

**THE INSULAR LIFE ASSURANCE CO., LTD., PLAINTIFF AND
APPELLANT, VS. MARIA NARCISA SUVA, AS ADMINISTRATRIX OF
THE INTESTATE ESTATE OF BENITO PATROCINIO SUVA,
DEFENDANT AND APPELLE...**

G.R. No. 42874. October 22, 1935

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of Manila in an action brought by the Insular Life Assurance Co., Ltd., for the cancellation of two policies of P5,000 each issued and delivered by it upon the life of Benito Patrocinio Suva, now deceased. The action was originally brought only against the administratrix of the estate of the insured, but by leave of court, Maria Narcisa Suva, in her own right, and Felicidad Cruz filed their interventions claiming to be the beneficiaries of the two policies involved in this action.

The first of the policies, numbered 47726, bears date of December 1, 1932, and names as beneficiary Isabel Simbulan, the wife of the insured. The second of the said policies, numbered 48819, bears date of February 1, 1933, and names as beneficiary the appellee, Maria Narcisa Suva, sister of the insured. The company acknowledges having received the premium due on said policies for the first year and tenders the return of the same in its petition. The intervenors, besides praying for judgment for the amount due on said policies, also pray for P1,000 each as damages.

The ground alleged by the plaintiff for the cancellation of said policies is that the insured made false statements as to the past and present state of his health in his applications which, by the terms of the policies themselves, are made a part of the contract. The applicant was examined on October 17, 1932, by Dr. G. Ocampo, one of the physicians of the company. He was again examined on December 28, 1932, by Dr. M. Llorca, a physician of the company sent out from the home office for that purpose. In connection with his first application for policy No. 47726, among the numerous questions with relation to specific diseases, the following questions and answers appear in the report of Dr. Ocampo (Exhibit B) :

"Ha padecido V. alguna vez de las siguientes enfermedades * * * del pulmon, pleuresia, pulmonia, aama?— No.

"Ha escupido V. sangre? iPor que causa?—No.

" No doubt is raised as to the correctness of any other statements of the applicant.

The report of Dr. Ocampo is a detailed account of the complete examination made by him. Item No. 30 of his report is as follows: "¿Encuentra V., despues de una cuidadosa interrogaci6n y reconocimiento, algun sintoma de padecimiento actual o anterior * * * de los pulmones? to which the doctor answered "No". Item 33 of his report is as follows: "¿Ha revisado V. cuidadosamente todas las contestaciones de este reconocimiento y esta V. seguro de que son claras y completas?" to which the doctor answered "Si". Item 34 is as follows: "¿Cree V. que los informes dados por el solicitante son verdaderos y completos en todos los conceptos?" to which the doctor answered "Si".

Item 35 is as follows: 'Recomienda V., como representante fiel de la compania, que se acepte este riesgo como exceiente, bueno, o que no se acepte?' to which the doctor answered "Si, que se acepte como exceiente."

On December 28, 1932, when the applicant was examined by Dr. M. Llorca, he was asked the same questions as were put to him by Dr. Ocampo. In the questions relating to his clinical history he was asked: "Have you ever suffered from any ailment or disease of (c) the lungs, pleurisy, pneumonia or asthma? The applicant answered "Yes, trancazo 1918" and (h) "Have you ever spat blood? What was it due to?" to which the applicant answered "No". No other answers made by him are called in question in this litigation.

In Dr. Llorca's detailed report which appears on the back of said application, Exhibit C, appear the following:

"Item 30: Do you find after careful inquiry and physical examination any evidence of past or present disease *
* * (d) of the lungs?

"Answer: No."

"Item 34: Do you believe the party has given full and true information in all respects?

"Answer: Si.

"Item 35: Would you classify applicant as first class, good, average or poor risk?

"Answer: Creo que es aceptable." His report concludes with the following certificate:

"I CERTIFY that I have carefully examined Benito Patrocinio Suva of Arayat, Pampanga, in private, and not in the presence of any third person, at Arayat, Pampanga, this 28th day of December, 1932, at 5.15 o'clock P. M. for an insurance of P5,000 for 20 C. P. years on the applicant's life; that I have asked each question exactly as set forth on the other side of this sheet and that the applicant's answers thereto are in my handwriting, and are exactly as made by the applicant to me and that the applicant signed them in my presence.

(Sgd.) "M. Llorca, Med. Ex"

The insured died of pulmonary tuberculosis in the Chinese General Hospital in Manila on September 23, 1933. The substance of the plaintiff's cause of action is that the statements made by the insured in his applications as above quoted, were false and that the applicant was not in good health either at the time he presented his applications or on the date when said policies were delivered.

Upon this issue of fact the learned trial judge made a complete and careful analysis of the evidence. We accept his conclusions as to the credibility of the witnesses. We have carefully re-examined the entire record and see no reason to disturb his findings of fact. It seems to us the company's physicians were entirely warranted in their conclusion that the insured was an acceptable risk. The preponderance of the evidence discloses that the applicant, a young man 27 years of age and recently married, was devoted to vigorous athletic sports and regularly carried on his business as a farmer and contractor up to May, 1933.

In reply to the question in the printed application, "Are you in good health? he replied "Yes". If two qualified physicians, not selected by him, independently examine a man with critical attention and in the interest of their employer, the insurance company, and they pronounce him to be in good health, we should find it difficult to declare that he knowingly made a false statement when he said he believed the same thing himself. "Good health" is a relative term. A person with sound body may honestly believe himself to be in "good health" although at the moment he may have a terrific headache, or a running cold, or an attack of diarrhea, or indigestion, or any other of a host of minor common ailments which may possibly develop later into a serious illness. A hemorrhage may be due to any one of a variety of causes, grave or slight, having no necessary relation with pulmonary tuberculosis. Even if we gave credence to the testimony that Benito Patrocim'o Suva spat blood on one occasion in May, 1932,

and another in August, 1932, there is no evidence whatever in the record as to the cause of the alleged hemorrhage. We have no right to jump at the conclusion that it was grave and could only be due to pulmonary tuberculosis, especially as it left no trace, for Drs. Ocampo and Llorca found nothing wrong with the applicant in October or December, 1932. No serious illness prior to May, 1933, is established by the evidence. We agree with the trial court that the applicant was in good health when the policies were delivered and that it is not proved that he made any material false statement in his said applications for insurance.

The appellant company complains that the trial court failed to consider the death certificate signed by Dr. Tablante. This certificate (Exhibit J) states that Suva died in the Chinese General Hospital of Manila on September 23, 1933; that the cause of the death was pulmonary tuberculosis; that the duration of the disease was one year and five months. The source of information of the latter statement is not mentioned. Suva entered the hospital in August, 1933, and the certificate itself recites that Dr. Tablante treated him only from August 18, 1933, to September 23, 1933. The plaintiff did not offer Dr. Tablante as a witness and none of the hospital records were put in evidence. The statement of Dr. Tablante as to the duration of the disease is apparently hearsay and, under the circumstances, we cannot give that recital in the certificate of death the conclusiveness which the plaintiff claims for it. (U. S. vs. Que Ping, 40 Phil., 17.)

Felicidad Cruz appeals from that part of the judgment which holds that the insured, Benito Patrocinio Suva, having renounced in his application the right to change the beneficiary in policy No. 47726, his wife, Isabel Simbulan, acquired a vested interest in the policy which neither the insured nor the company could take from her without her consent. The conclusion of the trial court is sustained by our decision in the case of Gercio vs. Sun Life Assurance Co. of Canada (48 Phil., 53), and the American authorities therein cited. We think that the attempted change of beneficiary made by the insured on August 16, 1933, and endorsed by the company on the back of the policy on August 24, 1933, was due to a mutual mistake. The application in which the insured, over his personal signature, renounced the right to change the beneficiary, should prevail over the printed phrase "with right of revocation" which occurs in the policy. It is to be noted that the application itself is made a part of the contract.

In view of the premises, the judgment is affirmed with costs against the appellant insurance company as to the appellee Maria Narcisa Suva and without special pronouncement as to costs in the appeal of Felicidad Cruz.

Malcolm, Imperial, Goddard, and Diaz, JJ., concur.

Judgment affirmed.

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