

GREAT PACIFIC LIFE INSURANCE CORPORATION, PETITIONER, VS. THE HON. COURT OF APPEALS AND TEODORO CORTEZ, RESPONDENTS.

G.R. NO. 57308. April 23, 1990

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This case involves an insured's claim for refund of the first premium on the endowment policy on his life, upon being notified by the insurer that the policy never took effect despite the premium payment.

Private respondent Teodoro Cortez, upon the solicitation of Margarita Siega, an underwriter for the petitioner Great Pacific Insurance Corporation, applied for a 20-year endowment policy for P30,000. His application, with the requisite medical examination, was accepted and approved by the company and in due course, Endowment Policy No. 221944 was issued in his name. It was released for delivery on January 24, 1973, and was actually delivered to him by the underwriter, Mrs. Siega, on January 25, 1973. The effective date indicated on the face of the policy in question was December 25, 1972. The annual premium was P1,416.60. Mrs. Siega assured him that the first premium may be paid within the grace period of thirty (30) days from date of delivery of the policy. The first premium of P1,416.60 was paid by him in three (3) installments, to wit:

(1) P400 evidenced by Temporary Receipt No. 19422, dated February 5, 1973 issued by Mrs. Siega (Exh. B) and confirmed by Official Receipt No. 43543 dated March 6, 1973, issued by the Home Office of the defendant in Makati, Rizal (Exh. B-1);

(2) P350 evidenced by Temporary Receipt No. 19448 dated February 17, 1973 issued by Mrs. Siega (Exh. C) and confirmed by Official Receipt No. 43559 dated March 28, 1973 issued by defendant's Home Office (Exh. C-1); and

(3) P666.60 evidenced by Temporary Receipt No. 19702 dated February 21, 1973, issued by the underwriter Mrs. Siega (Exh. D), and confirmed by Official Receipt No. 43563 dated March 28, 1973 issued by defendant's Home Office (Exh. D-1).

In a letter dated June 1, 1973 (Exh. E), defendant advised plaintiff that Policy No. 221944 (Exh. A) was not in force. To make it enforceable and operative, plaintiff was asked to remit the balance of P1,015.60 to complete his initial annual premium due December 15, 1972, and to see Dr. Felipe V. Remollo for another full medical examination at his own expense.

Cortez' reaction to the company's act was to immediately inform it that he was cancelling the policy and he demanded the return of his premium plus damages.

When the company ignored his demand, Cortez filed on August 14, 1973, a complaint for damages in the Court of First Instance of Negros Oriental, docketed as Civil Case No. 5709, entitled "Teodoro Cortez vs. Pacific Life Assurance Corporation." He prayed for the refund of the insurance premium of P1,416.60 which he paid, plus

P45,000 as moral damages, and P2,000 as attorney's fees.

After trial, the court a quo rendered judgment on September 9, 1977, the dispositive portion of which reads:

"FOR ALL THE FOREGOING CONSIDERATIONS, judgment is hereby rendered, in favor of the plaintiff and against the defendant, ordering the latter to pay to plaintiff the sum of:

"(1) ONE THOUSAND FOUR HUNDRED SIXTEEN PESOS AND SIXTY CENTAVOS (P1,416.60), without interest, representing the first annual premium paid by plaintiff on policy Exh. 'A';

"(2) THIRTY THOUSAND PESOS (P30,000.00) as moral damages;

"(3) FIVE HUNDRED PESOS (P500.00) as litigation expenses;

"(4) TWO THOUSAND PESOS (P2,000.00) as attorney's fees; and

"(5) Costs of suit." (p. 22, Rollo.)

The insurer appealed to the Court of Appeals and on March 10, 1981, the latter court rendered a decision the dispositive portion of which reads:

"WHEREFORE, modified in the sense the amount of moral damages is hereby reduced to P10,000.00, the judgment appealed from is hereby affirmed in all other respects. With cost against the appellant." (p. 25, Rollo.)

It filed a motion for reconsideration, but the same was denied by the Appellate Court on June 11, 1981. Hence, this petition for review.

The only issue in this case is whether Cortez is entitled to a refund of his premium.

In affirming the lower court's decision, the Appellate Court made the following observations:

"In the instant case, the policy was issued on December 25, 1972 and was delivered on January 25, 1973 and the appellee was given by the appellant thru its underwriter Mrs. Margarita Siega a grace period of 30 days from said date within which the premium was to be paid. Record shows that the premium was paid fully on February 21, 1973 or within the grace period. This being so, the policy was already enforceable. The company had sufficient time to examine the result of their medical examination on the person of the appellee. They would not have delivered the policy on January 24, 1973 if the appellee was unacceptable. Moreover, if premiums were to be paid within 90 days then the reckoning period should be the date the policy was delivered and not the date the appellee was physically examined. The 90-day period from the date of physical examination as provided for in the receipts of payment is of no moment, since said receipts are an integral part of the insurance policy (contract). The official receipts issued by the company's agent can only mean that the company ratified the act of Mrs. Margarita Siega in giving the appellee a grace period of 30 days from January 25, 1973 within which to pay the annual premium.

"Indeed, record shows that the three (3) installment payments were paid for within 30-days period and all 3 partial payments were officially acknowledged by the company, on March 6, 1973, and the 2 other installments on March 28, 1973, Exhs. D-1, C-1, E-1. To the mind of this Court, this acknowledgments are the most eloquent proofs that at such time the policy was already in full force and effect. We have no doubt at all that when the appellant wrote the letter in question in June 1973, understandably, the appellee must have been shocked to know that after all, the matter about his coverage or the security that he provided for his family was after all empty or, to say the least, made debatable by the very company the appellant has sought security from." (p. 24, Rollo.)

When the petitioner advised private respondent on June 1, 1973, four months after he had paid the first premium,

that his policy had never been in force, and that he must pay another premium and undergo another medical examination to make the policy effective, the petitioner committed a serious breach of the contract of insurance.

Petitioner should have informed Cortez of the deadline for paying the first premium before or at least upon delivery of the policy to him, so he could have complied with what was needful and would not have been misled into believing that his life and his family were protected by the policy, when actually they were not. And, if the premium paid by Cortez was unacceptable for being late, it was the company's duty to return it. By accepting his premiums without giving him the corresponding protection, the company acted in bad faith.

Sections 79, 81 anti 82 of P. D. 612 of the Insurance Code of 1978 provide when the insured entitled to the return of premium paid.

"SECTION 79. A person insured is entitled to a return of premium, as follows:

"(a) To the whole premium, if no part of his interest in the thing insured be exposed to any of the perils insured against.

"(b) Where the insurance is made for a definite period of time and the insured surrenders his policy, to such portion of the premium as corresponds with the unexpired time, at a pro rata rate, unless a short period rate has been agreed upon and appears on the face of the policy, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued: Provided, That no holder of a life insurance policy may avail himself of the privileges of this paragraph without sufficient causes as otherwise provided by law."

"SECTION 81. A person insured is entitled to a return of the premium when the contract is voidable on account of the fraud or misrepresentation of the insurer or of his agent or on account of facts the existence of which the insured was ignorant without his fault; or when, by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy."

"SECTION 82. In case of an over-insurance by several insurers, the insured is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the thing at risk."

Since his policy was in fact inoperative or ineffectual from the beginning, the company was never at risk, hence, it is not entitled to keep the premium.

The award of moral damages to Cortez was proper for there can hardly be any doubt that he must have suffered moral shock, serious anxiety and wounded feelings upon being informed by the petitioner six (6) months after it issued the policy to him and four (4) months after receiving the full premium, that his policy was in fact worthless for it never took effect, hence, he and his family never received the protection that he paid for.

WHEREFORE, the petition for review is denied for lack of merit. In the interest of justice, in view of the serious delay the private respondent's claim has suffered on account of the petitioner's intransigence in refusing to pay its just debt, the petitioner is ordered to pay legal rate of interest of 6% per annum on the premium of P1,416.60 refundable to the private respondent from the filing of the complaint until the judgment is fully paid. As thus modified, the decision of the Court of Appeals is affirmed. Costs against the petitioner. This decision is immediately executory.

SO ORDERED.

Narvasa, Acting C.J., (Chairman), Gancayco, and Medialdea, JJ., concur.
Cruz, J., no part.

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