

CCC INSURANCE CORPORATION, PETITIONER, VS. COURT OF APPEALS (FOURTH DIVISION) AND CARLOS F. ROBES, RESPONDENTS.

G.R. No. L-25920. January 30, 1970

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

Petition for review of the decision of the Court of Appeals, affirming that of the Court of First Instance of Rizal (Quezon City) allowing insurance indemnification of plaintiff for his damaged car and the payment of attorneys' fees.

The following facts are not in dispute:

On 1 March 1961, Carlos F. Robes took an insurance, with the CCC Insurance Corporation, on his Dodge Kingsway car against loss or damage through accident for an amount not exceeding P8,000.00 (Policy No. MC-1156). On 25 June 1961, and during the effectivity of the policy, the insured vehicle, while being driven by the owner's driver, became involved in a vehicular collision along Rizal Avenue Extension, Potrero, Malabon, Rizal. The car was damaged, and the repair was estimated to cost P5,300.00.

As the insurance company refused either to pay for the repair or to cause the restoration of the car to its original condition, Robes instituted Civil Case No. Q-6063 in the Court of First Instance of Rizal for recovery not only of the amount necessary for the repair of the insured car but also of actual and moral damages, attorneys' fees and costs. Resisting plaintiff's claim, the insurance company disclaimed liability for payment, alleging that there had been violation of the insurance contract because the one driving the car at the time of the incident was not an "authorized driver".

After due hearing, judgment was rendered for the plaintiff, and defendant insurer was ordered to pay unto the former the cost of repair of the car in the sum of P5,031.28; the sum of P150.00, for the hauling and impounding of the car at the repair shop; P2,000.00 as actual damages; and P1,000.00 as attorneys' fees, plus costs.

The insurance company went to the Court of Appeals, raising inter alia the questions of the qualification of plaintiff's driver to operate the insured vehicle and the correctness of the trial court's award to plaintiff of the amount of P5,013.28 as cost of repairs, and of actual damages and attorneys' fees. In its decision of 31 January 1966, the Court of Appeals affirmed the ruling of the lower court except the award of actual damages in the sum of P2,000.00, which was eliminated on the ground that it was too speculative. Not content, the insurance company filed the present petition for review of the aforesaid decision of the Court of Appeals on two grounds: (1) that the proceedings observed in the trial court were irregular and invalid; and (2) that the damage to the insured car was not covered by the insurance policy because at the time of the accident it was being driven by one who was not an authorized driver.

The second issue constitutes the main contention of herein appellant, and will be considered first. It is vigorously

urged by the insurer that the one driving the insured vehicle at the time of the accident was not an authorized driver thereof within the purview of the following provision of the insurance policy:

"AUTHORIZED DRIVER:

"Any of the following:

(a) The insured;

(b) Any person driving on the Insured's order or with his permission, provided that the person driving is permitted in accordance with licensing laws or regulations to drive the motor vehicle covered by this Policy, or has been so permitted and is not disqualified by order of a court of law or by reason of any enactment or regulation from driving such Motor Vehicle." (Underlin-ing ours)

It has been found as a fact by the Court of Appeals that Domingo Reyes, the driver who was at the wheel of the insured car at the time of the accident, does not know how to read and write; that he was able to secure a driver's license, without passing any examination therefor, by paying P25.00 to a certain woman; and that the Cavite agency of the Motor Vehicles Office has certified not having issued Reyes' purported driver's license No. 271703 DP.

In holding that the damage sustained by the car comes within the coverage of the insurance policy, the Court of Appeals argued that since Reyes' purported driver's, license (Exhibit "A") bears all the earmarks of a duly issued license, then it is a public document, and petitioner insurance company then has the burden of disproving its genuineness, which the latter has failed to do. In this respect, the Court of Appeals ruled:

" The fact that the Cavite Agency of the Motor Vehicles Office states that Driver's License No, 271703 DP was not issued by that office, does not remove the possibility that said office may have been mistaken or that said license was issued by another agency. Indeed, Exhibit 13 shows that a certain Gloria Presa made the notation thereon "no license issued" and which notation was the basis of the 1st Indorsement, Exhibit 12, signed by the MVO Cavite City Agency's officer-in-charge. Neither Gloria Presa nor the officer-in-charge Marciano A. Monzon was placed on the witness stand to be examined in order to determine whether said license is indeed void. As it is, as heretofore pointed out, the fact remains that Domingo Reyes is in possession of a driver's license issued by the Motor Vehicles Office which on its face appears to have been regularly issued."

In effect, the Court of Appeals found that the driver's license No. 271703 DP was genuine, that is, one really issued by the Motor Vehicles Office or its authorized deputy; and this finding of fact is now conclusive and may not be questioned in this appeal.

Nevertheless, the appellant insurer insists that, under the established facts of this case, Reyes, being admittedly one who cannot read and write, who has never passed any examination for drivers, and has not applied for a license from the duly constituted govern-ment agency entrusted with the duty of licensing drivers, can not be considered an authorized driver.

The fatal flaw in appellant's argument is that it studiously ignores the provisions of law existing at the time of the mishap. Under Section 24 of the Revised Motor Vehicles Law, Act 3992 of the Philippine Legislature, as amended by Republic Acts Nos. 587, 1204 and 2363[1],

"An examination or demonstration to show any applicant's ability to operate motor ve-hicles may also be required in the discretion of the Chief, Motor Vehicles Office or his deputies." (Emphasis supplied)

and reinforcing such discretion, Section 26 of the Act prescribes further

"SEC. 26. Issuance of chauffeur's license; professional chauffeur's badge: If, after examination, or without the same, the Chief, Motor Vehicles Office or his deputies, believe the applicant to possess the necessary qualifications and knowledge, they shall issue to such applicant a license to operate as chauffeur"
(Emphasis supplied)

It is thus clear that the issuance of a driving license without previous examination does not necessarily imply that the license issued is invalid. As the law stood in 1961, when the claim arose, the examinations could be dispensed with in the discretion of the Motor Vehicles Office officials. Whether discretion was abused in issuing the license without examination is not a proper subject of inquiry in these proceedings, though, as a matter of legislative policy, the discretion should be eliminated. There is no proof that the owner of the automobile knew that the circumstances surrounding such issuance showed that it was irregular.

The issuance of the license is proof that the Motor Vehicles Office official considered Reyes, the driver of the insured-appellee, qualified to operate motor vehicles, and the insured was entitled to rely upon such license. In this connection, it should be observed that the chauffeur, Reyes, had been driving since 1957,[2] and without mishap, for all the record shows. Considering that, as pointed out by the Court of Appeals, the weight of authority is in favor of a liberal interpretation of the insurance policy for the benefit of the party insured, and strictly against the insurer, We find no reason to diverge from the conclusion reached by the Court of Appeals that no breach was committed of the above-quoted provision of the policy.

The next issue assigned is anchored on the fact that the decision of the trial court was based on evidence presented to and received by the clerk of court who acted as commissioner, although, allegedly, there was no written court order constituting him as such commissioner; no written request for his commission was made by the parties; he did not take an oath prior to entering into the discharge of his commission; no written report of his findings was ever submitted to the court; and no notice thereof was sent to the parties, contrary to the specific provisions of Rule 33 of the Rules of Court.

Actually, there is nothing basically wrong with the practice of delegating to a commissioner, usually the clerk of court, who is a duly sworn court officer, the reception of evidence of both parties and for him to submit a report thereon to the court. In fact, this procedure is expressly sanctioned by Revised Rule 33 of the Rules of Court.[3] Petitioner's objection in this case, however, is directed not against its referral to the clerk of court but against the alleged non-observance of the prescribed steps in connection with such delegation.

We find no cause sufficient to invalidate the proceedings had in the trial court. We note that this issue was brought up by the appellant insurance company for the first time only in its motion for reconsideration filed in the Court of Appeals. It was not raised in the trial court, where the defect could still be remedied. This circumstance precludes ventilation of the issue of validity of the hearing at this stage; for, if such irregularity is to vitiate the proceeding, the question should have been seasonably raised, i.e., either before the parties proceeded with the hearing or before the court handed down its ruling.[4] It is a procedural point that can be waived by consent of the parties, express or implied.[5]

For the same reason, appellant cannot insist now on the annulment of the proceeding on the basis of alleged lack of written consent of the parties to the commission, or of an order appointing the clerk as commissioner, or of notice of the submission of his report to the court. Furthermore, appellant has presented no proof that the clerk of court committed any mistake or abuse in the performance of the task entrusted to him, or that the trial court was not able to properly appreciate the evidence in the case because it was received by another person. If indeed there were errors at all, they would be non-prejudicial and could not justify the holding of a new trial, as urged by herein petitioner.[6]

WHEREFORE, the decision of the Court of Appeals is affirmed, with costs against appellant CCC Insurance Corporation.

Concepcion, C.J., Dizon, Makalintal Zaldivar, Sanchez, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

[1] Subsequently replaced by Republic Act No. 4136 (1967).

[2] T.s.n., page 4; Record on Appeal, pages 36-38; Appellant's Brief, pages 15-16.

[3] Province of Pangasinan vs. Palisoc, (1962) 6 SCRA 300; Cruz vs. Malabayabas, 105 Phil. 708.

[4] Perlas vs. Ehrman, 53 Phil. 607.

[5] Luzon Stevedoring Corp. vs. PSC, I -5458, 16 September 1953; also Santos vs. De Guzman, 45 Phil. 646.

[6] See Gayon vs. Ubaldo, L-7650, 28 December 1955.

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