

FIGURACION VDA. DE MAGLANA, EDITHA M. CRUZ, ERLINDA M. MASESAR, LEONILA M. MALLARI, GILDA ANTONIO AND THE MINORS LEAH, LOPE, JR., AND ELVIRA, ALL SURNAMED MAGLANA, HEREIN REPRES...

G.R. No. 60506. August 06, 1992

Ponente: ROMERO, J.

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ROMERO, J.:

The nature of the liability of an insurer sued together with the insured/operator-owner of a common carrier which figured in an accident causing the death of a third person is sought to be defined in this petition for certiorari.

The facts as found by the trial court are as follows:

"x x x. Lope Maglana was an employee of the Bureau of Customs whose work station was at Lasa, here in Davao City. On December 20, 1978, early morning, Lope Maglana was on his way to his work station, driving a motorcycle owned by the Bureau of Customs. At Km. 7, Lanang, he met an accident that resulted in his death. He died on the spot. The PUJ jeep that bumped the deceased was driven by Pepito Into, operated and owned by defendant Destrajo. From the investigation conducted by the traffic investigator, the PUJ jeep was overtaking another passenger jeep that was going towards the city poblacion. While overtaking, the PUJ jeep of defendant Destrajo running abreast with the overtaken jeep, bumped the motorcycle driven by the deceased who was going towards the direction of Lasa, Davao City. The point of impact was on the lane of the motorcycle and the deceased was thrown from the road and met his untimely death." [1]

Consequently, the heirs of Lope Maglana, Sr., herein petitioners, filed an action for damages and attorney's fees against operator Patricio Destrajo and the Afisco Insurance Corporation (AFISCO for brevity) before the then Court of First Instance of Davao, Branch II. [2] An information for homicide thru reckless imprudence was also filed against Pepito Into.

During the pendency of the civil case, Into was sentenced to suffer an indeterminate penalty of one (1) year, eight (8) months and one (1) day of prision correccional, as minimum, to four (4) years, nine (9) months and eleven (11) days of prision correccional, as maximum, with all the accessory penalties provided by law, and to indemnify the heirs of Lope Maglana, Sr. in the amount of twelve thousand pesos (P12,000.00) with subsidiary imprisonment in case of insolvency, plus five thousand pesos (P5,000.00) in the concept of moral and exemplary damages with costs. No appeal was interposed by the accused who later applied for probation.

On December 14, 1981, the lower court rendered a decision finding that Destrajo had not exercised sufficient diligence as the operator of the jeepney. The dispositive portion of the decision reads:

"WHEREFORE, the Court finds judgment in favor of the plaintiffs against defendant Destrajo, ordering him to pay plaintiffs the sum of P28,000.00 for loss of income; to pay plaintiffs the sum of P12,000.00 which amount shall be deducted in the event judgment in Criminal Case No. 3527-D against the driver, accused Into, shall have been enforced; to pay plaintiffs the sum of P5,901.70 representing funeral and burial expenses of the

deceased; to pay plaintiffs the sum of P5,000.00 as moral damages which shall be deducted in the event judgment (sic) in Criminal Case No. 3527-D against the driver, accused Into; to pay plaintiffs the sum of P3,000.00 as attorney's fees and to pay the costs of suit.

The defendant insurance company is ordered to reimburse defendant Destrajo whatever amounts the latter shall have paid only up to the extent of its insurance coverage.

SO ORDERED.”[3]

Petitioners filed a motion for the reconsideration of the second paragraph of the dispositive portion of the decision contending that AFISCO should not merely be held secondarily liable because the Insurance Code provides that the insurer's liability is “direct and primary and/or jointly and severally with the operator of the vehicle, although only up to the extent of the insurance coverage.”[4] Hence, they argued that the P20,000.00 coverage of the insurance policy issued by AFISCO, should have been awarded in their favor.

In its comment on the motion for reconsideration, AFISCO argued that since the Insurance Code does not expressly provide for a solidary obligation, the presumption is that the obligation is joint.

In its Order of February 9, 1982, the lower court denied the motion for reconsideration ruling that since the insurance contract “is in the nature of suretyship, then the liability of the insurer is secondary only up to the extent of the insurance coverage.”[5]

Petitioners filed a second motion for reconsideration reiterating that the liability of the insurer is direct, primary and solidary with the jeepney operator because the petitioners became direct beneficiaries under the provision of the policy which, in effect, is a stipulation pour autrui.[6] This motion was likewise denied for lack of merit.

Hence, petitioners filed the instant petition for certiorari which, although it does not seek the reversal of the lower court's decision in its entirety, prays for the setting aside or modification of the second paragraph of the dispositive portion of said decision. Petitioners reassert their position that the insurance company is directly and solidarily liable with the negligent operator up to the extent of its insurance coverage.

We grant the petition.

The particular provision of the insurance policy on which petitioners base their claim is as follows:

“SECTION 1 — LIABILITY TO THE PUBLIC

1. The Company will, subject to the Limits of Liability, pay all sums necessary to discharge liability of the insured in respect of

(a) death of or bodily injury to any THIRD PARTY

(b) x x x.

2. x x x.

3. In the event of the death of any person entitled to indemnity under this Policy, the Company will, in respect of the liability incurred to such person indemnify his personal representatives in terms of, and subject to the terms and conditions hereof.”[7]

The above-quoted provision leads to no other conclusion but that AFISCO can be held directly liable by petitioners. As this Court ruled in *Shafer vs. Judge, RTC of Olongapo City, Br. 75*, “[w]here an insurance policy insures directly against liability, 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.”[8] The underlying reason behind the third party liability (TPL) of the Compulsory Motor Vehicle Liability Insurance 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 x x x.”[9] Since petitioners had received from AFISCO the sum of P5,000.00 under the no-fault clause. AFISCO's liability is now limited to P15,000.00.

However, we cannot agree that AFISCO is likewise solidarily liable with Destrajo. In *Malayan Insurance Co., Inc. v. Court of Appeals*,[10] this Court had the opportunity to resolve the issue as to the nature of the liability of the insurer and the insured vis-a-vis the third party injured in an accident. We categorically ruled thus:

"While it is true that where the insurance contract provides for indemnity against liability to third persons, such third persons can directly sue the insurer, however, the direct liability of the insurer under indemnity contracts against third party liability does not mean that the insurer can be held solidarily liable with the insured and/or the other parties found at fault. The liability of the insurer is based on contract; that of the insured is based on tort.

In the case at bar, petitioner as insurer of Sio Choy, is liable to respondent Vallejos (the injured third party), but it cannot, as incorrectly held by the trial court, be made 'solidarily' liable with the two principal tortfeasors, namely respondents Sio Choy and San Leon Rice Mill, Inc. For if petitioner-insurer were solidarily liable with said two (2) respondents by reason of the indemnity contract against third party liability - under which an insurer can be directly sued by a third party - this will result in a violation of the principles underlying solidary obligation and insurance contracts." (underscoring supplied)

The Court then proceeded to distinguish the extent of the liability and manner of enforcing the same in ordinary contracts from that of insurance contracts. While in solidary obligations, the creditor may enforce the entire obligation against one of the solidary debtors, in an insurance contract, the insurer undertakes for a consideration to indemnify the insured against loss, damage or liability arising from an unknown or contingent event.[11] Thus, petitioner therein, which, under the insurance contract is liable only up to P20,000.00, can not be made solidarily liable with the insured for the entire obligation of P29,013.00 otherwise there would result "an evident breach of the concept of solidary obligation.”

Similarly, petitioners herein cannot validly claim that AFISCO, whose liability under the insurance policy is also P20,000.00, can be held solidarily liable with Destrajo for the total amount of P53,901.70 in accordance with the decision of the lower court. Since under both the law and the insurance policy, AFISCO's liability is only up to P20,000.00, the second paragraph of the dispositive portion of the decision in question may have unwittingly sown confusion among the petitioners and their counsel. What should have been clearly stressed as to leave no room for doubt was the liability of AFISCO under the explicit terms of the insurance contract.

In fine, we conclude that the liability of AFISCO based on the insurance contract is direct, but not solidary with that of Destrajo which is based on Article 2180 of the Civil Code.[12] As such, petitioners have the option either to claim the P15, 000 from AFISCO and the balance from Destrajo or enforce the entire judgment from Destrajo subject to reimbursement from AFISCO to the extent of the insurance coverage.

While the petition seeks a definitive ruling only on the nature of AFISCO's liability, we noticed that the lower court erred in the computation of the probable loss of income. Using the formula: $\frac{2}{3}$ of $(80-56) \times P12,000.00$, it awarded P28,800.00.[13] Upon recomputation, the correct amount is P192,000.00, Being a "plain error," we opt to correct the same.[14] Furthermore, in accordance with prevailing jurisprudence, the death indemnity is hereby increased to P50,000.00.[15]

WHEREFORE, premises considered, the present petition is hereby GRANTED. The award of P28,800.00

representing loss of Income is INCREASED to P192,000.00 and the death indemnity of P12,000.00 to P50,000.00.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, and Davide, Jr., JJ., concur.
Feliciano, J., in the result.

[1] Decision, p. 5; Annex "A" to Petition, Rollo, p. 27.

[2] Civil Case No. 12706.

[3] Rollo, pp. 31-32.

[4] Motion for Reconsideration, p. 2; Rollo, p. 34.

[5] Rollo, pp. 37-38.

[6] Ibid., pp. 39-43.

[7] Ibid, p. 41.

[8] G.R. No. 78848, November 14, 1988, 167 SCRA 386, 391.

[9] Ibid.

[10] L-36413, September 26, 1988, 165 SCRA 536, 544.

[11] Supra, at p. 544 citing *The Imperial Insurance, Inc. v. David*, L-32425, November 21, 1984, 133 SCRA 317 and *Philippine Phoenix Surety Insurance Co. v. Woodworks, Inc.*, L-25317, August 6, 1979, 92 SCRA 419. See: *Quiombing v. Court of Appeals*, G.R. No. 93010, August 30, 1990, 189 SCRA 325, 328 re concept of solidary obligation.

[12] Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

[13] Decision, p. 9, Annex "A", Rollo, p. 31; Citing *Villa Rey Transit, Inc. v. Court of Appeals*, L-25499, February 18, 1970, 31 SCRA 511 and *Davila vs. Philippine Airlines*, L-28512, February 28, 1973, 49 SCRA 497.

[14] Section 7, Rule 51, Rules of Court.

[15] *Dangwa Transportation Co., Inc. v. Court of Appeals*, G.R. No. 95582, October 7, 1991, 202, SCRA 574.

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