

LAURA VELASCO AND GRETA ACOSTA, PETITIONERS, VS. HON. SERGIO A. F. APOSTOL AND MAHARLIKA INSURANCE, CO., INC., RESPONDENTS.

G.R. No. L-44588. May 09, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

Petitioners Laura Velasco and Greta Acosta were the plaintiffs in Civil Case No. Q-19118 in the former Court of First Instance of Rizal, Branch XVI, of which public respondent Hon. Sergio A. F. Apostol was the presiding judge. The case was an offshoot of an incident adequately alleged in their complaint, dated July 22, 1974, as follows:

"That on November 27, 1973, at about 2:30 p.m. plaintiffs were riding in their Mercury car, with Plate No. 44-43 (H-Manila-73), owned by plaintiff Laura Velasco, and driven by their driver Restituto Guarra, along Quezon Boulevard near the corner of Speaker Perez Street, Quezon City, toward the direction of Manila, when, before reaching said corner, an N/S taxicab driven by defendant Dominador Santos and with Plate No. 75-25L (TX-QC-73), registered in the name of defendants Alice Artuz, c/o Norberto Santos, crossed the center island towards their direction, and finally collided with their car at the left front part, and thereafter, the said taxicab tried to return to its original lane, but was unable to climb the island, and instead, backtracked, hitting again plaintiffs' car in the left rear portion, causing the latter's back portion to turn toward the center hitting a jeepney on its right, which was travelling along their side going toward Manila also;"[1]

and amply substantiated in detail at the trial.[2]

Originally sued as defendants were Dominador Santos, Alice Artuz and Norberto Santos, with plaintiffs claiming actual, moral and exemplary damages plus attorney's fees. After an answer was filed by said defendants, private respondent Maharlika Insurance Co., Inc. was impleaded as a defendant in an amended complaint filed by the petitioner on April 4, 1975, with an allegation that the N/S taxicab involved was insured against third party liability for P20,000.00 with private respondent at the time of the accident.[3]

In its answer to the amended complaint, respondent Maharlika Insurance Co., Inc. claimed that there was no cause of action against it because at the time of the accident, the alleged insurance policy was not in force due to non-payment of the premium thereon. It further averred that even if the taxicab had been insured, the complaint would still be premature since the policy provides that the insurer would be liable only when the insured becomes legally liable.[4]

The trial court rendered judgment in favor of the plaintiffs, finding that the evidence on the negligence of defendant Dominador Santos was uncontroverted and the proximate cause of the accident was his negligence.[5] Defendants Dominador Santos, Alice Artuz and Norberto Santos were adjudged jointly and severally liable to petitioners for the sums of P17,061.95 for the repair of their car, P17,000.00 for their medical expenses, P10,000.00 as moral damages and P10,000.00 as attorney's fees.[6] However, Maharlika Insurance Co. was

exonerated on the ground that the policy was not in force for failure of the therein defendants to pay the initial premium and for their concealment of a material fact.

From the decision of the court a quo, petitioners elevated the case to this Court by a petition for review on certiorari, with the averment that only questions of law are involved.

Petitioners fault the respondent judge for considering private respondent's defense of late payment of premium when, according to them, "the same was waived at the pre-trial",^[7] hence private respondent's evidence of late payment should be disregarded supposedly because, as We understand petitioners' argument, private respondent had thereby admitted that such fact was not in issue. They theorize that what was stipulated in the pre-trial order "does not include the issue on whether defendant Maharlika Insurance Co., Inc. is liable under the insurance policy, even as the premium was paid after the accident in question".^[8]

The records show that at the pre-trial conference the issues stipulated by the parties for trial were the following:

"Whether it was the driver of the plaintiffs' car or the driver of the defendants' car who was negligent.

"Whether defendant Maharlika Insurance Co., Inc. is liable under the insurance policy on account of the negligence of defendant Dominador Santos."^[9]

Petitioners' position is bereft of merit. We have carefully examined the pre-trial order but We fail to discern any intimation or semblance of a waiver or an admission on the part of Maharlika Insurance Co., Inc. Although there is no express statement as to the fact of late payment, this is necessarily deemed included in or ineluctably inferred from the issue of whether the company is liable under the insurance policy it had allegedly issued for the vehicle Involved and on which petitioners seek to recover. A pre-trial order is not meant to be a detailed catalogue of each and every issue that is to be or may be taken up during the trial. Issues that are impliedly included therein or may be inferable therefrom by necessary implication are as much integral parts of the pre-trial order as those that are expressly stipulated.

In fact, it would be absurd and inexplicable for the respondent company to knowingly disregard or deliberately abandon the issue of non-payment of the premium on the policy considering that it is the very core of its defense. Correspondingly, We cannot but perceive here an undesirable resort to technicalities to evade an issue determinative of a defense duly averred.

Furthermore, as private respondent correctly points out, evidence to prove such late payment was introduced without any objection by the adverse party.^[10] This lack of objection amounts to an implied consent conferring jurisdiction on the court to try said issue.^[11]

Noteworthy, too is petitioners' vacillation on this particular score. In their reply to respondents' comment, petitioners categorically stated that respondents' point regarding the lack of objection to the evidence is well taken, hence they do not insist on this ground to review respondent court's decision.^[12] However, in their amended reply, they reverted to their original position that it was a mistake for the trial court to have considered the defense of lack of payment of premium. At any rate, We consider that matter as duly disposed of by the preceding discussion.

Digressing from the procedural aspects of this case, We now consider petitioners' curative assertion that private respondent had agreed to grant the then prospective insured a credit extension for the premium due. It should be noted at the outset that this controversy arose under the aegis of the old insurance law, Act No. 2427, as amended. The accident occurred on November 27, 1973 while the complaint by reason thereof was filed on July 20, 1974, both before effectivity on December 18, 1974 of Presidential Decree No. 612, the subsequent insurance law which repealed its predecessor.

The former insurance law, which applies to the case under consideration, provided that:

"An insurer is entitled to the payment of premium as soon as the thing insured is exposed to the peril insured against, unless there is clear agreement to grant the insured credit extension of the premium due. No policy issued by an insurance company is valid and binding unless and until the premium thereof has been paid." [13]

Consequently, the insurance policy in question would be valid and binding notwithstanding the non-payment of the premium if there was a clear agreement to grant to the insured a credit extension. Such agreement may be express or implied.

Petitioners quote and rely on the following as authority for their cause:

"A condition requiring pre-payment of the premium is waived by a parol agreement to that effect, acceptance of the premium after delivery of the policy, the unconditional delivery of the policy, the giving of credit for the premiums, x x x or any other circumstances showing that pre-payment was not intended to be insisted upon, as where there are any words or acts from which a reasonable inference may be drawn that the insurer does not stand upon its rights to demand pre-payment. (Couch on Insurance, 2d, Vol. 1, pp. 402-403.)" [14]

As earlier stated, the accident for which respondent insurance company is sought to be held liable occurred on November 27, 1973 while the initial premium was paid only on December 11, 1973.

Petitioners maintain that in spite of this late payment, the policy is nevertheless binding because there was an implied agreement to grant a credit extension so as to make the policy effective. To them, the subsequent acceptance of the premium and delivery of the policy estops the respondent company from asserting that the policy is ineffective. [15]

We see no cogent proof of any such implied agreement. The purported nexus between the delivery of the policy and the grant of credit extension is too tenuous to support the conclusion for which petitioners contend. The delivery of the policy was made on March 28, 1974 and only because the premium had been paid, in fact, more than three months before such delivery. [16] As found by the court below, said payment was accepted by the insurer without any knowledge that the risk insured against had already occurred since such fact was concealed by the insured and was not revealed to the insurer. [17] Thus, the delivery of the policy was far from being unconditional. Had there really been a credit extension, the insured would not have had any apprehension or hesitation to inform the respondent insurance company at the time of or before the payment of the premium that an accident for which the insurer may be held liable had already happened. In fact, there is authority to hold that under such circumstances notice alone is necessary and the insured need not pay the premium because whatever premium may have been due may already be deducted upon the satisfaction of the loss under the policy. [18]

Aside from the supposed unconditional delivery of the policy, which has been demonstrated to be baseless, petitioners failed to point out "any other circumstances showing that prepayment of premium was not intended to be insisted upon". They have thus failed to discharge the burden of proving their allegation of the existence of the purported credit extension agreement. Indubitably, their insurance claim must fail.

It may not be amiss to parenthetically mention in this regard that, in the present law, Section 77 of the Insurance Code of 1978 [19] has deleted the clause "unless there is clear agreement to grant the insured credit extension of the premium due" which was then involved in this controversy.

There is no need to elaborate on the finding of the lower court that there was concealment by therein defendants of a material fact, although legal effects of pertinence to this case could be drawn therefrom. The fact withheld could not in any event have influenced the respondent company in entering into the supposed contract or in estimating the character of the risk or in fixing the rate premium, for the simple reason that no such contract

existed between the defendants and the company at the time of the accident. Accordingly, there was nothing to rescind at that point in time. What should be apparent from such actuations of therein defendants, however, is the presence of bad faith on their part, a reprehensible disregard of the principle that insurance contracts are *uberrimae fidei* and demand the most abundant good faith.[20]

WHEREFORE, finding no reversible error, the judgment appealed from is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Annex A, Petitioner; Rollo, 16-17.

[2] Rollo, 50-51.

[3] *Ibid.*, 20-21.

[4] Annex D, Petition; Rollo, 22.

[5] Rollo, 62-63.

[6] *Ibid.*, 66-67.

[7] *Ibid.*, 9.

[8] *Ibid.*, 131.

[9] Annex E, Petition; Rollo, 23.

[10] *Ibid.*, 147.

[11] Sec. 5, Rule 10, Rules of Court.

[12] *ibid.*, 113.

[13] Sec. 72, Act No. 2427.

[14] Rollo, 11-12.

[15] *Ibid.*, 12.

[16] *Ibid.*, 150.

[17] *Ibid.*, 65.

[18] *Capital Insurance & Surety Co., Inc. vs. Plastic Era Co., Inc.*, 65 SCRA 134 (1975).

[19] Presidential Decree No. 1460, superseding Presidential Decree No. 612.

[20] *Fieldmen's Insurance Co., Inc. vs. Vda. de Songco, et al.*, 25 SCRA 70 (1968).

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