

**DIOSDADO C. TY, PLAINTIFF AND APPELLANT VS. FIILIPINAS
COMPAÑIA DE SEGUROS, ET AL., DEFENDANTS AND APPELLEES.***G.R. Nos. L-21821-22, L-211824-27. May 31, 1966*

Ponente: BARRERA, J.

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These are appeals instituted by Diosdado C. Ty from a single decision of the Court of First Instance of Manila Civil Cases Nos. 26343, 26344, 26404, 26405, 26406, 26442 which were tried together), dismissing the six separate complaints he filed against six insurance companies (Filipinas Compania de Seguros, People's Surety & Insurance Co., Inc., South Sea Surety & Insurance Co., Inc., The Philippine Guaranty Company, Inc., Universal Insurance & Indemnity Co., and Plaridel Surety & Insurance Co., Inc.) for collection from each of them, of the sum of P650.00, as compensation for the disability of his left hand.

The facts of these cases are not controverted:

Plaintiff-appellant was an employee of Broadway Cotton Factory at Grace Park, Caloocan City, working as mechanic-operator, with a monthly salary of P185.00. In the latter part of 1953, he took Personal Accident Policies from several insurance companies, among which are herein defendants-appellees, on different dates,[1] effective for 12 months. During the effectivity of these policies, or on December 24, 1953, a fire broke out in the factory where plaintiff was working". As he was trying to put out said fire with the help of a fire extinguisher, a heavy object fell upon his left hand. Plaintiff received treatment at the National Orthopedic Hospital from December 26, 1953 to February 8, 1954, for the following injuries, to wit:

- (1) Fracture, simple, proximal phalanx, index finger, left;
- (2) Fracture, compound, comminute proximal phalanx, middle finger, left and 2nd phalanx, simple;
- (3) Fracture, compound, comminute phalanx, 4th finger, left;
- (4) Fracture, simple, middle phalanx, middle finger, left;
- (5) Lacerated wound, sutured, volar aspect, small finger, left;
- (6) Fracture, simple, chip, head, 1st phalanx, 5th digit, left.

which injuries, the attending surgeon certified, would cause temporary total disability of appellant's left hand.

As the insurance companies refused to pay his claim for compensation under the policies, by reason of the said disability of his left hand, Ty filed actions in the Municipal Courts of Manila, which rendered favorable decision. On appeal to the Court of First Instance by the insurance companies, the cases were dismissed on the ground that under the uniform terms of the insurance policies, partial disability of the insured caused by loss of either hand to be compensable, the loss must result in the amputation of that hand. Hence, these appeals by the insured.

Plaintiff-appellant is basing his claim for indemnity under the provision of the insurance contract uniform in all

the cases, which reads:

"INDEMNITY FOR TOTAL OR PARTIAL DISABILITY"

"If the Insured sustains any Bodily Injury which is effected solely through violent, external, visible and accidental means, and which shall not prove fatal but shall result, independently of all other causes and within sixty (60) days from the occurrence thereof, in Total or Partial Disability of the Insured, the Company shall pay, subject to the exceptions as provided for hereinafter, the amount set opposite such injury:

* * * * *

"PARTIAL DISABILITY"

* * * * *

"LOSS OF:

* * * * *

"Either Hand

P650.00

"The loss of a hand shall mean the loss by amputation through the bones of the wrist."

Appellant contends that to be entitled to indemnification under the foregoing provision, it is enough that the insured is disabled to such an extent that he cannot substantially perform all acts or duties of the kind necessary in the prosecution of his business. It is argued that what is compensable is the disability and not the amputation of the hand. The definition of what constitutes loss of hand, placed in the contract, according to appellant, consequently, makes the provision ambiguous and calls for the interpretation thereof by this Court.

This is not the first time that the proper construction of this provision, which is uniformly carried in personal accident policies has been questioned. Herein appellant himself has already brought this matter to the attention of this Court in connection with the other accident policies'-which he took and under which he had tried to collect indemnity, for the identical injury that is the basis of the claims in these cases. And, we had already ruled:

"While we sympathize with the plaintiff or his employer, for whose benefit the policies were issued, we can not go beyond the clear and express conditions of the insurance policies, all of which defined partial disability as loss of either hand by amputation through the bones of the wrist. There was no such amputation in the case at bar. All that was found by the trial court, which is not disputed on appeal, was that the physical injuries 'caused temporary total disability of plaintiff's left hand.' Note that the disability of plaintiff's hand was merely temporary, having been caused by fractures of the index, the middle and the fourth fingers of the left hand.

"We might add that the agreement contained in the insurance policies is the law between the parties. As the terms of the policies are clear, express and specific that only amputation of the left hand should be considered as a loss thereof, an interpretation that would include- the mere fracture or temporary disability not covered by the policies would certainly be unwarranted."[2]

We find no reason to depart from the foregoing ruling on the matter. Plaintiff-appellant cannot come to the court and claim that he was misled by the terms of the contract. The provision is clear enough to inform the party entering into that contract that the loss to be considered a disability entitled to indemnity, must be severance or amputation of that affected member from the body of the Insured.

Wherefore, finding no error in the decision appealed from, the same is hereby affirmed, without costs. So ordered.

Concepcion, Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

Decision affirmed.

[1] South. Sea Surety & Ins. Co.—Dec. 17, 19,13; The Philippine Guaranty Company, Inc.—Oct. 30, 1953; Universal Ins. & Indemnity" Co.—Oct. 30, 1953; Filipinas Compañia de Seguros—Oct. 30, 1953; Peoples Surety & Ins. Co.—Oct. 19, 1953; Plaridel Surety & Ins. Co.— Dec. 22, 1953; Pacific Union Ins. Co.—Nov. 18, 1953.

[2] Ty vs. First National Surety & Ins. Co., G. R. Nos. L-16133-16145, April 29, 1961.

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