

## THIRD DIVISION

**[ G.R. No. 84680, February 05, 1996 ]**

**SUMMA INSURANCE CORPORATION, PETITIONER, VS. COURT OF APPEALS AND METRO PORT SERVICE, INC., RESPONDENTS.**

### DECISION

**PANGANIBAN, J.:**

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<sup>[1]</sup> of the Court of Appeals<sup>[2]</sup> 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<sup>[3]</sup>:

"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.<sup>[4]</sup> 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