregarding the doctrine that discretion, when well exercised, should not be disturbed.

WHEREFORE, the petition for review on certiorari is DENIED and the decision of the Court of Appeals is AFFIRMED. Costs against petitioner.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Rollo, pp. 36-44.

[2] Eighth Division, composed of J. Ricardo L. Pronove, Jr., ponente, and JJ. Floreliaana Castro-Bartolome and Bonifacio A. Cacdac, Jr.,

[3] Rollo, p. 43.

[4] *Malavan Insurance Co. Inc. vs. Manila Port Service*, 28 SCRA 65 (May 15, 1969)

[5] *Shell Chemical Company (Philippines), Inc. vs. Manila Port Service*, 72 SCRA 35 (July 7, 1976); *Republic Manufacturing Co., Inc. vs. Manila Railroad Company* 27 SCRA 1237 (April 30, 1969).

[6] *Government Service Insurance System vs. Manila Railroad Company*, 1 SCRA 553 (February 25, 1961).

[7] *Lexal Pure Drug Laboratories vs. Manila Railroad Company*. 16 SCRA 866, 870 (April 30, 1966).

[8] *The Swedish East Asia Co., Ltd. vs. Manila Port Service*, 25 SCRA 633 (October 26, 1968).

[9] Rollo, p. 41.

[10] 161 SCRA 356, 360-361 (May 21, 1988).

[11] *Id.*, p.362.

[12] 107 Phil. 253, at pp. 256-257 (February 29, 1960).

[13] Cf. *Tabuena vs. Court of Appeals*, 196 SCRA 650 (May 6, 1991).

[14] *Sapu-an vs. Court of Appeals*, 214 SCRA 701 (October 19, 1992).

[15] *Alitalia vs. Intermediate Appellate Court*, 192 SCRA 9 (December 4, 1990).

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