

**ASSOCIATION OF BAPTISTS FOR WORLD EVANGELISM, INC.,
PLAINTIFF-APPELLEE, VS. FIELDMEN'S INSURANCE CO., INC.,
DEFENDANT-APPELLANT.**

G.R. No. L-28772. September 21, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This case for "Indemnity for Damages and Attor-ney's Fees" was elevated to this Tribunal by the then Court of Appeals on a question of law.

The Stipulation of Facts submitted by the par-ties before the Court of First Instance of Davao, Branch I, in Case No. 3789, reads as follows:

"COMES the parties in the above-entitled case, through their respective counsels and to this Hon-orable Court respectfully submit the following stipulations of facts:

'1. That plaintiff is a reli-gious corporation duly organized and registered under the laws of the Philippines, while defendant is also a domestic corporation duly organized and existing under the laws of the Philippines;

'2. That plaintiff, having an insurable interest in a Chevro-let Carry-all, 1955 Model, with Motor No. 032433272555 and Plate No. E-73317 covered by Registration Certificate No. 288141 Rizal, issued by the Davao Motor Vehicles Office Agency No. 20 and owned by Reverend Clinton Bonnel, insured said vehicle with the defendant under Fieldmen's Insurance Co., Inc. Private Car Comprehensive Policy No. 22 JI 1107, attached hereto as Annex 'A' to 'A-2' against loss or damage up to the amount of P5,000.00;

'3. That in the latter part of 1961, through plaintiff's representative, Dr. Antonio Lim, the aforementioned Chevrolet Carry--all was placed at the Jones Monument Mobilgas Service Station at Davao City, under the care of said sta-tion's operator, Rene Te so that said carry-all could be displayed as being for sale, with the understanding that the latter or any of his station boys would receive a 2% commission should they sell said vehicle.

'4. That on the night of January 18, 1962, Romeo Catiben one of the boys at the aforemen-tioned Jones Monument Service Sta-tion and a nephew of the wife of Rene Te who is residing with them, took the aforementioned chevrolet carry-all for a joy ride to Toril, Davao City, without the prior permission, authority or consent of either the plaintiff or its representative Dr. Antonio Lim, or of Rene Te, and on its way back to Davao City, said vehicle, due to some mechanical defect accidentally bumped an electric post causing actual damages valued at P5,518.61.

'5. That the issue before the Honorable Court is whether or not for the damage to the above-mentioned Chevrolet Carry-all to be compensable under the afore-mentioned Fieldmen's Private Car Comprehensive Policy No. 22 JL11107, there must be a prior criminal conviction of Romeo Catiben for theft.

"WHEREFORE, it is respectfully prayed that this Honorable Court render judgment on the facts and issues above stipulated after the parties shall have submitted their respective memoranda."

The Trial Court rendered judgment based on the facts stipulated and ordered defendant insurance company to pay plaintiff association the amount of P5,000.00 as indemnity for the damage sustained by the vehicle, P2,000.00 for attorney's fees, and costs. Dissatisfied, the insurance company interposed an appeal to the Appellate Court, docketed as CA-G.R. No. 33543-R, which as above stated, elevated it to this instance.

We affirm. The Comprehensive Policy issued by the insurance company includes loss of or damage to the motor vehicle by "burglary x x x or theft." It is settled that the act of Catiben in taking the vehicle for a joy ride to Toril, Davao City, constitutes theft within the meaning of the insurance policy and that recovery for damage to the car is not barred by the illegal use of the car by one of the station boys.

"x x x where a car is admittedly as in this case unlawfully and wrongfully taken by some people, be they employees of the car shop or not to whom it had been entrusted, and taken on a long trip to Montalban without the owner's consent or knowledge, such taking constitutes or partakes of the nature of theft as defined in Article 308 of the Revised Penal Code, viz. '(W)ho are liable for theft. - Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent,' for purposes of recovering the loss under the policy in question."

"x x x the Court sustains as the better view that which holds that when a person, either with the object of going to a certain place, or learning how to drive, or enjoying a free ride, takes possession of a vehicle belonging to another, without the consent of its owner, he is guilty of theft because by taking possession of the personal property belonging to another and using it, his intent to gain is evident since he derives therefrom utility, satisfaction, enjoyment and pleasure. Justice Ramon C. Aquino cites in his work Groizard who holds that the use of a thing constitutes gain and Cuello Calon who calls it 'hurto de uso.'[1]

There need be no prior conviction for the crime of theft to make an insurer liable under the theft clause of the policy. Upon the facts stipulated by the parties it is admitted that Catiben had taken the vehicle for a joy ride and while the same was in his possession he bumped it against an electric post resulting in damages. That act is theft within a policy of insurance. In a civil action for recovery on an automobile insurance, the question whether a person using a certain automobile at the time of the accident stole it or not is to be determined by a fair preponderance of evidence and not by the rule of criminal law requiring proof of guilt beyond reasonable doubt.[2] Besides, there is no provision in the policy requiring prior criminal conviction for theft.

ACCORDINGLY, finding no error in the judgment appealed from, the same is hereby affirmed.

Costs against defendant Fieldmen's Insurance Co., Inc.

SO ORDERED.

Teehankee, (Chairman), Plana, Relova, and Gutierrez, Jr., JJ., concur.

[1] Villacorta vs. Insurance Commission, 100 SCRA 467 (1980).

[2] Weir vs. Central National Fire Insurance Co., 189 NW, 794.

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