Supreme Court E-Library

(3) To the Workmen's Compensation Fund, the administrative fee pursuant to Section 55 of the Act.

SO ORDERED.

Teehankee, (Chairman) Makasiar, Fernandez, De Castro, and *Melencio-Herrera, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-43748. February 28, 1979]

HARTFORD FIRE INSURANCE CO., *plaintiff-appellee*, *vs.* **E. RAZON, INC.**, *defendant-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF LAW; DEFINED;.** — Where the action is submitted upon agreed stipulations of fact and the issue is the correctness of the conclusion drawn therefrom, the question is one of law.

2. **ID.; EVIDENCE; BURDEN OF PROOF; ARRASTRE OPERATOR NOT LIABLE FOR DAMAGE TO GOODS OCCURRING AFTER GOODS HAD LEFT ITS CUSTODY.** — Where the Bad Order Certificate requested by the arrastre operator and prepared before the release of goods to the consignee's broker, signed by the defendant's inspector and the consignee's representative, showed that the drums of brake fluid in question were "in apparent good order, contents complete except each dented at rims," while the marine survey made at the consignee's warehouse showed "that the contents had leaked as shown by stain marks on various parts of the containers," the burden is upon the plaintiff to prove that the cracks on the three drums and the consequent leakage of their contents could be traced to dents on the rims of the drums. In the absence of proof to the contrary, that the spillage or leakage occurred after the shipment in question left the custody of the defendant. The

Supreme Court E-Library

Certificate was silent on that point but that instead it specifically indicated that the contents were complete cannot but lead to the conclusion that the leakage of the contents, as detected upon survey at the consignee's warehouse, must have occurred after the cargo had left defendant's custody.

APPEARANCES OF COUNSEL

Silverio de Leon for appellant.
Zapa Law Office for appellee.

D E C I S I O N

MELENCIO-HERRERA, *J.*:

This case was decided both by the City Court of Manila, and, on appeal, by the Court of First Instance of Manila on the basis of stipulations of fact and memoranda submitted by the parties with no oral evidence presented. On appeal to the Court of Appeals, that Court resolved to certify the case to us on the ground that where an action is submitted upon agreed stipulations of fact and the issue is the correctness of the conclusion drawn therefrom, the question is one of law, upon the authority of *Cunanan vs. Lazatin* (74 Phil. 719), and *Ng Young vs. Villa, et als.* (93 Phil. 21).

The following facts were stipulated upon by the parties: On January 11, 1968, Union Carbide Corporation shipped from New York, U.S.A., fifty (50) drums of "brake fluid" on board the vessel SS "Johannes Maersk" consigned to Union Carbide Phil., Inc. The shipment was insured for ₱19,283.00 against all risks under plaintiff's Open Policy No. OC-H-126. The shipment arrived in Manila on February 19, 1968 and, on the same date, was discharged from the vessel unto the control, custody and safekeeping of defendant, complete and in good order. On February 28, 1968, the shipment was released from the custody of defendant and transferred to the Luzon Brokerage Corporation for delivery to the consignee. Out of the fifty (50) drums comprising the shipment, three (3) drums were released from

Supreme Court E-Library

defendant's custody in the condition described in defendant's "Request for Bad Order Survey" No. B-1881, that is, "in apparent good order, contents complete except each dented at rims."[1] Upon inspection at the consignee's warehouse, the Mariner's Adjustment Corporation reported that "the dents on the top lids and topmost portion of the body stock created cracks and from their appearance it was evident that the contents had leaked as shown by stain marks on various parts of the containers, and that, in their opinion, "loss was due to rough handling presumably during transit while goods were in the custody of the Arrastre Contractor (E. Razon, Inc.)."[2] Contending that the "brake fluid" was no longer salable in the local market at its normal price," the consignee filed a claim against defendant for the recovery of ₱909.15 as its damage but the latter refused to pay. Plaintiff insurance company paid the consignee the sum of ₱1,145,40 and thereafter instituted this action as subrogee of the consignee.

Originally filed before the City Court of Manila, plaintiff seeks the recovery of the sum of ₱1,145.40 representing the value of the damaged three drums. In its Answer, defendant maintains that the "drums in the question were delivered in good order to the consignee, hence, any damage on the cargo after leaving the pier premises, is no longer the responsibility of the defendant" and that "in filing this complaint the plaintiff did not comply with the pertinent provisions of the Revised Management Contract."[3]

On January 6. 1969, the parties submitted their "Stipulations of Fact," and on dates subsequent thereto, their "Formal Offer of Exhibits."

On July 12. 1969. the City Court of Manila, relying documentary evidence ad memoranda and as agreed upon the parties, dismissed the case stating. in part:

---

[1] Exhibits "G" and "I".

[2] Exhibit "H".

[3] Exhibits "6", "6-A", and "6-B".

Supreme Court E-Library

"After a careful deliberation on the evidence adduced and after a perusal of the parties' respective memoranda, this Court finds that defendant is not liable for the dents sustained by the three (3)drums of "brake fluid" under the Revised Management Contract inasmuch as Exhibit "1" (Exh. "G" for the plaintiff), the Request for the Bad Order Survey No. 1881, indicates that said three drums were "in apparent good order, contents complete except each dented at rim." So, actually the consignee did not suffer any damage from the loss of the contents in the drums due to leakage or spillage. It is to be presumed therefore, in the absence of proof to the contrary, that the spillage or leakage occurred after the shipment in question left the custody of the defendant.

"WHEREFORE, in view of the foregoing findings, this case is hereby ordered dismissed. Without pronouncement as to cost.

"SO ORDERED."[4]

On February 18, 1970, the Court of First Instance of Manila, on appeal, and relying on the same documentary evidence and memoranda presented before the City Court, reversed the latter's Decision after finding that:

"There is, therefore, sufficient evidence that the three (3) drums of brake fluid subject of plaintiff's claim was damaged while in the possession of the defendant and, therefore, it is liable to the plaintiff for such damage the same having been caused by the negligence of defendant's employees."

The dispositive portion of the judgment of the Court of First Instance reads:

"WHEREFORE, the Court renders judgment ordering the defendant to pay to plaintiff the amount of ₱1,145.40 and the cost in both instances. The defendant is entitled to get from the consignee the three (3) damaged drums of brake fluid and whatever remains of its contents."

On appeal to the Court of Appeals, defendant-appellant had assigned the following errors:

---

[4] pp. 20-21, Record on Appeal.

Supreme Court E-Library

"I

THE HONORABLE COURT OF FIRST INSTANCE OF MANILA ERRED IN HOLDING THAT THE DEFENDANT-APPELLANT WAS BOUND BY THE SURVEY REPORT OF THE MARINER'S ADJUSTMENT CORPORATION DATED APRIL 15, 1968 (EXH. H) IN THE EXECUTION OF WHICH IT WAS NOT A PARTY THERETO.

"II

THE HONORABLE COURT OF FIRST INSTANCE OF MANILA ERRED IN NOT GIVING CREDENCE AND PROBATIVE VALUE TO THE REQUEST FOR BAD ORDER SURVEY NO. 1881 (EXHS. "G" AND "I" RESPECTIVELY) EXECUTED BY THE DEFENDANT-APPELLANT ON FEBRUARY 28, 1968 WHEREIN THE CONSIGNEE OR ITS REPRESENTATIVE WAS A SIGNATORY.

"III

THE HONORABLE COURT OF FIRST INSTANCE OF MANILA ERRED IN RENDERING JUDGMENT THE DEFENDANT-APPELLANT."[5]

And as heretofore stated, that appellate Tribunal certified the case to us on the ground that the question involved is purely legal.

Upon the Stipulations of Fact and the documentary evidence submitted by the parties, we find that the conclusion drawn therefrom in the appealed judgment calls for reversal. The real issue to resolve is, did the loss of the contents of three drums of brake fluid occur while the drums were custody of defendant arrastre operator?

Of crucial significance is the condition of the cargo described in defendant's Request for Bad Order Survey[6] prepared before the release of the goods to the consignee's broker as follows:

"3 drums brake fluid, in apparent good order, *contents complete* except each dented at rims." (Emphasis supplied).

---

[5] p. 12, Appellant's Brief.

[6] Exhibits "G" and "I".

Supreme Court E-Library

The said Certificate was signed not only by defendant's inspector but also by the consignee's representative. It shows that while the rims of the drums were dented the contents thereof were complete. If, as the marine survey showed it was evident that the contents had leaked as shown by stain marks on various parts of the containers," then, those stain marks should have been evident as well when defendant's Bad Order Certificate was prepared. The consignee's representative would surely have noticed it and would have a notation to that effect to have been made in the Bad Order Certificate. The fact that the Certificate was silent on that point but that instead it specifically indicated that the contents were complete cannot but lead to the conclusion that the leakage of the contents, as detected upon survey at the consignee's warehouse, must have occurred after the cargo had left defendant's custody. The burden was upon plaintiff to prove that the cracks on the three drums and the consequent leakage of their contents could be traced to the dents on the rims of the drums, a question of fact which was not conclusively answered in the stipulations agreed upon by the parties. It follows that the defendant cannot be held liable for the value of the damage sought to be recovered by plaintiff.

WHEREFORE, the judgment appealed from is reversed, and the Decision of the City Court dismissing the complaint hereby affirmed.

No costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, Guerrero, and *De Castro, JJ.*, concur.