

AGAPITO GUTIERREZ, PLAINTIFF-APPELLEE, VS. CAPITAL INSURANCE & SURETY CO., INC., DEFENDANT-APPELLANT.

G.R. No. L-26827. June 29, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

The issue in this case is whether an insurance covers a jeepney whose driver's traffic violation report or temporary operator's permit had already expired.

Capital Insurance & Surety Co., Inc. insured on December 7, 1961 for one year the jeepney of Agapito Gutierrez against passenger and third-party liability. The passenger liability would not exceed P5,000 for any one person (Exh. 1 or C-2).

The policy provides in item 13 that the authorized driver must be the holder of a valid and subsisting professional driver's license. "A driver with an expired Traffic Violation Receipt or expired Temporary Operator's Permit is not considered an authorized driver" (pp. 26-27, 107, Record on Appeal, Par. 13, Policy, Exh. C).

Item 13 is part of the "declarations" which formed part of the policy and had a promissory nature and effect and constituted "the basis of the policy" (Exh. C, p. 7, Record on Appeal).

On May 29, 1962, the insured jeepney figured in an accident at Buendia Avenue, Makati, Rizal. As a result, a passenger named Agatonico Ballega fell off the vehicle and died (Pars. 3 and 4, Exh. A).

Teofilo Ventura, the jeepney driver, was duly licensed for the years 1962 and 1963 (Exh. D). However, at the time of the accident he did not have the license. Instead, he had a carbon copy of a traffic violation report (summons) issued by a policeman on February 22, 1962, with the notation that he had committed the violation: "Inattentive to driving - (Inv. in accident) at 9:30 a.m., 2-22-62" (Exh. E-1).

The same TVR, which served as a receipt for his license, required him to report to Branch 8 of the traffic court at the corner of Arroceros and Concepcion Streets, Manila at nine o'clock in the morning of March 2, 1962. The TVR would "serve as a temporary operator's permit for 15 days from receipt hereof" (p. 100, Record on Appeal). It is indisputable that at the time of the accident (May 29, 1962), Ventura was holding an "expired Temporary Operator's Permit".

Gutierrez paid P4,000 to the passenger's widow, Rosalina Abanes Vda. de Ballega, by reason of her husband's death (5 tsn January 20, 1966; Exh. B and B-1).

As Capital Insurance refused to make any reimbursement, he filed on October 14, 1963 in the city court of Manila an action for specific performance and damages.

The city court in a decision dated April 20, 1965 held that Ventura was an authorized driver because his TVR was coterminous with his license. However, it dismissed the complaint because Gutierrez allegedly failed to prove that he paid any amount to the heirs of Ballega Gutierrez appealed.

The Court of First Instance in a decision dated April 18, 1966 held that Gutierrez's Exhibits B and B-1 prove that he paid the widow of Ballega P4,099.95 and that his driver, Ventura, was an authorized driver because his TVR was "coextensive with the" two-year term of his confiscated license. It ordered the insurance company to pay the said amount. The insurance company appealed to this Court.

We hold that paragraph 13 of the policy, already cited, is decisive and controlling in this case. It plainly provides, and we repeat, that "a driver with an expired Traffic Violation Receipt or expired Temporary Operator's permit is not considered an authorized driver within the meaning" of the policy. Obviously, Ventura was not an authorized driver. His temporary operator's permit had expired. The expiration bars recovery under the policy.

In liability insurance, "the parties are bound by the terms of the policy and the right of insured to recover is governed thereby" (44 C. J. S. 934).

It may be that for purposes of the Motor Vehicle Law the TVR is coterminous with the confiscated license. That is why the Acting Administrator of the Motor Vehicles Office and the Manila deputy chief of police ventured the opinion that a TVR does not suspend the erring driver's license, that it serves as a temporary license and that it may be renewed but should in no case extend beyond the expiration date of the original license (Exh. F and J, 67, 90-91, Record on Appeal).

But the instant case deals with an insurance policy which definitively fixed the meaning of "authorized driver". That stipulation cannot be disregarded or rendered meaningless. It is binding on the insured.

It means that to be entitled to recovery the insured should see to it that his driver is authorized as envisaged in paragraph 13 of the policy which is the law between the parties (*Ty vs. First National Surety & Insurance Co., Inc.*, 111 Phil. 1122). The rights of the parties flow from the insurance contract (*Ang vs. Fulton Fire Ins. Co.*, 112 Phil. 844).

The following ruling has persuasive authority:

"Insurance; Automobile; When insurer exempt from liability; Case at bar. - The automobile insurance policy sued upon in the instant case exempts the insurer company from liability for any accident loss, damage or liability caused, sustained or incurred while the vehicle is being driven by any person other than an authorized driver.

"The policy defines the term 'authorized driver' to be the insured himself or any person driving on the insured's order or with his permission provided he is permitted to drive under the licensing laws.

"In the case at bar, plaintiff's brother, who was at the wheel at the time of the collision, did not have a valid license because the one he had obtained had already expired and had not been renewed as required by Section 31 of the Motor Vehicle Law.

"That he had renewed his license one week after the accident did not cure the delinquency or revalidate the license which had already expired" (*Syllabus, Tanco, Jr. vs. Phil. Guaranty Co.*, 122 Phil. 709).

WHEREFORE, the judgment of the trial court is reversed and set aside. The complaint is dismissed. No costs.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, Escolin, and Cuevas, JJ., concur.

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