

YU PANG CHENG ALIAS YU PANG CHING, PETITIONER VS. THE COURT OF APPEAL, ET AL., RESPONDENTS.

G.R. No. L-12465. May 29, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Plaintiff brought this action to collect from defendant the sum of P10,000.00, value of an insurance policy taken upon the life of one Yu Pang Eng, plus interest thereon at the legal rate, the sum of P10,000.00 as moral damages, the further sum of P3,000.00 as attorney's fees, and the costs of action.

Defendant, in its answer, set up the defense that the insured was guilty of misrepresentation and concealment of material facts in that he gave false and untruthful answers to certain questions asked him in his application for insurance which were material to the risk insured against and have the effect of avoiding the insurance policy.

After trial, the court rendered judgment ordering defendant to pay plaintiff the sum of P10,000.00, with legal interest thereon from the filing of the complaint, plus, the sum of P2,000.00 as attorney's fees, and the costs of suit. On appeal, the Court of Appeals reversed the decision of the trial court, holding that the insured was guilty of concealment of material facts which relieves defendant from liability. Hence the present petition for review.

On September 5, 1950, Yu Pang Eng submitted parts II and III of his application for insurance consisting of the medical declaration made by him to the medical examiner of defendant and the medical examiner's report. On September 7, he submitted part I of his application which is the declaration made by him to an agent of defendant, and on September 8, based on said application, and upon payment of the first premium in the sum of P591.70, defendant issued to the insured Policy No. 812858.

On December 27, 1950, the insured entered St. Luke's Hospital for medical treatment but he died on February 27, 1951. According to the death certificate, he died of "infiltrating medullary carcinoma, Grade 4, advanced cardiac and of lesser curvature, stomach metastases spleen." Plaintiff, brother and beneficiary of the insured, demanded from defendant the payment of the proceeds of the insurance policy and when the demand was refused, he brought the present action.

The issue to be determined is whether the insured is guilty of concealment of some facts material to the risk insured against which has the effect of avoiding the policy as found by respondent court.

The insured, in his application for insurance, particularly in his declarations to the examining physician, stated the following in answering the questions propounded to him:

"14. Have you ever had any of the following diseases or symptoms? Each question must be read and answered "Yes" or "No.", "Gastritis, Ulcer of the Stomach or any disease of that organ? No."

* * * * *

"Vertigo, Dizziness, Painting-spells or Unconsciousness? No.

"Cancer, Tumors or Ulcers of any kind? No.

"15. Have you ever consulted any physician, not included in any of the above answers? Give names and address or physicians list ailments or accidents and date. No."

It appears that the insured entered the Chinese General Hospital for medical treatment on January 29, 1950 having stayed there up to February 11, 1950. Upon entering the hospital, he complained of dizziness, anemia, abdominal pains and tarry stools, and in the evening of his admission he had several abdominal pains and his discharges were with black tarry stools and felt dizzy and weak. The history of his illness shows that the same "started a year ago as frequent dizziness." An X-ray picture of his stomach was taken and the diagnosis made of him by his doctors showed that his illness was "peptic ulcer, bleeding."

It should be noted that the insured's confinement in the Chinese General Hospital took place from January 29, 1950 to February 11, 1950, whereas his application for insurance wherein he stated his answers to the questions propounded to him by the examining physician of defendant was submitted to defendant on September 5, 1950.

It is apparent that when the insured gave his answers regarding his previous ailment, particularly with regard to "Gastritis, Ulcer of the Stomach or any disease of that organ" and "Vertigo, Dizziness, Fainting-spells or Unconsciousness", he concealed the ailment of which he was treated in the Chinese General Hospital which precisely has direct connection with the subject of the questions propounded. The negative answers given by the insured regarding his previous ailment, or his concealment of the fact that he was hospitalized and treated for sometime of peptic ulcer and had suffered from "dizziness, anemia, abdominal pains and tarry stools", deprived defendant of the opportunity to make the necessary inquiry as to the nature of his past illness so that it may form its estimate relative to the approval of his application. Had defendant been given such opportunity, considering the previous illness of the insured as disclosed by the records of the Chinese General Hospital, defendant would probably had never consented to the issuance of the policy in question. In fact, according to the death certificate, the insured died of "infiltrating medullary carcinoma, Grade, 4, advanced cardiac and of lesser curvature, stomach metastases spleen", which may have a direct connection with his previous illness.

Our Insurance Law provides that "A neglect; to communicate that which a party knows and ought to communicate, is called concealment" (Section 25, Act No. 2427). Whether intentional or unintentional, the concealment entitles the insurer to rescind the contract of insurance (Section 26). Our law even requires the insured to communicate to the insurer all facts within his knowledge ; which are material to the contract and which the other party has not the means of ascertaining (Section 27), and the materiality is to be determined not by the event but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due (Section 30).

In the case of *Argente vs. West Coast Life Insurance Co.*, 51 Phil., 725, this Court said:

"One ground for the rescission of a contract of insurance under the Insurance Act is 'a concealment', which in section 25 is defined 'A neglect to communicate that which a party knows and ought to communicate. Appellant argues that the concealment was immaterial and insufficient to avoid the policy. We cannot agree. In an action on a life insurance policy where the evidence conclusively shows that the answers to questions concerning diseases were untrue, the truth or falsity of the answers become the determining factor. If the policy was procured by fraudulent representations, the contract of insurance apparently set forth therein was never legally existent. It can fairly be assumed that had the true facts been disclosed by the assured, the insurance would never have been granted."

Upon the foregoing reasons, we are persuaded to conclude that respondent court did not err in declaring the policy ineffective on the ground of concealment and in relieving appellee from liability thereunder.

Wherefore, the decision appealed from is affirmed, with costs against petitioner-appellant.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes A., Labrador, Concepcion and Endencia, JJ., concur.

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