

**FAR EASTERN SURETY & INSURANCE COMPANY, INC.,
PETITIONER, VS. SOCORRO DANCEL VDA. DE MISA, ARACELI MARIA
PINTO AND LA MALLORCA, RESPONDENTS.**

G.R. No. L-24377. October 26, 1968

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

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

Appeal by petition for review from a judgment of the Court of Appeals, in its Case CA-G.R. No. 30846-R, sentencing the Far Eastern Surety & Insurance Company to indemnify La Mallorca on its insurance contract for P9,661.50.

The record discloses that on 3 September 1957 the two respondents, Socorro Dancel Vda. de Misa and Araceli Pinto, hired a taxicab operated by respondent La Mallorca in Quezon City. While proceeding south toward the Archbishop's Palace in Shaw Boulevard, the taxicab collided with a gravel and sand truck, driven by one Faustino Nabor, that was proceeding in the opposite direction. As a result, the two passengers of the La Mallorca taxicab were injured, and filed suit for damages against the taxicab company in the Court of First Instance. The operator denied liability, but instituted a third party complaint against herein appellant, Far Eastern Surety and Insurance Company, to recoup from the latter, based on its Common Carrier's Accident Insurance No. CCA 106, any damages that might be recovered by the plaintiffs taxicab passengers. The insurer, likewise, denied responsibility.

After trial, the Court of First Instance of Quezon City awarded to plaintiffs Vda. de Misa and Pinto (now respondents) actual, moral, and exemplary damages and attorney's fees, payable by the taxicab operator, La Mallorca; and sentenced the insurance company to pay to La Mallorca P10,000.00 on its third party liability insurance.

On appeal, the Court of Appeals, while holding that the collision was due to the fault of the driver of the sand truck, nevertheless held the taxicab operator liable in damages to the passengers of its motor vehicle on the strength of its representation that the passengers were insured against accidents, as shown by the sticker affixed to the taxicab; and, overruling the defense of the insurance company that it was not answerable except for whatever amounts the insured might be legally liable for in the event of accident caused by, or arising out of, the use of the motor vehicle, the appellate court adjudged the said insurer answerable to La Mallorca in view of its third party liability insurance contract. As a result, it rendered judgment on appeal in the following terms:

"IN VIEW WHEREOF, judgment affirmed with modi-fications; so that; 1st, on the complaint, appellant La Mallorca is sentenced to pay unto appellee, Socorro Dancel Vda. de Misa the sum of P3,910.00 plus P1,000.00 attorney's fees; and unto appellee, Araceli Pinto, the sum of P3,751.50 plus P1,000.00 attorney's fees; and pursuant to Art. 2210, of the New Civil Code, this Court orders that the P3,910.00 awarded unto Socorro Dancel and the P3,751.50 awarded unto Araceli Pinto shall earn interest from the date of the promulgation of this decision; and 2ndly, On the third party complaint, condemning Far Eastern Surety and Insurance Co. Inc., to pay unto La Mallorca the sum of P4,910.00 corresponding to Socorro Dancel, and P4,751.50 corresponding to Araceli Pinto; costs against appellants La Mallorca and Far Eastern Surety and Insurance Company.

"SO ORDERED."

Unable to secure reconsideration, the insurance company appealed to this Court, but La Mallorca did not.

The decision of the Court of Appeals not having been appealed by the taxicab company, the same is now final as far as that entity is concerned, and may not be modified by this Court. The insurance company's first and second assignments of error, regarding the correctness of the appealed judgment in holding La Mallorca responsible to the taxicab passengers, must be, therefore, overruled. The only issue before this Court at this stage of the litigation is whether or not the appellant insurer is liable to the insured on its policy of insurance.

In affirming the responsibility of the insurer, the Court of Appeals reasoned out in this wise:

"In the first place, as we have said earlier, the Far Eastern Surety is not liable under the insurance contract because the assured La Mallorca is not 'legally liable' to the plaintiffs-appellees. But in the very remote event that the La Mallorca is held 'legally liable' and for which reason that the Far Eastern Surety may be called upon to answer under the insurance contract, it is the stand of this representation that it cannot be answerable to the full extent of its maximum liability of P5,000.00 per passenger.'

'For one thing, the Far Eastern Surety's liability under the insurance contract does not extend to moral, compensatory and exemplary damages, and attorney's fees. Its insurance liability is limited to actual physical injuries. This is so because under the Common Carrier's Accident Insurance Contract and its Third Party Liability Insurance Rider (Annex "C" of the Third-Party Complaint please see page 59 of the Record on Appeal), the liability of the Far Eastern Surety is defined as follows: -

'1. The Company will subject to the Limits of Liability indemnify the Insured in the event of accident caused by or arising out of the use of the Motor Vehicle or in connection with the loading or unloading of the Motor Vehicle against all sums including claimant's costs and expense which the Insured shall become legally liable to pay in respect of.

(a) death of or bodily injury to any person

(b) damage to property

'The above-quoted stipulation exempts the Far Eastern Surety from paying damages other than actual bodily injuries sustained by third parties.' Brief for the Third-Party-Defendant-Appellant Far Eastern Surety & Insurance Company, Inc., pages 12-13;

"but this is wrong, because since La Mallorca has been found to be 'legally liable', it must follow that Far Eastern Surety must now answer unto it as its insurer, only that the total liability per passenger should not exceed P5,000.00; nor is it correct for Far Eastern to say that it should answer only for 'actual bodily injuries' and to no other, for what the stipulation above copied says and what it therefore must mean is that said Company:

'will . . . indemnify the Insured in the event of accident caused by or arising out of the use of the Motor Vehicle . . . against all sums . . . which the Insured shall become legally liable in respect of . . . bodily injury';

"otherwise stated, the 'bodily injury' is only required to be the cause of the liability of Far Eastern, but its liability should extend to 'all sums which the Insured shall become legally liable', only that this should not exceed P5,000.00; the result of all these will be to sustain the decision appealed from, with the corresponding deductions outlined above;"

We agree with the appellant that the decision of the Court of Appeals on this point is not legally tenable, for the reason that the policy of insurance limited the recovery of the insured to "all sums including claimant's" (passengers in this case) "cost and expenses which the Insured shall become legally liable" in the "event of

accident caused by or arising out of the use of the Motor Vehicle"; and the appealed decision itself shows that the indemnity awarded to the passengers of the La Mallorca taxicab was not because of the accident but was exclusively predicated on the representation made by the taxicab company to its passengers that the latter were insured against accidents. This is plain from the consideranda made in the appealed decision (pages 10-11):

" indeed, the notice in the sticker evidently being intended in order to court the riding public patronizing La Mallorca, and being placed there right in the taxi, the only meaning that can be given to it, - and certainly it must have a meaning for it could not have been there placed if intended to be useless, - was that La Mallorca bound itself, in its contract of carriage, with that additional stipulation therein indicated, that the passengers were 'Insured', and if there be any ambiguity in its meaning, such ambiguity must be construed most strongly against the party causing the ambiguity, 1377 New Civil Code; and having that as a basis, this Court must find that La Mallorca had indeed, insured its passengers and since such a stipulation was not at all illegal, it must bind La Mallorca, and would be enough to render it liable for injuries to the passengers thereof, even though it had not been at fault, i.e., that the damage had come from a fortuitous event coming from the fault of a third party for which it was not responsible, since the Law also dictates that:

'ART. 1174 - Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, are inevitable.' Art. 1174, New Civil Code;

and the result must be that La Mallorca would have to answer just the same and the 3rd and 4th assignment of error must have to be overruled; and this will take the discussion to the amount of damages awarded, subject of the 5th error."

While the decision correctly held that La Mallorca was in estoppel, and could not be heard to deny that its passengers were insured, it does not necessarily follow that the estoppel, likewise, applied to the appellant insurer. The Court of Appeals concurred in the finding of the trial court that only the negligence of the driver of the sand and gravel truck was the causative factor of the mishap, and made no pronouncement that the driver of the taxicab in any way contributed thereto; so that, had it not been for its representation that its passengers were insured, the taxicab company would not have been liable at all. As it does not appear that the insurance company authorized or consented to, or even knew of, the representation made by the taxicab company to its passengers, it follows that the source of the award of damages against the taxicab company was beyond, or outside of, the contemplation of the parties to the contract of Accident Insurance No. CCA 106, and that the insurer may not be held liable for such damages.

WHEREFORE, the decision of the Court of Appeals is modified, by eliminating therefrom the award against the appellant, Far Eastern Insurance Co., Inc., in favor of the taxicab operator, La Mallorca, including the sharing of the costs of litigation, which shall be exclusively borne by the latter entity. Without costs in this instance.

Concepcion, C.J., Dizon, Makalintal, Sanchez, Castro, Angeles, Fernando, and Capistrano, JJ., concur. Zaldivar, J., on leave, did not take part.

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