

EMILIA T. BIAGTAN, JUAN T. BIAGTAN, JR., MIGUEL T. BIAGTAN, GIL T. BIAGTAN AND GRACIA T. BIAGTAN, PLAINTIFFS-APPELLEES, VS. THE INSULAR LIFE ASSURANCE COMPANY, LTD., DEFENDANT-A...

G.R. No. L-25579. March 29, 1972

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal from the decision of the Court of First Instance of Pangasinan in its Civil Case No. D-1700.

The facts are stipulated Juan S. Biagtan was insured with defendant Insular Life Assurance Company under Policy No. 398075 for the sum of P5,000.00 and, under a supplementary contract denominated "Accidental Death Benefit Clause, for an additional sum of P5,000.00 if "the death of the Insured resulted directly from bodily injury effected solely through external and violent means sustained in an accident * * * and independently of all other causes." The clause, however, expressly provided that it would not apply where death resulted from an injury "intentionally inflicted by a third party."

On the night of May 20, 1964 or during the first hours of the following day a band of robbers entered the house of the insured Juan S. Biagtan. What happened then is related in the decision of the trial court as follows:

" * * * ; that on the night of May 20, 1964 or the first hours of May 21, 1964, while the said life policy and supplementary contract were in full force and effect, the house of insured Juan S. Biagtan was robbed by a band of robbers who were charged in and convicted by the Court of First Instance of Pangasinan for robbery with homicide; that in committing the robbery, the robbers, on, reaching the staircase landing of the second floor, rushed towards the doors of the second floor room, where they suddenly met a person near the door of one of the rooms who turned out to be the insured Juan S. Biagtan who received thrusts from their sharp-pointed instruments, causing wounds on the body of said Juan S. Biagtan resulting in his death at about 7 a.m. on the same day, May 21, 1964;"

Plaintiffs, as beneficiaries of the insured, filed a claim under the policy. The insurance company paid the basic amount of P5,000.00 but refused to pay the additional sum of P5,000.00 under the accidental death benefit clause, on the ground that the insured's death resulted from injuries intentionally inflicted by third parties and therefore was not covered. Plaintiffs filed suit to recover, and after due hearing the court a quo rendered judgment in their favor. Hence the present appeal by the insurer.

The only issue here is whether under the facts as stipulated and found by the trial court the wounds received by the insured at the hands of the robbers — nine in all, five of them mortal and four non-mortal — were inflicted intentionally. The court, in ruling negatively on the issue, stated that since the parties presented no evidence and submitted the case upon stipulation, there was no "proof that the act of receiving thrust (sic) from the sharp-pointed instrument of the robbers was intended to inflict injuries upon the person of the insured or any other person or merely to scare away any person so as to ward off any resistance or obstacle that might be offered in the pursuit of their main objective which was robbery."

The trial court committed a plain error in drawing the conclusion it did from the admitted facts. Nine wounds were inflicted upon the deceased, all by means of thrust with sharp-pointed instruments wielded by the robbers. This is a physical fact as to which there is no dispute. So is the fact that five of those wounds caused the death of the insured. Whether the robbers had the intent to kill or merely to scare the victim or to ward off any defense he might offer, it cannot be denied that the act itself of inflicting the injuries was intentional. It should be noted that the exception in the accidental benefit clause invoked by the appellant does not speak of the purpose — whether homicidal or not — of a third party in causing the injuries, but only of the fact that such injuries have been "intentionally" inflicted - this obviously to distinguish them from injuries which, although received at the hands of a third party, are purely accidental. This construction is the basic idea expressed in the coverage of the clause itself, namely, that "the death of the insured resulted directly from bodily injury effected solely through external and violent means sustained in an accident * * * and independently of all other causes." A gun which discharges while being cleaned and kills a bystander; a hunter who shoots at his prey and hits a person instead; an athlete in a competitive game involving physical effort who collides with an opponent and fatally injures him as a result: these are instances where the infliction of the injury is unintentional and therefore would be within the coverage of an accidental death benefit clause such as that in question in this case. But where a gang of robbers enter a house and coming face to face with the owner, even if unexpectedly, stab him repeatedly, it is contrary to all reason and logic to say that his injuries are not intentionally inflicted, regardless of whether they prove fatal or not. As it was, in the present case they did prove fatal, and the robbers have been accused and convicted of the crime of robbery with homicide.

The case of *Calanoc vs. Court of Appeals*, 98 Phil. 79, is relied upon by the trial court in support of its decision. The facts in that case, however, are different from those obtaining here. The insured there was a watchman in a certain company, who happened to be invited by a policeman to come along as the latter was on his way to investigate a reported robbery going on in a private house. As the two of them, together with the owner of the house, approached and stood in front of the main gate, a shot was fired and it turned out afterwards that the watchman was hit in the abdomen, the wound causing his death. Under those circumstances this Court held that it could not be said that the killing was intentional for there was the possibility that the malefactor had fired the shot to scare the people around for his own protection and not necessarily to kill or hit the victim. A similar possibility is clearly ruled out by the facts in the case now before Us. For while a single shot fired from a distance, and by a person who was not even seen aiming at the victim, could indeed have been fired without intent to kill or injure, nine wounds inflicted with bladed weapons at close range cannot conceivably be considered as innocent insofar as such intent is concerned. The manner of execution of the crime permits no other conclusion.

Court decisions in the American jurisdiction, where similar provisions in accidental death benefit clauses in insurance policies have been construed, may shed light on the issue before Us. Thus, it has been held that "intentional" as used in an accident policy excepting intentional injuries inflicted by the insured or any other person, etc., implies the exercise of the reasoning faculties, consciousness, and volition.[1] Where a provision of the policy excludes intentional injury, it is the intention of the person inflicting the injury that is controlling.[2] If the injuries suffered by the insured clearly resulted from the intentional act of a third person the insurer is relieved from liability as stipulated.[3]

In the case of *Hutchcraft's Ex'r. vs. Travelers' Ins. Co.*, 87 Ky. 300, 8 S.W. 570, 12 Am. St. Rep. 484, the insured was waylaid and assassinated for the purpose of robbery. Two (2) defenses were interposed to the action to recover indemnity, namely: (1) that the insured having been killed by intentional means, his death was not accidental, and (2) that the proviso in the policy expressly exempted the insurer from liability in case the insured died from injuries intentionally inflicted by another person. In rendering judgment for the insurance company the Court held that while the assassination of the insured was as to him an unforeseen event and therefore accidental,

"the clause of the proviso that excludes the (insurer's) liability, in case death or injury is intentionally inflicted by any other person, applies to this case."

In *Butero vs. Travelers' Acc. Ins. Co.*, 96 Wis. 536, 65 Am. St. Rep. 61, 71 S.W. 811, the insured was shot three times by a person unknown late on a dark and stormy night, while working in the coal shed of a railroad company. The policy did not cover death resulting from "intentional injuries inflicted by the insured or any other person." The inquiry was as to the question whether the shooting that caused the insured's death was accidental or intentional; and the Court found that under the facts, showing that the murderer knew his victim and that he fired with intent to kill, there could be no recovery under the policy which excepted death from intentional injuries inflicted by any person.

WHEREFORE, the decision appealed from is reversed and the complaint dismissed, without pronouncement as to costs.

Zaldivar, Castro, Fernando, and Villamor, JJ., concur.

[1] *Berger vs. Pacific Mut. Life Ins. Co.*, 88 F. 241, 242.

[2] *Travelers' Protective Ass'n. of America vs. Fawcett*, 104 N.E. 991, 50 Ind. App. 111.

[3] *Continental Cas. Co. vs. Klinge*, 82 Ind. App. 277, 144 N.E. 246; *Washington vs. Union C. & Sur. Co.*, 115 Mo. App. 627, 91 S.W. 988; *National L & Acci. Co. vs. De Lopez* (Tex. Civ. App.), 207 S.W. 160.

CONCURRING OPINION

BARREDO, J.:

During the deliberations in this case, I entertained some doubts as to the correctness and validity of the view upheld in the main opinion penned by Justice Makalintal. Further reflection has convinced me, however, that there are good reasons to support it.

At first blush, one would feel that every death not suicidal should be considered accidental, for the purposes of an accident insurance policy or a life insurance policy with a double-indemnity clause in case death results from accident. Indeed, it is quite logical to think that any event whether caused by fault, negligence, intent of a third party or any unavoidable circumstance, normally unforeseen by the insured and free from any possible connivance on his part, is an accident in the generally accepted sense of the term. And if I were convinced that in including in the policy the provision in question, both the insurer and the insured had in mind to exclude thereby from the coverage of the policy only suicide whether unhelped or helped somehow by a third party, I would disregard the American decisions cited and quoted in the main opinion as not even persuasive authorities. But examining the unequivocal language of the provision in controversy and considering that the insured accepted the policy without asking that it be made clear that the phrase "injury intentionally inflicted by a third party" should be understood to refer only to injuries inflicted by a third party without any wilfull intervention on his part (of the insured) or, in other words, without any connivance with him (the insured) in order to augment the proceeds of the policy for his beneficiaries, I am inclined to agree that death caused by criminal assault is not covered by the policies of the kind here in question, specially if the assault, as a matter of fact, could have been more or less anticipated, as when the insured happens to have violent enemies or is found in circumstances that would make his life fair game of third parties.

As to the rest, I have no doubt that the killing of the insured in this case is as intentional as any intentional act can be hence this concurrence.

DISSENTING OPINION

TEEHANKEE, J.:

The sole issue at bar is the correctness in law of the lower court's appealed decision adjudging defendant insurance company liable, under its supplementary contract denominated "Accidental Death Benefit Clause" with the deceased insured, to plaintiffs-beneficiaries (excluding plaintiff Emilia T. Biagtan) in an additional amount of P5,000.00 (with corresponding legal interest) and ruling that defendant company had failed to present any evidence to substantiate its defense that the insured's death came within the stipulated exceptions.

Defendant's accidental death benefit clause expressly provides:

"ACCIDENTAL DEATH BENEFIT. (hereinafter called the benefit.) Upon receipt and approval of due proof that the death of the Insured resulted directly from bodily injury effected solely through external and violent means sustained in an accident, within ninety days after the date of sustaining such injury, and independently of all other causes, this Company shall pay, in addition to the sum insured specified on the first page of this Policy, a further sum equal to said sum insured payable at the same time and in the same manner as said sum insured, provided that such death occurred during the continuance of this Clause and of this Policy and before the sixtieth birthday of the Insured"[4]

A long list of exceptions and an Automatic Discontinuance clause immediately follow thereafter, thus:

"EXCEPTIONS. The Benefit shall not apply if the Insured's death shall result, either directly or indirectly from any one of the following causes:

- (1) Self-destruction or self-inflicted injuries, whether the Insured be sane or insane;
- (2) Bodily or mental infirmity or disease of any kind;
- (3) Poisoning or infection, other than infection occurring simultaneously with and in consequence of a cut or wound sustained in an accident;
- (4) Injuries of which there is no visible contusions or wound on the exterior of the body, drowning and internal injuries revealed by autopsy excepted;
- (5) Any injuries received (a) while on police duty in any military, naval or police organization; (b) in any riot, civil commotion, insurrection or war or any act incident thereto; (c) while travelling as a passenger or otherwise in any form of submarine transportation, or while engaging submarine operations; (d) in any violation of the law by the Insured or assault provoked by the Insured; (e) that has been inflicted intentionally by a third party, either with or without provocation on the part of the Insured, and whether or not the attack or the defense by the third party was caused by a violation of the law by the Insured;
- (6) Operating or riding in or descending from any kind of aircraft if the Insured is a pilot, officer or member of the crew of the aircraft or is giving or receiving any kind of training or instruction or has any duties aboard the aircraft or requiring descent therefrom; and
- (7) Atomic energy explosion of any nature whatsoever.

"The Company, before making any payment under this Clause, shall have the right and opportunity to examine the body and make an autopsy thereof.

"AUTOMATIC DISCONTINUANCE. This Benefit shall automatically terminate and the additional premium therefor shall cease to be payable when and if:

- (1) This Policy is surrendered for cash, paid-up insurance or extended term insurance; or
- (2) The benefit under the Total and Permanent Disability Waiver of Premium Certificate is granted to the insured; or
- (3) The Insured engages in military, naval or aeronautic service in time of war; or

The policy anniversary immediately preceding the sixtieth birthday of the Insured is reached."[5]

It is undisputed that, as recited in the lower court's decision, the insured met his death, as follows: "that on the night of May 20, 1964 or the first hours of May 21, 1964, while the said life policy and supplementary contract were in full force and effect, the house of insured Juan S. Biagtan was robbed by a band of robbers who were charged in and convicted by the Court of First Instance of Pangasinan for robbery with homicide; that in committing the robbery, the robbers, on reaching the staircase landing of the second floor, rushed towards the doors of the second floor room, where they suddenly met a person near the door of one of the rooms who turned out to be the insured Juan S. Biagtan who received thrusts from their sharp-pointed instruments, causing wounds on the body of said Juan S. Biagtan resulting in his death at about 7 a.m. on the same day, May 21, 1964."[6]

Defendant company, while admitting the above-recited circumstances under which the insured met his death, disclaimed liability under its accidental death benefit clause under paragraph 5 of its stipulated "Exceptions" on its theory that the insured's death resulted from injuries "intentionally inflicted by a third party," i.e. the robbers who broke into the insured's house and inflicted fatal injuries on him.

The case was submitted for decision upon the parties' stipulation of facts that (1) insurance companies such as the Lincoln National Life Insurance Co. and Sun Life Assurance Co. of Canada with which the deceased insured Juan S. Biagtan was also insured for much larger sums under similar contracts with accidental death benefit provisions have promptly paid the benefits thereunder to plaintiffs-beneficiaries; (2) the robbers who caused the insured's death were charged in and convicted by the Court of First Instance of Pangasinan for the crime of robbery with homicide; and (3) the injuries inflicted on the insured by the robbers consisted of five mortal and four non-mortal wounds.[7]

The lower court thereafter rendered judgment against defendant, as follows:

"There is no doubt that the insured, Juan S. Biagtan, met his death as a result of the wounds inflicted upon him by the malefactors on the early morning of May 21, 1964 by means of thrusts from sharp-pointed instruments delivered upon his person, and there is likewise no question that the thrusts were made on the occasion of the robbery. However, it is defendants' position that the killing of the insured was intentionally done by the malefactors, who were charged with and convicted of the crime of robbery with homicide by the Court of First Instance of Pangasinan.

"It must be noted here that no evidence whatsoever, was presented by the parties who submitted the case for resolution upon the stipulation of facts presented by them. Thus, the court does not have before it proof that the act of receiving thrust (s) from the sharp-pointed instrument of the robbers was intended to inflict injuries upon the person of the insured or any other person or merely to scare away any person so as to ward off any resistance or obstacle that might be offered in the pursuit of their main objective which was robbery. It was held that where a provision of the policy excludes intentional injury it is the intention of the person inflicting the injury that is controlling * * * and to come within the exception, the act which causes the injury must be

wholly intentional, not merely partly.

"The case at bar has some similarity with the case of *Virginia Calanoc vs. Court of Appeals, et al*, L-8151, promulgated December 16, 1955, where the Supreme Court ruled that 'the shot (which killed the insured) was merely to scare away the people around for his own protection and not necessarily to kill or hit the victim.'

"In the *Calanoc* case, one Melencio Basilio, a watchman of a certain company, took out life insurance from the Philippine American Life Insurance Company in the amount of P2,000.00 to which was attached a supplementary contract covering death by accident. Calanoc died a gunshot wounds on the occasion of a robbery committed in the house of a certain Atty. Ojeda in Manila. The insured's widow was paid P2,000.00, the face value of the policy, but when she demanded payment of the additional sum of P2,000.00 representing the value of the supplemental policy, the company refused alleging, as main defense, that the deceased died because he was murdered by a person who took part in the commission of the robbery and while making an arrest as an officer of the law which contingencies were (as in this case) expressly excluded in the contract and have the effect of exempting the company from liability.

"The facts in the *Calanoc* case insofar as pertinent to this case are, as found by the Court of Appeals in its decision which findings of fact were adopted by the Supreme Court, as follows:

`* * * that on the way to the Ojeda residence (which was then being robbed by armed men), the policeman and Atty. Ojeda passed by Basilio (the insured) and somehow or other invited the latter to come along; that as the three approached the Ojeda residence and stood in front of the main gate which was covered by galvanized iron, the fence itself being partly concrete and partly adobe stone, a shot was fired; * * * that it turned out afterwards that the special watchman Melencio Basilio was hit in the abdomen, the wound causing his instantaneous death * * * .'

"The Court of Appeals arrived at the conclusion that the death of Basilio, although unexpected, was caused by an accident, being a voluntary and intentional act on the part of the one who robbed, or one of those who robbed, the house of Atty. Ojeda.

"In reversing this conclusion of the Court of Appeals, the Supreme Court said in part:

'* * * Nor can it be said that the killing was intentional for there is the possibility that the malefactors had fired the shot merely to scare away the people around for his own protection and not necessarily to kill or hit the victim. In any event, while the act may not exempt the triggerman from liability for the damage done, the fact remains that the happening was a pure accident on the part of the victim.'

"With this ruling of the Supreme Court and the utter absence of evidence in this case as to the real intention of the malefactors in making a thrust with their sharp-pointed instrument on any person, the victim in particular, the case falls squarely within the ruling in the *Calanoc vs. Court of Appeals* case.

"It is the considered view of this Court that the insured died because of an accident which happened on the occasion of the robbery being committed in his house. His death was not sought (at least no evidence was presented to show it was), and therefore was fortuitous. 'Accident' was defined as that which happens by chance or fortuitously, - without intention or design, and which is unexpected, unusual and unforeseen, or that which takes place without ones foresight or expectation — an event that proceeds from an unknown cause, or is an unusual effect of a known cause, and therefore not expected (29 Am. Jur. 706).

"There is no question that the defense set up by the defendant company is one of those included among the risks excluded in the supplementary contract. However, there is no evidence here that the thrusts with sharp-pointed instrument (which led to the death of the insured) was 'intentional,' (sic) so as to exempt the company from liability. It could safely be assumed that it was purely accidental considering that the principal motive of the

culprits was robbery, the thrusts being merely intended to scare away person/s who might offer resistance or might obstruct them from pursuing their main objective which was robbery." [8]

It is respectfully submitted that the lower court committed no error in law in holding defendant insurance company liable to plaintiffs-beneficiaries under its accidental death benefit clause; by virtue of the following considerations:

1. The case of *Calanoc* cited by the lower court is indeed controlling here. [9] This Court, there construing a similar clause, squarely ruled that fatal injuries inflicted upon an insured by a malefactor(s) during the latter's commission of a crime are deemed accidental and the coverage of such accidental death benefit clauses and the burden of proving that the killing was intentional so as to have it fall within the stipulated exception of having resulted from injuries "intentionally inflicted by a third part" must be discharged by the insurance company. This Court there clearly held that in such cases where the killing does not amount to murder, it must be held to be a "pure accident" on the part of the victim, compensable with double-indemnity, even though the malefactor is criminally liable for his act. This Court rejected the insurance-company's contrary claim, thus:

"Much less can it be pretended that Basilio died in the course of an assault or murder considering the very nature of these crimes. In the first place, there is no proof that the death of Basilio is the result of either crime for therecord is barren of any circumstance showing how the fatal shot was fired. Perhaps this may be clarified in the criminal case now pending in court as regards the incident but before that is done anything that might be said on the point would be a mere conjecture. Nor can it be said that the killing was intentional for there is the possibility that the malefactor had fired the shot merely to scare away the people around for his own protection and not necessarily to kill or hit the victim. In any event, while the act may not exempt the triggerman from liability for the damage done, the fact remains that the happening was a pure accident on the part of the victim. The victim could have been either the policeman or Atty. Ojeda for it cannot be pretended that the malefactor aimed at the deceased precisely because he wanted to take his life." [10]

2. Defendant company patently failed to discharge its burden of proving that the fatal injuries were inflicted upon the deceased intentionally, i.e. deliberately. The lower court correctly held that since the case was submitted upon the parties' stipulation of facts which did not cover the malefactors' intent at all, there was an "utter absence of evidence in this case as to the real intention of the malefactors in making a thrust with their sharp-pointed instrument(s) on any person, the victim in particular." From the undisputed facts, *supra*, [11] the robbers had "rushed towards the doors of the second floor room, where they suddenly met a person * * * who turned out to be the insured Juan S. Biagtan who received thrusts from their sharp-pointed instruments." The thrusts were indeed properly termed "purely accidental" since they seemed to be a reflex action on the robbers' part upon their being surprised by the deceased. To argue, as defendant does, that the robbers' intent to kill must necessarily be deduced from the four mortal wounds inflicted upon the deceased is to beg the question. Defendant must suffer the consequence of its to beg the question. Defendant must suffer the consequence of its failure to discharge its burden of proving by competent evidence, e.g. the robbers' or eyewitnesses' testimony, that the fatal injuries were intentionally inflicted upon the insured so as to exempt itself from liability.

3. Furthermore, plaintiffs-appellees properly assert in their brief that the sole error assigned by defendant company, to wit, that the fatal injuries were not accidental as held by the lower court but should be held to have been intentionally inflicted, raises a question of fact — which defendant is now barred from raising, since it expressly limited its appeal to this Court purely "on questions of law", per its notice of appeal. [12] Defendant is therefore confined to "raising only questions of law" and "no other questions" under Rule 42, section 2 of the Rules of Court [13] and is deemed to have conceded the findings of fact of the trial court, since he thereby waived all questions of fact. [14]

4. It has long been an established rule of construction of so-called contracts of adhesion such as insurance contracts, where the insured is handed a printed insurance policy whose fine-print language has long been selected with great care and deliberation by specialists and legal advisers employed by and acting exclusively in the interest of the insurance company, that the terms and phraseology of the policy, particularly of any exception clauses, must be clearly expressed so as to be easily understood by the insured and any "ambiguous, equivocal or uncertain terms" are to be "construed strictly and most strongly against the insurer and liberally in favor of the insured so as to effect the dominant purpose indemnity or payment to the insured, especially where a forfeiture is involved."

The Court so expressly held in *Calanoc* that:

"* * * While as a general rule the parties may limit the coverage of the policy to certain particular accidents and risks or causes of loss, and may expressly except other risks or causes of loss therefrom' (45 C. J. S. 781-782), however, it is to be desired that the terms and phraseology of the exception clause be clearly expressed so as to be within the easy grasp and understanding of the insured, for if the terms are doubtful or obscure the same must of necessity be interpreted or resolved against the one who has caused the obscurity. (Article 1377, new Civil Code) And so it has been generally held that the 'terms in an insurance policy, which are ambiguous, equivocal, or uncertain * * * are to be construed strictly and most strongly against the insurer, and liberally in favor of the insured so as to effect the dominant purpose of indemnity or payment to the insured, especially where a forfeiture is involved' (29 AM. Jur., 181), and the reason for this rule is that the insured usually has no voice in the selection or arrangement of the words employed and that the language of the contract is selected with great care and deliberation by experts and legal advisers employed by, and acting exclusively in the interest of, the insurance company.' (44 C.J.S', p. 1174)

"Insurance is, in its nature, complex and difficult for the layman to understand. Policies are prepared by experts who know and can anticipate the bearing and possible complications of every contingency. So long as insurance companies insist upon the use of ambiguous, intricate and technical provisions, which conceal rather than frankly disclose, their own intentions, the courts must, in fairness to those who purchase insurance construe every ambiguity in favor of the insured.' (Algoe vs. Pacific Mut. L. Ins. Co., 91 Wash. 324, LRA 1917A, 1237.)

" 'An insurer should not be allowed, by the use of obscure phrases and exceptions, to defeat the very purpose for which the policy was procured.' (Moore vs. Aetna Life Insurance Co., LRA 1915D, 164)."[15] The Court has but recently reiterated this doctrine in *Landicho vs. GSIS*[16] and again applied the provisions of Article 1377 of our Civil Code that "The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity."

5. The accidental death benefit clause assuring the insured's beneficiaries of double indemnity, upon payment of an extra premium, in the event that the insured meets violent accidental death is contractually stipulated as follows in the policy: "that the death of the insured resulted directly from bodily injury effected solely through external and violent means sustained in an accident," *supra*. The policy then lists numerous exceptions, which may be classified as follows:

- Injuries effected through non-external means which are excepted: self-destruction, bodily or mental infirmity or disease, poisoning or infection, injuries with no visible contusions or exterior wounds (exceptions 1 to 4 of policy clause);
- Injuries caused by some act of the insured which is proscribed by the policy, and are therefore similarly excepted: injuries received while on police duty, while traveling in any form of submarine transportation, or in any violation of law by the insured or assault provoked by the insured, or in any aircraft if the insured is a pilot or crew member; (exceptions 5 (a), (c) and (d), and 6 of the policy, clause); and

– Accidents expressly excluded: where death resulted in any riot, civil commotion, insurrection or war or atomic energy explosion. (Exceptions 5(b) and 7 of policy clause).

The only exception which is not susceptible of classification is that provided in paragraph 5(e), the very exception herein involved, which would also except injuries "inflicted intentionally by a third party, either with or without provocation on the part of the insured, and whether or not the attack or the defense by the third party was caused by a violation of the law by the insured."

This ambiguous clause conflicts with all the other four exceptions in the same paragraph 5 particularly that immediately preceding it in item (d) which excepts injuries received where the insured has violated the law or provoked the injury, while this clause, construed as the insurance company now claims, would seemingly except also all other injuries, intentionally inflicted by a third party, regardless of any violation of law or provocation by the insured, and defeat the very purpose of the policy of giving the insured double indemnity in case of accidental death by "external and violent means" — in the very language of the policy.

It is obvious from the very classification of the exceptions and applying the rule of *noscitur a sociis*, that the double-indemnity policy covers the insured against accidental death, whether caused by fault, negligence or intent of a third party which is unforeseen and unexpected by the insured. All the associated words and concepts in the policy plainly exclude the accidental death from the coverage of the policy only where the injuries are self-inflicted or attended by some proscribed act of the insured or are incurred in some expressly excluded calamity such as riot, war or atomic explosion.

FINALLY, the untenability of herein defendant insurer's claim that the insured's death fell within the exception is further heightened by the stipulated fact that two other insurance companies which likewise covered the insured for much larger sums under similar accidental death benefit clauses promptly paid the benefits thereof to plaintiffs-beneficiaries.

I vote accordingly for the affirmance *intoto* of the appealed decision, with costs against defendant-appellant.

Concepcion, C.J., and Reyes, J.B.L., J., concur.

[4] Rec. on Appeal, pp. 7-8, italics furnished.

[5] *Idem*, pp. 8-10, italics furnished.

[6] *Idem*, pp. 46-47.

[7] *Idem*, pp. 37-38.

[8] *Idem*, pp. 49-54. italics furnished.

[9] 98 Phil. 79.

[10] *Idem*, at page 83, italics furnished.

[11] At page 3.

[12] Rec. on Appeal, p. 56.

[13] "SEC. 2. Appeal on pure question of law. - Where the appellant states in his notice of appeal or record on appeal that he will raise only questions of law, no other questions shall be allowed, and the evidence need not be elevated." (Rule 42)

[14] See 2 Moran's Comments on Rules of Court, 1970 Ed., pp. 456-457 and cases cited therein.

[15] Italics furnished.

[16] L-28866, prom. March 17, 1972, per Concepcion, C.J., and cases cited therein

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