94 Phil. 627

[G.R. No. L-5921. March 29, 1954]

SALVACION B. LONDRES, PLAINTIFF AND APPELLEE, VS. THE NATIONAL LIFE INSURANCE COMPANY OF THE PHILIPPINES, DEFENDANT AND APPELLANT.

D E C I S I O N

BAUTISTA ANGELO, J.:

This is an appeal from a decision of the Court of First Instance of Manila ordering defendant to pay to plaintiff the sum of P3,000, Philippine currency, plus legal interest thereon from the time of the filing of the complaint until its full payment.

On April 14, 1943, the National Life Insurance Company of the Philippines issued a policy on the life of Jose C. Londres whereby it undertook to pay its beneficiary upon his death the sum of P3,000. All the premiums due under the policy were actually paid on their dates of maturity and the policy was in force when the insured died on February 7, 1945. Salvacion B. Londres, as beneficiary, demanded from the company the payment of the proceeds of the policy, and her demand having been refused, she instituted the present action against the company in the Court of First Instance of Manila.

Defendant in its answer denied, for lack of sufficient proof, the allegation that the insured died on February 7, 1945, and set up the following special defenses: (*a*) that plaintiff's claim is covered by the Moratorium Law; (*b*) that the policy having been issued during the Japanese occupation, it is presumed that its face value should be paid in Japanese currency, there being no provision in the policy from which can be inferred that the parties contemplated payment in any other currency; (*c*) that the money paid by the insured as premiums, together with the money

received from other policy-holders, was all deposited by the defendant in the Philippine National Bank and said deposit was declared without value by Executive Order No. 49 of the President of the Philippines; and (*d*) that the policy having been issued under abnormal circumstances, it should be considered in the light of equity which does not permit anyone to enrich himself at the expense of another. Defendant, however, as a proof of good faith, offered to pay the value of the policy in accordance with the Ballantyne scale of values, or the sum of P2,400, Philippine currency.

On April 15, 1952, plaintiff filed a motion for summary judgment supported by an affidavit which contains a restatement of the allegations of the complaint attaching thereto in support of the motion certain annexes and affidavits which are intended to substantiate and prove said allegations. Defendant, answering this motion, stated that while it joins the plaintiff in her petition for summary judgment, it does so only in so far as its defense of moratorium is concerned, but not as regards the merits of the case because its answer raises questions of fact which should be established, not by mere affidavits, but by evidence duly presented in court. And on May 15, 1952, the court rendered decision not only on the question of moratorium but on the merits of the case, apparently disregarding the issue raised by defendant as regards the necessity of presenting evidence on the facts controverted by it in its answer. From this decision, the defendant has appealed.

One of the errors assigned by appellant refers to the fact that the lower court rendered judgment on the merits by virtue merely of the motion for summary judgment: filed by appellee without giving an opportunity to appellant to present evidence on the facts on which, it alleges, its answer and special defenses are predicated. Appellant contends that the facts raised by its special defenses are “triable issues of facts” which cannot be the subject of summary judgment unless established by sufficient evidence, and that those facts are material to sustain its point of view that it can only be made to pay under the policy an indemnity in the amount of P2,400.

When appellee filed a motion for summary judgment upon her claim she attached thereto in support of the motion certain annexes and affidavits which were intended to substantiate and prove her allegations. Appellant failed not only to interpose opposing affidavits but announced to the court that it was joining the appellee in her petition for summary judgment although it evinced its desire to present evidence with regard to the questions of facts raised in its special defenses. And acting on said motion, the lower court, after considering the pleadings and affidavits submitted in support of the motion for summary judgment, found that there was no substantial triable issue of facts and concluded that the appellee was entitled to a judgment as a matter of law. We find this to be in substantial compliance with the rules (sections 1 and 2, Rule 36).

The material averments of the claim as regards the execution of the policy, the payment of the premiums, and the death of the insured, are not disputed. The only issues of fact which served as basis for the opposition to the summary judgment are those raised in the special defenses contained in the answer. But these facts are not material for a decision on the merits, as correctly stated by the lower court, for even if they are taken for granted the result would not materially change the findings as to the question affecting the main claim. We hold therefore that the lower court did not err in rendering a summary judgment on the merits of the case.

The issue of moratorium, which was decided against the stand taken by appellant, and which is also raised as one of the errors, has now become moot in view of the ruling in the case of Rutter vs. Esteban, 93 Phil., 68, wherein the Moratorium Law was declared invalid and unconstitutional.

The main question to be determined refers to the amount to be paid by appellant under the policy by way of indemnity to the insured. Stated in another way, the question to be determined is whether the amount of P3,000 which appellant bound itself to pay to the insured under the policy upon his death should be paid in accordance with the present currency or should be adjusted under the Ballantyne scale of

values. The answer to the question would depend upon the interpretation to be placed on the facts surrounding the death of the insured.

It appears that the deceased took up the policy under consideration on April 15, 1943 for the sum of P3,000. All the premiums due under the policy were actually paid on their dates of maturity and the policy was in force when the insured died on February 7, 1945. On said date, the battle for the liberation of the City of Manila was still raging. While the northern part may have been liberated, not so the southern part, as shown from the very affidavits submitted by appellee wherein it was stated that on the aforesaid date, the insured, Jose Londres, and his two sons were taken by the Japanese soldiers from their house at Singalong Street and were massacred by their captors. It may therefore be said that the policy became due when the City of Manila was still under the yoke of the enemy and became payable only after liberation which took place on March 10,1945 when President Osmena issued Proclamation No. 6 following the restoration of the civil government by General Douglas MacArthur. And we say that the policy became payable only after liberation even if it matured sometime before, because before that eventuality the insurance company, appellant herein, was not yet in a position to pay the value of the policy for the simple reason that it had not yet reopened. This much the court can take judicial notice of, for during those days of liberation, while the people were rejoicing because of the happy event, the banks, the insurance companies, and for that matter other commercial and business firms, were still feeling the adverse effects of the sudden fall of values and were uncertain and apprehensive as to the manner the readjustment would be made by the new Government. It is for this reason that the beneficiary, after realizing the truth about the death of her husband, and after gathering evidence to substantiate his death, had difficulty in effecting the collection of her claim from the insurance company because at that time it had not yet reopened for business purposes. Although the record does not disclose the exact date on which the insurance company reopened for this purpose, this Court can take judicial notice that it only did so after liberation. At that time the legal tender was already the present currency.

However, it is an undisputed fact that the beneficiary submitted to the company formally her claim and demanded payment thereof on May 16, 1949, attaching thereto sufficient proof of the death of the insured, which claim however the company did not entertain, not because the proof submitted was not sufficient in contemplation of law, but because the policy was executed during the occupation and the determination of its value has not yet been passed upon by the Government. And following the provisions of our Insurance Law to the effect that in case of maturity by death the proceeds are payable within sixty days after the presentation of the claim and the filing of proof of death, the conclusion is inescapable that from the point of view of the insurance company, the proceeds of the policy became payable only upon the expiration of that period. (Insurance Law, Section 91-A). In this sense, this case may be likened to those already decided by this Court wherein we said in substance that, where the parties have agreed that the payment of the obligation will be made in the currency that would prevail by the end of the stipulated period, and this takes place after liberation, the obligation shall be paid in accordance with the currency then prevailing, or Philippine currency. (Rono vs. Gomez, 83 Phil., 890, 46 Off. Gaz., Sup. 11, 339; Gomez vs. Tabia, 84 Phil., 269, 47, Off. Gaz., 641.) We are, therefore, persuaded to conclude, on the strength of these authorities, that the present claim should be paid in accordance with the present legal tender, or the Philippine currency.

With regard to the sufficiency of the proof presented by appellee as to the death of the insured, we find that the same has been sufficiently established in view of the death certificate issued by the Civil Register of Manila on April 15, 1952, which was attached to the motion for summary judgment. This certificate strengthens the proof submitted by appellee on May 16, 1949 and as such it can serve as basis for the determination of the interest that the company should pay under the policy as required by law. (Insurance Law, Section 91-A). However, the lower court, contrary to the claim of appellant, only required said appellant to pay legal interest from the filing of the complaint until the payment of the judgment.

As final plea, appellant invokes equity in its favor in view of the

nullification of the deposits made by it with the Philippine National Bank of all fiat money received from its policyholders, which money was declared without value by Executive Order No. 49 of the President of the Philippines. Appellant claims that, considering the unexpected circumstances that developed, the indemnity to be paid by it should be ameliorated. This loss, painful as it is, should be suffered by it under Article 307 of the Code of Commerce which provides: "When the deposits are of cash, with a specification of the coins constituting them, * * * the increase or reduction which their value may suffer shall, be for the account of the depositor." Moreover, appellant, by entering into an insurance contract, cannot claim, if it suffers loss, that the beneficiary cannot enrich herself at its expense. This is a risk attendant to any wagering contract.[1] One who gambles and loses cannot be heard to complain of his loss. To appellant, we can only repeat the following admonition:

"The parties herein gambled and speculated on the date of the termination of the war and the liberation of the Philippines by the Americans. This can be gleaned from the stipulation about redemption, particularly that portion to the effect that redemption could be effected not before the expiration of one year from June 24, 1944. This kind of agreement is permitted by law. We find nothing immoral or unlawful in it." (Gomez vs. Tabia, *supra*.)

Wherefore, the decision appealed from is affirmed, with costs against appellant.

Bengzon, Reyes, Jugo, Labrador, Concepcion, and *Diokno, JJ.,* concur.

Paras, C. J., concurs in the result

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[1] A wager may take the form of a contract, called wagering, or gambling, contract. Contracts of this nature include various common forms of valid commercial contracts, as contracts of insurance, contracts dealing in futures, options, etc. (Webster's New International Dictionary, 2nd ed. (unabridged) p. 2863.)

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