

WORLD-WIDE INSURANCE & SURETY CO., INC., PETITIONER, VS. THE COURT OF APPEALS, HON. SERAFIN R. CUEVAS, IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF MANIL...

G.R. No. L-40797. March 16, 1987

Ponente: PADILLA, J.

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PADILLA, J.:

Private respondent Buenaventura Saldaña was the owner of a motor vehicle which he had insured with the herein petitioner, World-Wide Insurance & Surety Co., Inc. While the policy was in force, the driver of the private respondent disappeared with the motor vehicle and his whereabouts, as well as that of the motor vehicle, are still unknown despite diligent efforts to locate them.

As a result, Saldaña filed a complaint against the insurance company to recover the proceeds of the policy, but the latter refused to pay on the ground that the assured "who is engaged in the business of 'service' is subsidiarily liable to the defendant for the acts of his employee (driver) and, therefore, whatever the defendant may be compelled by the Court to pay the plaintiff can be set off by his liability to the defendant, and that plaintiff failed to take all reasonable steps to safeguard the motor vehicle from loss or damage in violation of one of the policy conditions." [1]

The parties submitted a "Stipulation of Facts and Issues", after which, the trial court rendered judgment in favor of the plaintiff, "ordering defendant to pay plaintiff the sum of P15,000.00 with 6% interest thereon per annum from the time of the filing of the complaint until the whole amount shall have been totally paid; P3,000.00 as attorney's fees, this being merely an ex-parte case; and to pay costs." [2]

The defendant filed a motion for reconsideration of the decision, but the trial court denied the same for lack of merit. Thereupon, the defendant filed a notice of appeal, appeal bond, and record on appeal, signifying its intention to appeal to the Court of Appeals. A few days later, the plaintiff filed a motion to dismiss the appeal on the ground that it was not perfected on time, since the motion for reconsideration of the decision filed by the defendant was a pro-forma motion and did not interrupt the period for the perfection of appeals. The trial court found the motion to dismiss well taken and, accordingly, dismissed the defendant's appeal. Whereupon, the defendant filed a petition for certiorari, prohibition, mandamus, with preliminary injunction and/or restraining order with the Court of Appeals seeking the annulment of the order dismissing its appeal and praying that its appeal be given due course.

The appellate court, however, dismissed the petition on the ground of lack of jurisdiction since the appealed decision is based upon stipulated facts and purely questions of law are involved in the projected appeal. The defendant filed a motion for reconsideration of this resolution, but the same was denied by the appellate court. Hence, the defendant filed a petition for certiorari with this Court.

Sometime later, counsel for the respondents manifested to this Court "that in satisfaction of the judgment, petitioner has paid respondent Buenaventura Saldaña P20,700.00 under Filipinas Bank & Trust Co. Check No. 109062 thru the Sheriff of Manila." [3]

WHEREFORE, the case should be, as it is hereby DISMISSED for being moot and academic.

SO ORDERED.

Fernan, (Chairman), Alampay, Gutierrez, Jr., Paras, Bidin, and Cortes, JJ., concur.

[1] Original Record, p.12

[2]id., p. 21

[3] Rollo, p. 91

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