

MELECIO COQUIA, MARIA ESPANUEVA AND MANILA YELLOW TAXICAB CO., INC., PLAINTIFFS-APPELLEES, VS. FIELDMEN'S INSURANCE CO., INC., DEFENDANT-APPELLANT.

G.R. No. L-23276. November 29, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

This is an appeal from a decision of the Court of First Instance of Manila, certified to us by the Court of Appeals, only questions of law being involved therein. Indeed, the pertinent facts have been stipulated and/or, admitted by the parties at the hearing of the case in the trial court, to dispense with the presentation of evidence therein.

It appears that on December 1, 1961, appellant Fieldmen's Insurance Company, Inc. — hereinafter referred to as the Company — issued, in favor of the Manila Yellow Taxicab Co., Inc. — herein-after referred to as the Insured — a common carrier accident insurance policy, covering the period from December 1, 1961 to December 1, 1962. It was stipulated in said policy that:

"The Company will, subject to the Limits of Liability and under the Terms of this Policy, indemnify the insured in the event of accident caused by or arising out of the use of Motor Vehicle against all stuns which the Insured will become legally liable to pay in respect of: Death or bodily injury to any fare-paying passenger including the Driver, Conductor and/or Inspector who is riding in the Motor Vehicle insured at the time of accident or injury." [1]

While the policy was in force, or on February 10, 1962, a taxicab of the Insured, driven by Carlito Coquia, met a vehicular accident at Mañgaldan, Pangasinan, in consequence of which Carlito died. The Insured filed therefor a claim for P5,000.00 to which the Company replied with an offer to pay P2,000.00, by way of com-promise. The Insured rejected the same and made a counter-offer for P4,000.00, but the Company did not accept it. Hence, on September 18, 1962, the Insured and Carlito's parents, namely, Melecio Coquia and Maria Espanueva hereinafter referred to as the Coquias — filed a complaint against the Company to collect the proceeds of the aforementioned policy. In its answer, the Company admitted the existence thereof, but pleaded lack of cause of action on the part of the plaintiffs.

After appropriate proceedings, the trial court rendered a decision sentencing the Company to pay to the plaintiffs the sum of P4,000.00 and the costs. Hence, this appeal by the Company, which contends that plaintiffs have no cause of action because: 2) the Coquias have no contractual relation with the Company; and 2) the Insured has not complied with the provisions of the policy concerning arbitration.

As regards the first defense, it should be noted that, although, in general, only parties to a contract may bring an action based thereon, this rule is subject to exceptions, one of which is found in the second paragraph of Article 1311 of the Civil Code of the Philippines, reading:

"If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided communicated his acceptance to the obligor before its revocation. A mere incidental benefit or

interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.”[2]

This is but the restatement of a well-known principle concerning contracts pour autrui, the enforcement of which may be demanded by a third party for whose benefit it was made, although not a party to the contract, before the stipulation in his favor has been revoked by the contracting parties. Does the policy in question belong to such class of contracts pour autrui?

In this connection, said policy provides, inter alia:

"Section I — Liability to Passengers. 1. The Company will, subject to the Limits of Liability and under the Terms of this Policy, indemnify the Insured in the event of accident caused by or arising out of the use of Motor Vehicle against all sums which the Insured will become legally liable to pay in respect of: Death or bodily injury to any fare-paying passenger including the Driver x x x who is riding in the Motor Vehicle insured at the time of accident or injury.

"Section II — Liability to the Public

x x x

x x x

x x x

"3. In terms of and subject to the limitations of and for the purposes of this Section, the Company will indemnify any authorized Driver who is driving the Motor Vehicle x x x."

"Conditions

x x x

x x x

x x x

"7. In the event of death of any person entitled to indemnity under this Policy, the Company will, in respect of the liability incurred by such person, indemnify his personal representatives in terms of and subject to the limitations of this Policy, provided, that such representatives shall, as though they were the Insured, observe, fulfill and be subject to the Terms of this Policy insofar as they can apply.

"8. The Company may, at its option, make indemnity payable directly to the claimants or heirs of claimants, with or without securing the consent of or prior notification to the Insured, it being the true intention of this Policy to protect, to the extent herein specified and subject always to the Terms of this Policy, the liabilities of the Insured towards the passengers of the Motor Vehicle and the Public."

Pursuant to these stipulations, the Company "will indemnify any authorized Driver who is driving the Motor Vehicle" of the Insured and, in the event of death of said driver, the Company shall, likewise, "indemnify his personal representatives." In fact, the Company "may, at its option, make indemnity payable directly to the claimants or heirs of claimants x x x it being the true intention of this Policy to protect x x x the liabilities of the Insured towards the passengers of the Motor Vehicle and the Public" - in other words, third parties.

Thus, the policy under consideration is typical of contracts pour autrui, this character being made more manifest

by the fact that the deceased driver paid fifty percent (50%) of the corresponding premiums, which were deducted from his weekly commissions. Under these conditions, it is clear that the Coquias - who, admittedly, are the sole heirs of the deceased - have a direct cause of action against the Company,[3] and, since they could have maintained this action by themselves, without the assistance of the Insured, it goes without saying that they could and did properly join the latter in filing the complaint herein.[4]

The second defense set up by the Company is based upon Section 17 of the policy reading:

"If any difference or dispute shall arise with respect to the amount of the Company's liability under this Policy, the same shall be referred to the decision of a single arbitrator to be agreed upon by both parties or failing such agreement of a single arbitrator, to the decision of two arbitrators, one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties and in case of disagreement between the arbitrators, to the decision of an umpire who shall have been appointed in writing by the arbitrators before entering on the reference and the costs of and incidental to the reference shall be dealt with in the Award. And it is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this Policy that the award by such arbitrator, arbitrators or umpire of the amount of the Company's liability hereunder if disputed shall be first obtained."

The record shows, however, that none of the parties to the contract invoked this section, or made any reference to arbitration, during the negotiations preceding the institution of the present case. In fact, counsel for both parties stipulated, in the trial court, that none of them had, at any time during said negotiations, even suggested the settlement of the issue between them by arbitration, as provided in said section. Their aforementioned acts or omissions had the effect of a waiver of their respective right to demand an arbitration. Thus, in *Kahnweiler vs. Phenix Ins. Co. of Brooklyn*,[5] it was held:

"Another well-settled rule for interpretation of all contracts is that the court will lean to that interpretation of a contract which will make it reasonable and just. Bish. Cont. Sec. 400. Applying these rules to the tenth clause of this policy, its proper interpretation seems quite clear. When there is a difference between the company and the insured as to the amount of the loss the policy declares: 'The same shall then be submitted to competent and impartial arbitrators, one to be selected by each party x x x'. It will be observed that the obligation to procure or demand an arbitration is not, by this clause, in terms imposed on either party. It is not said that either the company or the insured shall take the initiative in setting the arbitration on foot. The company has no more right to say the insured must do it than the insured has to say the company must do it. The contract in this respect is neither unilateral nor self-executing. To procure a reference to arbitrators, the joint and concurrent action of both parties to the contract is indispensable. The right it gives and the obligation it creates to refer the differences between the parties to arbitrators are mutual. One party to the contract cannot bring about an arbitration. Each party is entitled to demand a reference, but neither can compel it, and neither has the right to insist that the other shall first demand it, and shall forfeit any right by not doing so. If the company demands it, and the insured refuses to arbitrate, his right of action is suspended until he consents to an arbitration; and if the insured demands an arbitration, and the company refuses to accede to the demand, the insured may maintain a suit on the policy, notwithstanding the language of the twelfth section of the policy, and, where neither party demands an arbitration, both parties thereby waive it."[6]

To the same effect was the decision of the Supreme Court of Minnesota in *Independent School Dist. No. 35, St. Louis County vs. A. Hedenberg & Co., Inc.*[7] from which we quote:

"This rule is not new in our state. In *Meyer v. Berlandi*, 53 Minn. 59, 54 N.W. 937, decided in 1893, this court held that the parties to a construction contract, having proceeded throughout the entire course of their dealings with each other in entire disregard of the pro-vision of the contract regarding the mode of determining by arbitration the value of the extras, thereby waived such provision."

X X X

X X X

X X X

"The test for determining whether there has been a waiver in a particular case is stated by the author of an exhaustive annotation in 117 A.L.R. p. 304, as follows: 'Any conduct of the parties inconsistent with the notion that they treated the arbitration provision as in effect, or any conduct which might be reasonably construed as showing that they did not intend to avail themselves of such provision, may amount to a waiver thereof and estop the party charged with such conduct from claiming its benefits'."

X X X

X X X

X X X

"The decisive facts here are that both parties from the inception of their dispute proceeded in entire disregard of the provisions of the contract relating to arbitration and that neither at any stage of such dispute, either before or after commencement of the action, demanded arbitration, either by oral or written demand, pleading, or otherwise. Their conduct was as effective a rejection of the right to arbitrate as if, in the best Coolidge tradition, they had said, 'We do not choose to arbitrate'. As arbitration under the express provisions of article 40 was 'at the choice of either party,' and was chosen by neither, a waiver by both of the right to arbitration followed as a matter of law."

WHEREFORE, the decision appealed from should be as it is hereby affirmed in toto, with costs against the herein defendant-appellant, Fieldmen's Insurance Co., Inc.

SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, and Capistrano, JJ., concur.

[1] Underscoring ours.

[2] Underscoring ours.

[3] Uy Tam vs. Leonard, 30 Phil., 471, 485-486; Kauffman vs. Philippine National Bank, 42 Phil., 182, 187, 189.

[4] Guingon vs. Capital Insurance & Surety Co., Inc., L-22042, August 17, 1967.

[5] 67 Fed. 483, 487-488.

[6] Underscoring ours.

[7] 7 NW 2nd, 511, 517, 518.

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