

REGINA L. EDILLON, AS ASSISTED BY HER HUSBAND, MARCIAL EDILLON, PETITIONERS-APPELLANTS, VS. MANILA BANKERS LIFE INSURANCE CORPORATION AND THE COURT OF FIRST INSTANCE OF RIZAL, B...

G.R. No. L-34200. September 30, 1982

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

The question of law raised in this case that justified a direct appeal from a decision of the Court of First Instance Rizal, Branch V, Quezon City, to be taken directly to the Supreme Court is whether or not the acceptance by the private respondent insurance corporation of the premium and the issuance of the corresponding certificate of insurance should be deemed a waiver of the exclusionary condition of overage stated in the said certificate of insurance.

The material facts are not in dispute. Sometime in April 1969, Carmen O. Lapuz applied with respondent insurance corporation for insurance coverage against accident and injuries. She filled up the blank application form given to her and filed the same with the respondent insurance corporation. In the said application form which was dated April 15, 1969, she gave the date of her birth as July 11, 1904. On the same date, she paid the sum of P20.00 representing the premium for which she was issued the corresponding receipt signed by an authorized agent of the respondent insurance corporation. (Rollo , p. 27.) Upon the filing of said application and the payment of the premium on the policy applied for, the respondent insurance corporation issued to Carmen O. Lapuz its Certificate of Insurance No. 128866. (Rollo , p. 28.) The policy was to be effective for a period of 90 days.

On May 31, 1969 or during the effectivity of Certificate of Insurance No. 12886, Carmen O. Lapuz died in a vehicular accident in the North Diversion Road.

On June 7, 1969, petitioner Regina L. Edillon, a sister of the insured and who was the named beneficiary in the policy, filed her claim for the proceeds of the insurance, submitting all the necessary papers and other requisites with the private respondent. Her claim having been denied, Regina L. Edillon instituted this action in the Court of First Instance of Rizal on August 27, 1969.

In resisting the claim of the petitioner, the respondent insurance corporation relies on a provision contained in the Certificate of Insurance, excluding its liability to pay claims under the policy in behalf of "persons who are under the age of sixteen (16) years of age or over the age of sixty (60) years x x x." It is pointed out that the insured being over sixty (60) years of age when she applied for the insurance coverage, the policy was null and void, and no risk on the part of the respondent insurance corporation had arisen therefrom.

The trial court sustained the contention of the private respondent and dismissed the complaint; ordered the petitioner to pay attorney's fees in the sum of ONE THOUSAND (P1,000.00) PESOS in favor of the private

respondent; and ordered the private respondent to return the sum of TWENTY (P20.00) PESOS received by way of premium on the insurancy policy. It was reasoned out that a policy of insurance being a contract of adhesion, it was the duty of the insured to know the terms of the contract he or she is entering into; the insured in this case, upon learning from its terms that she could not have been qualified under the conditions stated in said contract, what she should have done is simply to ask for a refund of the premium that she paid. It was further argued by the trial court that the ruling calling for a liberal interpretation of an insurance contract in favor of the insured and strictly against the insurer may not be applied in the present case in view of the peculiar facts and circumstances obtaining therein.

We REVERSE the judgment of the trial court. The age of the insured Carmen O. Lapuz was not concealed to the insurance company. Her application for insurance coverage which was on a printed form furnished by private respondent and which contained very few items of information clearly indicated her age at the time of filing the same to be almost 65 years of age. Despite such information which would hardly be overlooked in the application form, considering its prominence thereon and its materiality to the coverage applied for, the respondent insurance corporation received her payment of premium and issued the corresponding certificate of insurance without question. The accident which resulted in the death of the insured, a risk covered by the policy, occurred on May 31, 1969 or FORTY-FIVE (45) DAYS after the insurance coverage was applied for. There was sufficient time for the private respondent to process the application and to notice that the applicant was over 60 years of age and thereby cancel the policy on that ground if it was minded to do so. If the private respondent failed to act, it is either because it was willing to waive such disqualification; or, through the negligence or incompetence of its employees for which it has only itself to blame, it simply overlooked such fact. Under the circumstances, the insurance corporation is already deemed in estoppel. Its inaction to revoke the policy despite a departure from the exclusionary condition contained in the said policy constituted a waiver of such condition, as was held in the case of " Que Chee Gan vs. Law Union Rock Insurance Co., Ltd.", 98 Phil. 85. This case involved a claim on an insurance policy which contained a provision as to the installation of fire hydrants the number of which depended on the height of the external wall perimeter of the bodega that was insured. When it was determined that the bodega should have eleven (11) fire hydrants in the compound as required by the terms of the policy, instead of only two (2) that it had, the claim under the policy was resisted on that ground. In ruling that the said deviation from the terms of the policy did not prevent the claim under the same, this Court stated the following:

"We are in agreement with the trial Court that the appellant is barred by waiver (or rather estoppel) to claim violation of the so-called fire hydrants warranty, for the reason that knowing fully all that the number of hydrants demanded therein never existed from the very beginning, the appellant nevertheless issued the policies in question subject to such warranty, and received the corresponding premiums. It would be perilously close to conniving at fraud upon the insured to allow appellant to claim now as void ab initio the policies that it had issued to the plaintiff without warning of their fatal defect, of which it was informed, and after it had misled the defendant into believing that the policies were effective.

The insurance company was aware, even before the policies were issued, that in the premises insured there were only two fire hydrants installed by Que Chee Gan and two others nearby, owned by the municipality of Tabaco, contrary to the requirements of the warranty in question. Such fact appears from positive testimony for the insured that appellant's agents inspected the premises; and the simple denials of appellant's representative (Jamiczon) can not overcome that proof. That such inspection was made is moreover rendered probable by its being a prerequisite for the fixing of the discount on the premium to which the insured was entitled, since the discount depended on the number of hydrants, and the fire fighting equipment available (See 'Scale of Allowances' to which the policies were expressly made subject). The law, supported by a long line of cases, is expressed by American Jurisprudence (Vol. 29, pp. 611-612) to be as follows:

'It is usually held that where the insurer, at the time of the issuance of a policy of insurance, has knowledge of existing facts which, if insisted on, would invalidate the contract from its very inception, such knowledge constitutes a waiver of conditions in the contract inconsistent with the known facts, and the insurer is stopped thereafter from asserting the breach of such conditions. The law is charitable enough to assume, in the absence of any showing to the contrary, that an insurance company intends to execute a valid contract in return for the premium received; and when the policy contains a condition which renders it voidable at its inception, and this result is known to the insurer, it will be presumed to have intended to waive the conditions and to execute a binding contract, rather than to have deceived the insured into thinking he is insured when in fact he is not, and to have taken his money without consideration.' (29 Am. Jur., Insurance, section 807, at pp. 611- 612.)

The reason for the rule is not difficult to find.

'The plain, human justice of this doctrine is perfectly apparent. To allow a company to accept one's money for a policy of insurance which it then knows to be void and of no effect, though it knows as it must, that the assured believes it to be valid and binding, is so contrary to the dictates of honesty and fair dealing, and so closely related to positive fraud, as to be abhorrent to fairminded men. It would be to allow the company to treat the policy as valid long enough to get the premium on it, and leave it at liberty to repudiate it the next moment. This cannot be deemed to be the real intention of the parties. To hold that a literal construction of the policy expressed the true intention of the company would be to indict it, for fraudulent purposes and designs which we cannot believe it to be guilty of.' (Wilson vs. Commercial Union Assurance Co., 96 Atl. 540, 543-544)."

A similar view was upheld in the case of Capital Insurance & Surety Co., Inc. vs. Plastic Era Co., Inc., 65 SCRA 134, which involved a violation of the provision of the policy requiring the payment of premiums before the insurance shall become effective. The company issued the policy upon the execution of a promissory note for the payment of the premium. A check given subsequently by the insured as partial payment of the premium was dishonored for lack of funds. Despite such deviation from the terms of the policy, the insurer was held liable.

"Significantly, in the case before Us the Capital Insurance accepted the promise of Plastic Era to pay the insurance premium within thirty (30) days from the effective date of policy. By so doing, it has impliedly agreed to modify the tenor of the insurance policy and in effect, waived the provision therein that it would only pay for the loss or damage in case the same occurs after the payment of the premium. Considering that the insurance policy is silent as to the mode of payment, Capital Insurance is deemed to have accepted the promissory note in payment of the premium. This rendered the policy immediately operative on the date it was delivered. The view taken in most cases in the United States:

"'x x x is that although one of conditions of an insurance policy is that 'it shall not be valid or binding until the first premium is paid', if it is silent as to the mode of payment, promissory notes received by the company must be deemed to have been accepted in payment of the premium. In other words, a requirement for the payment of the first or initial premium in advance or actual cash may be waived by acceptance of a promissory note. x x x.'"

WHEREFORE, the judgment appealed from is hereby REVERSED and SET ASIDE. In lieu thereof, the private respondent insurance corporation is hereby ordered to pay to the petitioner the sum of TEN THOUSAND (P10,000.00) PESOS as proceeds of Insurance Certificate No. 128866 with interest at the legal rate from May 31, 1969 until fully paid, the further sum of TWO THOUSAND (P2,000.00) PESOS as and for attorney's fees, and the costs of suit.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Plana, Relova, and Gutierrez, Jr., JJ.,concur.
Melencio-Herrera, J., no part.

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