101 Phil. 1031

[G.R. No. L-11497. August 16, 1957]

PHILIPPINE AIR LINES, INC., PLAINTIFF AND APPELLANT VS. HEALD LUMBER COMPANY, DEFENDANT AND APPELLEE.

Sometime prior to June 4, 1954, the Lepanto Consolidated Mines chartered a helicopter belonging to plaintiff to make a flight on said date from its base at Nichols Field airport to the former's camp located at Mankayan, Mountain Province. The helicopter took oft on said date with Capt. Gabriel G. Hernandez as pilot and Lt. Rex M. Imperial as first officer. No other person was on board. The helicopter failed to reach its destination for the reason that, while on flight within the logging area of defendant, it collided with defendant's tramway steel cables some-where in Ampusungan, Mankayan, Mt. Province, resulting in its destruction and the death of Capt. Hernandez and Lt. Imperial. Plaintiff insured at its expense the helicopter for P80,000 and the two officers who piloted the same for P20.000 each with various insurance companies in London. As a result of the crash, the insurance companies paid to plaintiff a total indemnity of P120,000. Nevertheless, plaintiff sustained additional damages totalling P103,347.82 which were not recovered by insurance.

On March 2,1956, plaintiff commenced the present action to recover from defendant (*a*) the sum of P120,000 paid to the plaintiff by the insurance companies as indemnity for the loss of the helicopter and the death of Capt. Hernandez and Lt. Imperial; and (*b*) the sum of P103,347.82 representing consequential and moral damages which plaintiff claims it had incurred as a result of the loss of the helicopter and the death of the officers above-mentioned. With regard to the claim of P120,000.00, the complaint alleges that said helicopter and officers having been duly insured with numerous insurance companies, and having been paid the aforesaid amount as value of the helicopter and reimbursement for the compensation paid to the heirs of the deceased officers, plaintiff is now asserting this claim "on behalf and for the benefit of said insurers," and in the prayer it claims that said amount of P120,000 "shall be held by plaintiff in trust for the insurer." As regards the other claim for P103.347.82, plaintiff states that the same represents additional damages sustained by it "upon its own account."

On March 20, 1956, defendant filed a motion to dismiss invoking, among other grounds, the following: Plaintiff seeks to recover, among other items, the sum of P120,000 representing the proceeds of various insurance policies which have already been paid to it by "numerous insurance companies." It is evident that plaintiff has.no cause of action against defendant for if anyone should sue defendant for its recovery, it will only be the insurance companies.

Plaintiff, opposing this motion, contends that "inasmuch as the loss sustained exceeded the amount of insurance the right of action against defendant which allegedly negligently caused the loss remained with the insured (plaintiff) for the entire loss and the action must be brought by it in its own name as the real party in interest, it merely holding in trust for the insurers so much of the recovery as corresponds to the amount received as indemnity from the insurers."

The court, acting on the motion, issued an order on April 16, 1956 the pertinent portion of which reads: "As to the first allegation that insurance companies have paid a portion of Plaintiff's damages, this Court believes that the real parties in interest are the insurance companies concerned so that Plaintiff should either delete this allegation or bring in the insurance companies as parties plaintiff." Accordingly, the court ordered plaintiff to amend its complaint as above indicated, within a period of ten (10) days from receipt of the order.

Plaintiff filed a motion for reconsideration which was denied. And having manifested its decision not to amend the complaint as above indicated, the lower court, in a subsequent order, made it clear that such move of plaintiff amounts to a deletion of the portion objected to and so the complaint should be deemed limited to the additional damages covered by paragraph 9 thereof. Plaintiff appealed from both orders.

The only question to be determined is whether "The lower court erred in ruling that plaintiff is not the real party in interest respecting the claim for P120,000.00 and in ordering deleted that claim from the complaint."

It is appellant's theory that, inasmuch as the loss it has sustained exceeds the amount of insurance paid to it by the insurers, the right of action to recover the entire loss from the wrongdoer remains with the insured and so the action must be brought in its own name as real party in interest. To the extent of the amount received by it as indemnity from the insurers, plaintiff would then be acting as trustee for them.

In support of this contention, appellant cites American authorities the most representative of which we quote:

> "Sec. 1358. *Under Statute, where. Loss Exceeds Insurance Paid.*— Under statutes providing that every action must he prosecuted in the name of the real party in interest, it is generally held that *if the insurance paid by an insurer covers only a portion of the loss, the insurer is not the real party in interest, but rather, the right of action against the wrongdoer who caused the loss remains in the insured for the entire loss, and the action must be brought by him in his own name.* This rule has been said to rest upon the theory that the insured sustains toward the insurer the relation of trustee, and also upon the right of the wrongdoer not to have the cause of action against him split up so that he is compelled to defend two actions for the same wrong." (20 Am. Jur., p. 1016) (Italics supplied)

While the above is the rule under American Statutes, the rule on the matter is different in the Philippines. In this jurisdiction, we have our own legal provision which in substance differs from the American law. We refer to Article 2207 of the New Civil Code which provides:

> "ART. 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury."

Note that if a property is insured and the owner receives the indemnity from the insurer, it is provided in said article that the insurer is deemed subrogated to the rights of the insured against the wrongdoer and if the amount paid by the insurer does not fully cover the loss, then the aggrieved party is the one entitled to recover the deficiency. Evidently, under this legal provision, the real party in interest with regard to the portion of the indemnity paid is the insurer and not the insured. The reason is obvious. The payment

of the indemnity by the insurer to the insured does not make the latter a trustee of the former as in the American law. This matter being statutory, the same must be governed by our own law in this jurisdiction.

This interpretation finds support in the explanatory note given by the Code Commission in proposing the adoption of the article under consideration. Thus, said Commission, in its report on the proposed Civil Code of the Philippines, referring to the article in question, says:

> "The rule in article 2227 (Art. 2207 of the Code, as enacted) about insurance indemnity *is different from the American law.* Said article provides:
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> "Art. 2227. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising' out of the wrong or breach of contract complained of the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing- the loss or injury.'
>
> "*According to American jurisprudence, the fact that the plaintiff has been indemnified by an insurance company cannot lessen the .damages to be paid by the defendant.* Such rule gives more damages than those actually suffered by the plaintiff, and the defendant, if also sued by the insurance company for reimbursement, would have to pay in many cases twice the damages he has caused. *The proposed article would seem to be a better adjustment of the rights* of the three parties concerned." (Report of the Code Commission on the Proposed Civil Code of the Philippines, p. 73) (Italics supplied)

It is insisted that despite the subrogation of the insurer to. the rights of the insured, the latter can still bring the action in its name because the subrogation vests in the latter the character of a trustee charged with the duty to pay to the insurer so much of the recovery as corresponds to the amount it had received as a partial indemnity. This cannot be true in this jurisdiction, for before a person can sue for the benefit of another under a trusteeship, he must be "a trustee of an express trust" (Section 3, Rule 3, Rules of Court). Thus, under this provision, "in order that a trustee may sue or be sued alone, it

is essential that his trust should be express, that is, a trust created by the direct and positive acts of the parties, by some writing, deed, or will or by proceedings in court. The provision does not apply in cases of implied trust, that is, a trust which may be inferred merely from the acts of the parties or from other circumstances" (Moran, Comments on the Rules of Court, Vol. I, 1952 Ed., p. 35).

It is also contended that to adopt a contrary rule to what is authorized by the American statutes would be splitting a cause of action or promoting multiplicity of suits which should be avoided. This contention cannot also hold water considering that under our rules both the insurer and the insured may join as plaintiffs to press their claims against the wrongdoer when the same arise out of the same transaction or event. This is authorized by Section 6, Rule 3, of the Rules of Court. Former Chief Justice Moran gives a number of instances where this joinder may be effected, some of which are quoting hereunder for purposes of illustration:

> 1. "For instance, A, B, C, and D are owners, respectively, .of four houses destroyed by fire caused by sparks coming from a defective chimney of a passing locomotive owned by the Manila Railroad Company. Under the old procedure, the four owners cannot join in a single complaint for damages against the Manila Railroad Company, for the reason that they do not have a community of interest in the same subject of the litigation, each of them being interested in recovering' the value of his house alone. Under the new procedure, they may join in a single complaint, for a right to relief is alleged to exist in their favor severally arising out of the same cause, namely, the single negligent act of the defendant by which the four houses were destroyed by fire, and which is also a common question of fact to all of the four plaintiffs."
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> 2. "Again, several farmers, depending upon a system for the irrigation of their crops, have sustained damages by reason of the diversion of the "water from said system by the defendant company.
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> Under the old procedure, those several farmers cannot unite in a single action, they having no community of interest in the same subject, for each of them is.interested in the damages to his own farm and not in those of the others. But, under the new procedure, they may join in a single action, for their right to relief arises from the same occurrence, namely, the diversion of the water from the

aforesaid system, which is also a question of fact common to all of them."

3. "If, in a collision of motor cars, a chauffeur sustained personal injuries and damages are caused to the car he was driving two causes of action arise: one, in favor of the chauffeur for the injuries caused to his person, and another, in favor of the owner of the car for the damages caused thereto. Under the old procedure, it is doubtful whether the owner and the chauffeur may join in a single complaint, "because they are not interested in the same subject each of them claiming a different and separate kind of damages, but under tho new procedure, they may join, because a right of relief exists in their favor arising out of the same transaction or occurrence) namely, the collision, and a question of fact will arise at the trial common to both of them," (Moran, Comments, on the Rules of Court, Vol. I, 1952 Ed., pp. 42-43)

Wherefore, the orders appealed from are affirmed, with costs against appellant.

Paras, C. J., Padilla, Montemayar, Reyes, A., Labrador, Concepcion, Endencia and *Felix, JJ.,* concur.

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