

**FIRST INTEGRATED BONDING & INSURANCE COMPANY, INC.,
PETITIONER, VS. HON. HAROLD M. HERNANDO, VICTORINO
ADVINCULA, ROMANA ADVINCULA, SILVERIO BLANCO & THE
SHERIFF OF MANILA AND H...**

G.R. No. 51221. July 31, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition for certiorari under Rule 65 of the Revised Rules of Court, seeks the annulment of the amended decision of respondent trial court in Civil Case No. 1104 for allegedly having been rendered in excess of jurisdiction. The same decision was sought to be annulled in a petition for relief from judgment filed in the same case but the petition was denied for having been filed out of time.

The narration of facts below was taken from the pleadings filed by the parties. As regards the proceedings following the promulgation of the amended decision, the dates were supplied in the Comment and Answer filed by respondent judge and which were not disputed by petitioner.

Silverio Blanco was the owner of a passenger -jeepney which he insured against liabilities for death and injuries to third persons with First Integrated Bonding and Insurance Company, Inc. (First Insurance) under Motor Vehicle Policy No. V-05-63751 with the face value of P30,000.00 (p. 15, Rollo).

On November 25, 1976, the said jeepney driven by Blanco himself bumped a five-year old child, Deogracias Advincula, causing the latter's death.

A complaint (pp. 38-41, Rollo) for damages was brought by the child's parents, the Advincula spouses, against Silverio Blanco. First Insurance was also impleaded in the complaint as the insurer. The complaint was docketed as Civil Case No. 1104 of the Court of First Instance of Abra (now Regional Trial Court).

Summons were served on Silverio Blanco and First Insurance. However, only Blanco filed an answer. Upon motion of the Advincula spouses, First Insurance was declared in default (p. 45, Rollo) on January 19, 1978.

Thereafter, a pre-trial conference was conducted where the Advincula spouses presented the following documentary evidence:

"Exhibit 'A' - Marriage Certificate, Exhibit B - Birth Certificate, Exhibit B-1 - the Certificate of the Local Civil Registrar, Exhibit C - Certificate of Death, Exhibit C-1 - the official receipt of the burial permit, Exhibit C-2 - the autopsy report, Exhibit D - filing fee under official receipt in the amount of P80.00, Exhibit D-1 - list of actual expenses in connection with the death and burial of the deceased Advincula, Exhibit E - Criminal Case No. 666 of the Municipal Court of Tayum, Abra entitled People of the Philippines versus Silverio Blanco for Homicide thru Reckless Imprudence, Exhibit E-1 - sworn statement of Severino Balneg, Exhibit F - Tax Declaration No. 906 in the name of Maria Blanco delivered by Silverio Blanco to the plaintiffs as pledge of Silverio Blanco to settle the civil aspect of this case." (pp. 14-15, Rollo)

On the basis of the evidence presented by the Advincula spouses, judgment was rendered by the trial court on March 1, 1978, the dispositive portion of which states:

"WHEREFORE, for moral damages, this court adjudicates to the plaintiffs P5,000.00; for the life of Deogracias Advincula P12,000.00, for funeral expenses, P3,663.50 and for attorney's fees, P3,000.00. The satisfaction of these damages divulged (sic) independently now upon the defendant insurance company and to pay the costs of the proceedings.

"SO ORDERED." (p. 16, Rollo)

First Insurance received a copy of the decision on March 14, 1978. Upon motion of the Advincula spouses, the decision was amended on March 27, 1978 (p. 17, Rollo), which, in addition to the damages granted in the original decision, awarded damages in the amount of P6,336.50 to Silverio Blanco. The dispositive portion of the amended decision is quoted, as follows:

"WHEREFORE, for moral damages, this Court hereby adjudicates to the plaintiffs P5,000.00; for the life of Deogracias Advincula P12,000.00; for funeral expenses P3,663.50 and for attorney's fees P3,000.00 or in the total amount of P23,663.50 which must be satisfied independently by the defendant First Integrated Bonding and Insurance Company, Inc. in favor of the plaintiffs and the balance of P6,336.50 shall also be paid by said defendant Insurance Company to the defendant Silverio Blanco. The grand total under the insurance policy, Exhibit H, is P30,000.00.

"The defendant Insurance Company to pay the costs of the proceedings.

"SO ORDERED." (p. 17, Rollo)

The amended decision was received by First Insurance on April 11, 1978. On May 11, 1978, entry of judgment was made, a copy of which was furnished First Insurance on June 27, 1978. Upon motion of the Advincula spouses, an order granting execution was issued by the court on June 14, 1978, which was received by First Insurance on August 1, 1978 (pp. 31-32, Rollo).

On September 5, 1978, First Insurance filed a petition for relief from judgment in the same case. The petition was set for hearing on September 28, 1978. No appearance was entered by First Insurance on the said date. On October 4, 1978, the trial court issued an order, denying the petition for relief from judgment (pp. 33-34, Rollo), a copy of which was received by First Insurance on October 10, 1978 (p. 35, Rollo). The order reads:

"The records of this case show that on April 11, 1978, the defendant First Integrated Bonding and Insurance Company, Inc. received a copy of the amended decision dated March 27, 1978 and found on page 30 of the records of this case; on May 11, 1978, the Deputy Clerk of Court entered the corresponding entry of judgment and the First Integrated Bonding and Insurance Company, Inc. received a copy thereof on June 27, 1978. On June 13, 1978, the plaintiffs moved for execution of judgment and the same was granted pursuant to an Order of this Court dated June 14, 1978 and found on page 35 of the records of this case.

"And now comes the petition for relief from the Order of execution and judgment with preliminary injunction filed by First Integrated Bonding and Insurance Co., Inc. and which was received by this Court on September 5, 1978; on September 28, 1978, the plaintiffs filed their written opposition to the petition for relief from judgment and preliminary injunction. The opposition is based on three grounds, namely: 1. that the petition is filed out of time; 2. that there was gross and notorious negligence of the Insurance Company; 3. that this case is within the jurisdiction of this Court and therefore the cause of action of the plaintiffs deserves judicial consideration.

"It was on April 11, 1978 that the First Integrated Bonding and Insurance Co., Inc. received the amended decision and the petition for relief from Order of Execution and judgment with preliminary injunction was filed

on September 5, 1978 or a period of 191 days already expired, that is, more than 6 months already as required by Section 3, Rule 38 of the Rules Of Court. Consequently, the first ground invoked by the opposition must be sustained. On the second ground, the records of this case show that the First Integrated Bonding and Insurance Co., Inc. was duly summoned and served a copy of the complaint on August 16, 1977 and it was received by the President of the Insurance Company as shown by the certificate of Service of the Sheriff of Manila and found in page 12 and page 13 of the records of this case; after the reglementary period to file an answer expired, the plaintiffs move to declare the defendant insurance company in default and likewise asked the Court that they be allowed to present their evidence on January 23, 1978 and which was granted by this Court pursuant to an order dated January 19, 1978 and found on page 16 of the records of this case; after the reception of the evidence for the plaintiffs this Court rendered a decision on March 1, 1978 and which is found on pages 23 to 26 of the records of this case; subsequently, on March 27, 1978, an amended decision was issued by this Court and it is found on page 30 of the records of this case. Clearly, therefore, the First Integrated Bonding and Insurance Co., Inc. was grossly and notoriously negligent in giving the proper attention to this case. This kind of gross and notorious negligence can not be considered excusable. The last ground is that this Court has jurisdiction over the plaintiffs' cause of action against the insurance company. This ground is well-taken because according to Section 416 of the Philippine Insurance Code, Presidential Decree No. 612, it provides that the authority to adjudicate granted to the Commissioner of insurance shall be concurrent with that of the civil courts, but the filing of a complaint with the commissioner shall preclude the civil courts from taking cognizance of a suit involving the same subject matter. Furthermore, the plaintiffs did not intervene in the criminal aspect of this case, instead, they filed a separate and independent civil action on July 26, 1977 and which is now the present Civil Case No. 1104. It may be added, that the matter of exhaustion of administrative remedy maybe waived which has been so in the present case because the First Integrated Bonding and Insurance Co., Inc, was declared in default.

"In view of all the foregoing considerations, the petition for relief from the order of execution and judgment with preliminary injunction, for lack of merit, is hereby denied.

"SO ORDERED." (pp. 33-34, Rollo)

First Insurance filed a motion for reconsideration of the order denying the petition for relief on May 14, 1979. The motion was set for hearing and again no appearance was entered by the movant First Insurance (p. 35, Rollo), prompting the trial court to deny the same.

On August 13, 1979, the herein petitioner First Insurance filed this petition for certiorari on the following grounds:

1. The trial court erred in deciding for the respondent spouse(s) where there exists no cause of action against the herein petitioner.
2. The trial court erred when it abbreviated the proceeding and rendered judgment based only on the documentary evidence presented during the pre-trial conference.
3. The trial court erred in holding the petitioner liable in excess of the limits of liability as provided for in the policy contract.

On August 20, 1979, this Court issued a temporary restraining order enjoining the respondents from enforcing the Writ of Execution dated August 1, 1978 (p. 19, Rollo).

It is the contention of the petitioner that the Advincula spouses have no cause of action against it. As parents of the victim, they may proceed against the driver, Silverio Blanco on the basis of the provisions of the New Civil Code. However, they have no cause of action against First Insurance, because they are not parties to the insurance contract.

It is settled that where the insurance contract provides for indemnity against liability to a third party, such third party can directly sue the insurer (*Cagua v. Fieldman's Insurance Co., Inc.* G.R. No. 23276, November 29, 1968, 26 SCRA 178). The liability of the insurer to such third person is based on contract while the liability of the insured to the third party is based on tort (*Malayan Insurance Co., Inc. v. CA*, L-36413, September 26, 1988, 165 SCRA 536). This rule was explained in the case of *Shafer v. Judge, RTC of Olongapo City, Br. 75*, G.R. No. 78848, November 14, 1988:

"The injured for whom the contract of insurance is intended can sue directly the insurer. The general purpose of statutes enabling an injured person to proceed directly against the insurer is to protect injured persons against the insolvency of the insured who causes such injury, and to give such injured person a certain beneficial interest in the proceeds of the policy, and statutes are to be liberally construed so that their intended purpose may be accomplished. It has even been held that such a provision creates a contractual relation which inures to the benefit of any and every person who may be negligently injured by the named insured as if such injured person were specifically named in the policy.

"In the event that the injured fails or refuses to include the insurer as party defendant in his claim for indemnity against the insured, the latter is not prevented by law to avail of the procedural rules intended to avoid multiplicity of suits. Not even a 'no action' clause under the policy which requires that a final judgment be first obtained against the insured and that only thereafter can the person insured recover on the policy can prevail over the Rules of Court provisions aimed at avoiding multiplicity of suits." (p. 391, 167 SCRA) (underscoring supplied)

First Insurance cannot evade its liability as insurer by hiding under the cloak of the insured. Its liability is primary and not dependent on the recovery of judgment from the insured.

"Compulsory Motor Vehicle Liability Insurance (third party liability, or TPL) is primarily intended to provide compensation for the death or bodily injuries suffered by innocent third parties or passengers as a result of a negligent operation and use of motor vehicles. The victims and/or their dependents are assured of immediate financial assistance, regardless of the financial capacity of the motor vehicle owners.

"x x x the insurer's liability accrues immediately upon the occurrence of the injury or event upon which the liability depends, and does not depend on the recovery of judgment by the injured party against the insured (*Shafer v. Judge, RTC of Olongapo*, supra, p. 390)

It is true that Blanco denied that he was negligent when the incident occurred. However, during the pre-trial conference, when respondent judge admitted all the exhibits of the plaintiffs to abbreviate the proceedings, no objection was interposed by Blanco. When a decision was rendered based only on the exhibits of the plaintiffs, Blanco likewise did not object. No motion for reconsideration was filed by either Blanco or First Insurance. Hence, the decision became final and may no longer be attacked.

It should be noted also that First Insurance was declared in default because of its failure to file an answer. As far as it was concerned, it failed to raise any triable issue. It lost its standing in court and judgment may be rendered against it on the basis only of the evidence of the Advincula spouses.

Petitioner had been given its day in court. Despite its having been declared in default and its failure to file a motion to lift the order of default, it was still notified of the subsequent proceedings in the trial court. But no positive step was taken by it on time to vacate the order of default, the decision nor the amended decision. Instead, it chose to file a petition for relief from judgment on September 1, 1978 almost five (5) months from its receipt of a copy of the amended decision on April 11, 1978. Clearly, the said petition for relief from judgment was filed out of time. The rules require that such petitions must be filed within sixty (60) days after the petitioner learns of the judgment and not more than six (6) months after such judgment was entered (Rule 38, Section 3). The period

fixed by Rule 38 of the Rules of Court is non-extendible and never interrupted. It is not subject to any condition or contingency, because it is itself devised to meet a condition or contingency. The remedy allowed by Rule 38 is an act of grace, as it were, designed to give the aggrieved party another and last chance. Being in the position of one who begs, such party's privilege is not to impose conditions, haggle or dilly-dally, but to grab what is offered him (Palomares, et al. v. Jimenes, et al., 90 Phil. 773, XVII, L.J., No. 3, p. 136, Rafanan v. Rafanan, 35 O.G. 228; Santos v. Manila Electric Co., G.R. L-7735, December 29, 1955; Gana v. Abaya, G.R. No. L-3106, December 29, 1955, cited in Vicente J. Francisco, The Revised Rules of Court of the Philippines, Annotated and Commented, Vol. 11, p. 580).

It appears that the award of damages in favor of Blanco has no basis. The complaint in Civil Case 1104 was for damages brought by the spouses against Blanco and First Insurance. Blanco did not put up any claim against the latter. However, since the said decision had already become final and executory, it can no longer be corrected or amended. In the same vein, the claim of petitioner that its liability to third parties under the insurance policy is limited to P20,000.00 only can no longer be given consideration at this late stage, when the decision of the trial court awarding damages had already become final and executory.

ACCORDINGLY, finding respondent judge to have acted within his jurisdiction in denying the petition for relief from judgment, the petition is DISMISSED. The questioned decision of the trial court in Civil Case No. 1104 having become final and executory, is AFFIRMED. The temporary restraining order issued on August 20, 1979 is hereby lifted.

Costs against petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

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