

**DIONISIA, EULOGIO, MARINA, GUILLERMO AND NORBERTO ALL
SURNAMED GUINGON, PLAINTIFFS-APPELLEES, VS. ILUMINADO DEL
MONTE, JULIO AGUILAR AND CAPITAL INSURANCE & SURETY
CO., INC., DE...**

G.R. No. 22042. August 17, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Julio Aguilar owned and operated several jeepneys in the City of Manila among which was one with plate number PUJ-206-Manila, 1961. He entered into a contract with the Capital Insurance & Surety Co., Inc. insuring the operation of his jeepneys against accidents with third-party liability. As a consequence thereof an insurance policy was executed by the Capital Insurance & Surety Co., Inc., the pertinent provisions of which in so far as this case is concerned contains the following:

"Section II - LIABILITY TO THE PUBLIC

"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/s or in connection with the loading or unloading of the Motor vehicle/s, against all sums including claimant's costs and expenses 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"

During the effectivity of such insurance policy on February 20, 1961 Iluminado Del Monte, one of the drivers of the jeepneys operated by Aguilar, while driving along the intersection of Juan Luna and Moro streets, City of Manila, bumped with the jeepney abovementioned one Gervacio Guingon who had just alighted from another jeepney and as a consequence the latter died some days thereafter.

A corresponding information for homicide thru reckless imprudence was filed against Iluminado del Monte, who pleaded guilty. A penalty of four months imprisonment was imposed on him.

As a corollary to such action, the heirs of Gervacio Guingon filed an action for damages praying that the sum of P82,771.80 be paid to them jointly and severally by the defendants, driver Iluminado del Monte, owner and operator Julio Aguilar, and the Capital Insurance & Surety Co., Inc. For failure to answer the complaint, Del Monte and Aguilar were declared in default. Capital Insurance & Surety Co., Inc. answered, alleging that the plaintiff has no cause of action against it. During the trial the following facts were stipulated:

"COURT: The Court wants to find if there is a stipulation in the policy whereby the insured is insured against liability to third persons who are not passengers of jeeps.

"ALMARIO: As far as I know, in my honest belief, there is no particularization as to the passengers, whether

the passengers of the jeep insured or a passenger of another jeep or whether it is a pedestrian. With those, we can submit the stipulation.

"SIMBULAN: I admit that." (T.s.n., p. 21, Jan. 23, 1962; p. 65 Rec. on Appeal)

On August 27, 1962, the Court of First Instance of Manila rendered its judgment with the following dispositive portion:

"WHEREFORE, judgment is rendered sentencing Iuminado del Monte and Julio Aguilar jointly and severally to pay plaintiffs the sum of P8,572.95 as damages for the death of their father, plus P1,000.00 for attorney's fees plus costs.

"The defendant Capital Insurance and Surety Co., Inc. is hereby sentenced to pay the plaintiffs the sum of Five Thousand (P5,000.00) Pesos plus Five Hundred (P500.00) Pesos as attorney's fees and costs. These sums of P5,000.00 and P500.00 adjudged against Capital Insurance and Surety Co., Inc. shall be applied in partial satisfaction of the judgment rendered against Iuminado del Monte and Julio Aguilar in this case.

"SO ORDERED."

The case was appealed to the Court of Appeals which appellate court on September 30, 1963 certified the case to Us because the appeal raises purely questions of law.

The issues raised before Us in this appeal are (1) As the company agreed to indemnify the insured Julio Aguilar, is it only the insured to whom it is liable? (2) Must Julio Aguilar first show himself to be entitled to indemnity before the insurance company may be held liable for the same? (3) Plaintiffs not being parties to the insurance contract, do they have a cause of action against the company; and (4) Does the fact that the insured is liable to the plaintiffs necessarily mean that the insurer is liable to the insured?

In the discussion of the points thus raised, what is paramount is the interpretation of the insurance contract with the aim in view of attaining the objectives for which the insurance was taken. The Rules of Court provide that parties may be joined either as plaintiffs or defendants, as the right to relief in respect to or arising out of the same transactions is alleged to exist (Sec. 6, Rule 3). The policy, on the other hand, contains a clause stating:

"E. Action Against Company

No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all of the terms of this Policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant, and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by the Policy. Nothing contained in this policy shall give any person or organization any right to join the Company as a co-defendant in any action against the Insured to determine the Insured's liability.

Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder."

Appellant contends that the "no action" clause in the policy closes the avenue to any third party which may be injured in an accident wherein the jeepney of the insured might have been the cause of the injury of third persons, alleging the freedom of contracts. Will the mere fact that such clause was agreed upon by the parties in an insurance policy prevail over the Rules of Court which authorizes the joining of parties plaintiffs or defendants?

The foregoing issues raise two principal questions: (1) Can plaintiffs sue the insurer at all? (2) If so, can plaintiffs sue the insurer jointly with the insured?

The policy in the present case, as aforequoted, is one whereby the insurer agreed to indemnify the insured "against all sums x x x which the Insured shall become legally liable to pay in respect of a death of: a. of or bodily injury to any person x x x." Clearly, therefore, it is one for indemnity against liability;^[1] from the fact then that the insured is liable to the third person, such third person is entitled to sue the insurer.

The right of the person injured to sue the insurer of the party at fault (insured), depends on whether the contract of insurance is intended to benefit third persons also or only the insured. And the test applied has been this: Where the contract provides for indemnity against liability to third persons, then third persons to whom the insured is liable, can sue the insurer. Where the contract is for indemnity against actual loss or payment, then third persons cannot proceed against the insurer, the contract being solely to reimburse the insured for liability actually discharged by him thru payment to third persons, said third persons' recourse being thus limited to the insured alone.^[2]

The next question is on the right of the third person to sue the insurer jointly with the insured. The policy requires, as afore-stated, that suit and final judgment be first obtained against the insured; that only "thereafter" can the person injured recover on the policy; it expressly disallows suing the insurer as a co-defendant of the insured in a suit to determine the latter's liability. As adverted to before, the query is which procedure to follow - that of the insurance policy or the Rules of Court.

The "no action" clause in the policy of insurance cannot prevail over the Rules of Court provision aimed at avoiding multiplicity of suits. In a case squarely on the point, *American Automobile Ins. Co. v. Struwe*, 218 SW 534 (Texas CCA), it was held that a "no action" clause in a policy of insurance cannot override procedural rules aimed at avoidance of multiplicity of suits. We quote:

"Appellants filed a plea in abatement on the grounds that the suit had been prematurely brought against the insurance company, and that it had been improperly joined with Zunker, as said insurance company, under the terms of the policy, was only liable after judgment had been awarded against Zunker. x x x

"xxx That plea was properly overruled, because under the laws of Texas a dual suit will always be avoided whenever all parties can have a fair trial when joined in one suit. Appellee, had he so desired, could have prosecuted his claim to judgment as against Zunker and then have sued on that judgment against the insurance company, but the law does not make it imperative that he should do so, but would permit him to dispose of the whole matter in one suit.

"The rule has often been announced in Texas that when two causes of action are connected with each other, or grow out of the same transaction, they may be properly joined, and in such suit all parties against whom the plaintiff asserts a common or an alternative liability may be joined as defendants. x x x Even if appellants had presented any plea in abatement as to joinder of damages arising from a tort with those arising from a contract, it could not, under the facts of this case, be sustained, for the rule is that a suit may include an action for breach of contract and one for tort, provided they are connected with each other or grew out of the same transaction."

Similarly, in the instant suit, Sec. 5 of Rule 2 on "Joinder of causes of action" and Sec. 6 of Rule 3 on "Permissive joinder of parties" cannot be superseded, at least with respect to third persons not a party to the contract, as herein, by a "no action" clause in the contract of insurance.

WHEREFORE, the judgment appealed from is affirmed in toto. Costs against appellant.

SO ORDERED.

Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., and Dizon, J., on official leave.

[1] See *Capelle v. US Fidelity & Guaranty Co. of Baltimore, Md.*, --- Md.; 120 Atl. 556 containing substantially the same pertinent clauses used here, also held as a contract to indemnify assured from liability, and not one to indemnify him from loss.

[2] 29A Am. Jur. 604; See cases collected in Anno. 3 ALR 381; 13 ALR 136; 19 ALR 881; 23 ALR 1474; 28 ALR 1303; 41 ALR 516; 81 ALR 1296.

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