

TRAVELLERS INSURANCE & SURETY CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS AND VICENTE MENDOZA, RESPONDENTS.

G.R. No. 82036. May 22, 1997

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

The petition herein seeks the review and reversal of the decision[1] of respondent Court of Appeals[2] affirming in toto the judgment[3] of the Regional Trial Court[4] in an action for damages[5] filed by private respondent Vicente Mendoza, Jr. as heir of his mother who was killed in a vehicular accident.

Before the trial court, the complainant lumped the erring taxicab driver, the owner of the taxicab, and the alleged insurer of the vehicle which featured in the vehicular accident into one complaint. The erring taxicab was allegedly covered by a third-party liability insurance policy issued by petitioner Travellers Insurance & Surety Corporation.

The evidence presented before the trial court established the following facts:

“At about 5:30 o’clock in the morning of July 20, 1980, a 78-year old woman by the name of Feliza Vineza de Mendoza was on her way to hear mass at the Tayuman Cathedral. While walking along Tayuman corner Gregorio Perfecto Streets, she was bumped by a taxi that was running fast. Several persons witnessed the accident, among whom were Rolando Marvilla, Ernesto Lopez and Eulogio Tabalno. After the bumping, the old woman was seen sprawled on the pavement. Right away, the good Samaritan that he was, Marvilla ran towards the old woman and held her on his lap to inquire from her what had happened, but obviously she was already in shock and could not talk. At this moment, a private jeep stopped. With the driver of that vehicle, the two helped board the old woman on the jeep and brought her to the Mary Johnston Hospital in Tondo.

x x x Ernesto Lopez, a driver of a passenger jeepney plying along Tayuman Street from Pritil, Tondo, to Rizal Avenue and vice-versa, also witnessed the incident. It was on his return trip from Rizal Avenue when Lopez saw the plaintiff and his brother who were crying near the scene of the accident. Upon learning that the two were the sons of the old woman, Lopez told them what had happened. The Mendoza brothers were then able to trace their mother at the Mary Johnston Hospital where they were advised by the attending physician that they should bring the patient to the National Orthopedic Hospital because of her fractured bones. Instead, the victim was brought to the U.S.T. Hospital where she expired at 9:00 o’clock that same morning. Death was caused by ‘traumatic shock’ as a result of the severe injuries she sustained x x x x.

x x x The evidence shows that at the moment the victim was bumped by the vehicle, the latter was running fast, so much so that because of the strong impact the old woman was thrown away and she fell on the pavement. x x x In truth, in that related criminal case against defendant Dumlao x x x the trial court found as a fact that therein accused ‘was driving the subject taxicab in a careless, reckless and imprudent manner and at a speed greater than what was reasonable and proper without taking the necessary precaution to avoid accident to persons x x x considering the condition of the traffic at the place at the time aforementioned’ x x x. Moreover,

the driver fled from the scene of the accident and without rendering assistance to the victim. x x x

x x x Three (3) witnesses who were at the scene at the time identified the taxi involved, though not necessarily the driver thereof. Marvilla saw a lone taxi speeding away just after the bumping which, when it passed by him, said witness noticed to be a Lady Love Taxi with Plate No. 438, painted maroon, with baggage bar attached on the baggage compartment and with an antennae[sic] attached at the right rear side. The same descriptions were revealed by Ernesto Lopez, who further described the taxi to have x x x reflectorized decorations on the edges of the glass at the back. x x x A third witness in the person of Eulogio Tabalno x x x made similar descriptions although, because of the fast speed of the taxi, he was only able to detect the last digit of the plate number which is '8'. x x x [T]he police proceeded to the garage of Lady Love Taxi and then and there they took possession of such a taxi and later impounded it in the impounding area of the agency concerned. x x x [T]he eyewitnesses x x x were unanimous in pointing to that Lady Love Taxi with Plate No. 438, obviously the vehicle involved herein.

x x x During the investigation, defendant Armando Abellon, the registered owner of Lady Love Taxi bearing No. 438-HA Pilipinas Taxi 1980, certified to the fact 'that the vehicle was driven last July 20, 1980 by one Rodrigo Dumlao x x x' x x x It was on the basis of this affidavit of the registered owner that caused the police to apprehend Rodrigo Dumlao, and consequently to have him prosecuted and eventually convicted of the offense x x x. x x x [S]aid Dumlao absconded in that criminal case, specially at the time of the promulgation of the judgment therein so much so that he is now a fugitive from justice." [6]

Private respondent filed a complaint for damages against Armando Abellon as the owner of the Lady Love Taxi and Rodrigo Dumlao as the driver of the Lady Love taxicab that bumped private respondent's mother. Subsequently, private respondent amended his complaint to include petitioner as the compulsory insurer of the said taxicab under Certificate of Cover No. 1447785-3.

After trial, the trial court rendered judgment in favor of private respondent, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff, or more particularly the 'Heirs of the late Feliza Vineza de Mendoza,' and against defendants Rodrigo Dumlao, Armando Abellon and Travellers Insurance and Surety Corporation, by ordering the latter to pay, jointly and severally, the former the following amounts:

- (a) The sum of P2,924.70, as actual and compensatory damages, with interest thereon at the rate of 12% per annum from October 17, 1980, when the complaint was filed, until the said amount is fully paid;
- (b) P30,000.00 as death indemnity;
- (c) P25,000.00 as moral damages;
- (d) P10,000.00 as by way of corrective or exemplary damages; and
- (e) Another P10,000.00 by way of attorney's fees and other litigation expenses.

Defendants are further ordered to pay, jointly and severally, the costs of this suit.

SO ORDERED."[7]

Petitioner appealed from the aforecited decision to the respondent Court of Appeals. The decision of the trial court was affirmed by respondent appellate court. Petitioner's Motion for Reconsideration[8] of September 22, 1987 was denied in a Resolution[9] dated February 9, 1988.

Hence this petition.

Petitioner mainly contends that it did not issue an insurance policy as compulsory insurer of the Lady Love Taxi and that, assuming arguendo that it had indeed covered said taxicab for third-party liability insurance, private respondent failed to file a written notice of claim with petitioner as required by Section 384 of P.D. No. 612, otherwise known as the Insurance Code.

We find the petition to be meritorious.

I

When private respondent filed his amended complaint to implead petitioner as party defendant and therein alleged that petitioner was the third-party liability insurer of the Lady Love taxicab that fatally hit private respondent's mother, private respondent did not attach a copy of the insurance contract to the amended complaint. Private respondent does not deny this omission.

It is significant to point out at this juncture that the right of a third person to sue the insurer depends on whether the contract of insurance is intended to benefit third persons also or only the insured.

“[A] policy x x x 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 or bodily injury to any person x x x is one for indemnity against liability; 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 on 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.”[10]

Since private respondent failed to attach a copy of the insurance contract to his complaint, the trial court could not have been able to apprise itself of the real nature and pecuniary limits of petitioner's liability. More importantly, the trial court could not have possibly ascertained the right of private respondent as third person to sue petitioner as insurer of the Lady Love taxicab because the trial court never saw nor read the insurance contract and learned of its terms and conditions.

Petitioner, understandably, did not volunteer to present any insurance contract covering the Lady Love taxicab that fatally hit private respondent's mother, considering that petitioner precisely presented the defense of lack of insurance coverage before the trial court. Neither did the trial court issue a subpoena duces tecum to have the insurance contract produced before it under pain of contempt.

We thus find hardly a basis in the records for the trial court to have validly found petitioner liable jointly and severally with the owner and the driver of the Lady Love taxicab, for damages accruing to private respondent.

Apparently, the trial court did not distinguish between the private respondent's cause of action against the owner and the driver of the Lady Love taxicab and his cause of action against petitioner. The former is based on torts and quasi-delicts while the latter is based on contract. Confusing these two sources of obligations as they arise from the same act of the taxicab fatally hitting private respondent's mother, and in the face of overwhelming evidence of the reckless imprudence of the driver of the Lady Love taxicab, the trial court brushed aside its ignorance of the terms and conditions of the insurance contract and forthwith found all three - the driver of the taxicab, the owner of the taxicab, and the alleged insurer of the taxicab - jointly and severally liable for actual, moral and exemplary

damages as well as attorney's fees and litigation expenses. This is clearly a misapplication of the law by the trial court, and respondent appellate court grievously erred in not having reversed the trial court on this ground.

“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.”[11]

Applying this principle underlying solidary obligation and insurance contracts, we ruled in one case that:

“In solidary obligation, the creditor may enforce the entire obligation against one of the solidary debtors. On the other hand, insurance is defined as ‘a contract whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event.’

In the case at bar, the trial court held petitioner together with respondents Sio Choy and San Leon Rice Mills Inc. solidarily liable to respondent Vallejos for a total amount of P29,103.00, with the qualification that petitioner's liability is only up to P20,000.00. In the context of a solidary obligation, petitioner may be compelled by respondent Vallejos to pay the entire obligation of P29,103.00, notwithstanding the qualification made by the trial court. But, how can petitioner be obliged to pay the entire obligation when the amount stated in its insurance policy with respondent Sio Choy for indemnity against third-party liability is only P20,000.00? Moreover, the qualification made in the decision of the trial court to the effect that petitioner is sentenced to pay up to P20,000.00 only when the obligation to pay P29,103.00 is made solidary is an evident breach of the concept of a solidary obligation.”[12]

The above principles take on more significance in the light of the counter-allegation of petitioner that, assuming arguendo that it is the insurer of the Lady Love taxicab in question, its liability is limited to only P50,000.00, this being its standard amount of coverage in vehicle insurance policies. It bears repeating that no copy of the insurance contract was ever proffered before the trial court by the private respondent, notwithstanding knowledge of the fact that the latter's complaint against petitioner is one under a written contract. Thus, the trial court proceeded to hold petitioner liable for an award of damages exceeding its limited liability of P50,000.00. This only shows beyond doubt that the trial court was under the erroneous presumption that petitioner could be found liable absent proof of the contract and based merely on the proof of reckless imprudence on the part of the driver of the Lady Love taxicab that fatally hit private respondent's mother.

II

Petitioner did not tire in arguing before the trial court and the respondent appellate court that, assuming arguendo that it had issued the insurance contract over the Lady Love taxicab, private respondent's cause of action against petitioner did not successfully accrue because he failed to file with petitioner a written notice of claim within six (6) months from the date of the accident as required by Section 384 of the Insurance Code.

At the time of the vehicular incident which resulted in the death of private respondent's mother, during which time the Insurance Code had not yet been amended by Batas Pambansa (B.P.) Blg. 874, Section 384 provided as follows:

“Any person having any claim upon the policy issued pursuant to this chapter shall, without any unnecessary delay, present to the insurance company concerned a written notice of claim setting forth the amount of his loss, and/or the nature, extent and duration of the injuries sustained as certified by a duly licensed physician. Notice of claim must be filed within six months from date of the accident, otherwise, the claim shall be deemed waived. Action or suit for recovery of damage due to loss or injury must be brought in proper cases,

with the Commission or the Courts within one year from date of accident, otherwise the claimant's right of action shall prescribe" [emphasis and underscoring supplied].

In the landmark case of *Summit Guaranty and Insurance Co., Inc. v. De Guzman*,^[13] we ruled that the one year prescription period to bring suit in court against the insurer should be counted from the time that the insurer rejects the written claim filed therewith by the insured, the beneficiary or the third person interested under the insurance policy. We explained:

"It is very obvious that petitioner company is trying to use Section 384 of the Insurance Code as a cloak to hide itself from its liabilities. The facts of these cases evidently reflect the deliberate efforts of petitioner company to prevent the filing of a formal action against it. Bearing in mind that if it succeeds in doing so until one year lapses from the date of the accident it could set up the defense of prescription, petitioner company made private respondents believe that their claims would be settled in order that the latter will not find it necessary to immediately bring suit. In violation of its duties to adopt and implement reasonable standards for the prompt investigation of claims and to effectuate prompt, fair and equitable settlement of claims, and with manifest bad faith, petitioner company devised means and ways of stalling the settlement proceedings. x x x [N]o steps were taken to process the claim and no rejection of said claim was ever made even if private respondent had already complied with all the requirements. x x x

This Court has made the observation that some insurance companies have been inventing excuses to avoid their just obligations and it is only the State that can give the protection which the insuring public needs from possible abuses of the insurers."^[14]

It is significant to note that the aforecited Section 384 was amended by B.P. Blg. 874 to categorically provide that "action or suit for recovery of damage due to loss or injury must be brought in proper cases, with the Commissioner or the Courts within one year from denial of the claim, otherwise the claimant's right of action shall prescribe" [emphasis ours].^[15]

We have certainly ruled with consistency that the prescriptive period to bring suit in court under an insurance policy, begins to run from the date of the insurer's rejection of the claim filed by the insured, the beneficiary or any person claiming under an insurance contract. This ruling is premised upon the compliance by the persons suing under an insurance contract, with the indispensable requirement of having filed the written claim mandated by Section 384 of the Insurance Code before and after its amendment. Absent such written claim filed by the person suing under an insurance contract, no cause of action accrues under such insurance contract, considering that it is the rejection of that claim that triggers the running of the one-year prescriptive period to bring suit in court, and there can be no opportunity for the insurer to even reject a claim if none has been filed in the first place, as in the instant case.

"The one-year period should instead be counted from the date of rejection by the insurer as this is the time when the cause of action accrues. x x x

In *Eagle Star Insurance Co., Ltd., et al. vs. Chia Yu*, this Court ruled:

'The plaintiff's cause of action did not accrue until his claim was finally rejected by the insurance company. This is because, before such final rejection, there was no real necessity for bringing suit.'

The philosophy of the above pronouncement was pointed out in the case of *ACCFA vs. Alpha Insurance and Surety Co.*, viz.:

'Since a cause of action requires, as essential elements, not only a legal right of the plaintiff and a correlative obligation of the defendant but also an act or omission of the defendant in violation of said legal right, the cause of action does not accrue until the party obligated refuses, expressly or impliedly, to comply with its duty'.^[16]

When petitioner asseverates, thus, that no written claim was filed by private respondent and rejected by petitioner, and private respondent does not dispute such asseveration through a denial in his pleadings, we are constrained to rule that respondent appellate court committed reversible error in finding petitioner liable under an insurance contract the existence of which had not at all been proven in court. Even if there were such a contract, private respondent's cause of action can not prevail because he failed to file the written claim mandated by Section 384 of the Insurance Code. He is deemed, under this legal provision, to have waived his rights as against petitioner-insurer.

WHEREFORE, the instant petition is HEREBY GRANTED. The decision of the Court of Appeals in CA-G.R. CV No. 09416 and the decision of the Regional Trial Court in Civil Case No. 135486 are REVERSED and SET ASIDE insofar as Travellers Insurance & Surety Corporation was found jointly and severally liable to pay actual, moral and exemplary damages, death indemnity, attorney's fees and litigation expenses in Civil Case No. 135486. The complaint against Travellers Insurance & Surety Corporation in said case is hereby ordered dismissed.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, Vitug, and Kapunan, JJ., concur.

Padilla, (Chairman), J., on leave.

[1] Promulgated on August 31, 1987, and penned by Associate Justice Luis A. Javellana and concurred in by Associate Justice Pedro A. Ramirez and Minerva P. Gonzaga-Reyes; Rollo, pp. 6-19.

[2] Twelfth Division.

[3] Dated October 24, 1985.

[4] Branch II, Manila.

[5] Docketed as Civil Case No. 135486.

[6] Decision of the Court of Appeals, pp. 4-6; Rollo, pp. 9-11. [The decision of the Regional Trial Court was reproduced in its entirety in the decision of the Court of Appeals.]

[7] Id., pp. 12-13; Rollo, pp. 17-18.

[8] Rollo, pp. 20-23.

[9] Rollo, pp. 26-27.

[10] *Guington v. Del Monte*, 20 SCRA 1043, 1046-1047 [1967].

[11] *Malayan Insurance Co., Inc. v. Court of Appeals*, 165 SCRA 536, 544 [1988]. Also see *Vda. De Maglana v. Consolacion*, 212 SCRA 268 [1992].

[12] Id., p. 545.

[13] 151 SCRA 389 [1987].

[14] Id., pp. 395-396.

[15] *Country Bankers Insurance Corp. v. Travellers Insurance and Surety Corporation*, 176 SCRA 523 [1989].

[16] *Summit Guaranty and Insurance Co., Inc. v. De Guzman*, 151 SCRA 389, 397-398 [1987].

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