

HEIRS OF ILDEFONSO COSCOLLUELA, SR., INC., PETITIONER, VS. RICO GENERAL INSURANCE CORPORATION, COURT OF APPEALS (11TH DIVISION), AND HON. ENRIQUE T. JOCSON, JUDGE, REGIONAL TRIA...

G.R. No. 84628. November 16, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The main issues raised in this petition for review on certiorari are whether the Court of Appeals erred in: (1) affirming the dismissal by the trial court of the complaint for damages on the ground of lack of cause of action, and in (2) denying due course to a petition for certiorari on the ground that the remedy of the petitioner to assail said order is appeal.

Petitioner, Heirs of Ildefonso Coscoluella, Inc. is a domestic corporation and the registered owner of an Isuzu KBD Pick-up truck bearing Motor No. 663296 and Plate No. UV-FAW-189. The vehicle was insured with the private respondent Rico General Insurance Corporation for a consideration of P100,000.00 excluding third party liability under Commercial Vehicle Policy No. CV?122415 per Renewal Certificate No. 02189. The premiums and other expenses for insurance paid covered the period from October 1, 1986 to October 1, 1987.

On August 28, 1987 and within the period covered by the insurance, the insured vehicle was severely damaged and rendered unserviceable when fired upon by a group of unidentified armed persons at Hacienda Puyas, Barangay Blumentritt, Murcia, Negros Occidental. In the same incident, four persons died.

Petitioner filed its claim of P80,000.00 for the repair of the vehicle but private respondent, in a letter dated October 8, 1987, refused to grant it. As a consequence, the petitioner was prompted to file a complaint with the Regional Trial Court, 6th Judicial Region, Branch 47 at Bacolod City, docketed as Civil Case No. 4707, to recover the claim of P80,000.00 plus interest and attorney's fees.

The private respondent filed a motion to dismiss alleging that the complaint lacks a cause of action because the firing by armed men is a risk excepted under the following provisions in the insurance policy:

"The Company shall not be liable under any Section of the Policy in respect of: -

1. x x x x x

2. x x x x x

3. Except in respect of claims arising under Sections I and II of the policy, any accident, loss, damage or liability directly or indirectly, proximately or remotely occasioned by, contributed to by or traceable to, or arising out of, or in connection with flood, typhoon, hurricane, volcanic eruption, earthquake or other convulsion of nature, invasion, the act of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil commotion, mutiny, rebellion, insurrection, military or usurped power, or by any direct

or indirect consequences of any of the said occurrences and in the event of any claim hereunder, the Insured shall prove that the accident, loss or damage or liability arose independently of, and was in no way connected with, or occasioned by, or contributed to, any of the said occurrences, or any consequence thereof, and in default of such proof, the Company shall not be liable to make any payment in respect of such claim." (Underscoring supplied; see Rollo, p. 33, 71)

The private respondent alleged that the firing was "an indirect consequence of rebellion, insurrection or civil commotion." The petitioner opposed the motion, saying that the quoted provision does not apply in the absence of an official governmental proclamation of any of the above-enumerated conditions.

The trial court ordered the dismissal of the complaint for lack of cause of action stating that the damage arose from a civil commotion or was a direct result thereof. (Rollo, p. 37)

A motion for reconsideration filed by the petitioner was denied by the trial court which further noted that "Courts can take effective cognizance of the general civil disturbance in the country akin to civil war without any executive proclamation of the existence of such unsettling condition." (Rollo, p. 38)

A second motion for reconsideration was filed but was later withdrawn.

Petitioner filed a notice of appeal which was given due course. However, the trial court, stated in its order that "the records of the case will not be transmitted to the Court of Appeals, the appropriate remedy being (a) petition for review by way of certiorari." In that same order, the trial court took cognizance of the withdrawal of the second motion for reconsideration but noted the police blotter appended to said motion which showed that "other than M-16 Armalite Rifles (the number of which were not specified for unknown reasons), nothing else was taken by the attackers." (Rollo, p. 40)

Thereafter, the petitioner filed a petition for certiorari with the Court of Appeals. The appellate court denied the petition, affirmed the trial court's dismissal order, and also ruled that an appeal in the ordinary course of law, not a special civil action of certiorari, is the proper remedy for the petitioner in assailing the dismissal order.

Hence, this petition to review the respondent appellate court's decision.

Petitioner asserts that its complaint states a cause of action since ultimate facts were alleged as follows:

"3. - That, on August 28, 1987, the ISUZU KBD PICK-UP referred to in the preceding paragraph was damaged as a result of an incident at Hda. Puyas, Barangay Blumentritt, Murcia, Negros Occidental, when it was fired upon by a group of unidentified armed persons causing even the death of four (4) persons and rendering the said vehicle almost totally damaged and unserviceable;

4. - That when the said incident occurred on August 28, 1987, the said ISUZU KBD PICK-UP was insured by the defendant for P100,000.00 excluding third-party liability under Commercial Vehicle Policy No. CV/122415 per Renewal Certificate No. 02189 a copy of which is herewith attached as Annex "B"; and with the premiums and other expenses thereon duly paid for under Official Receipt No. 691, dated September 8, 1986, covering the period from October 1, 1986 to October 1, 1987, a copy of the same being attached hereto as Annex "C";

5. - That, the damage on said motor vehicle being a "fait accompli" and that it was insured by the defendant at the time it was damaged, it is the obligation of the defendant to restore the said vehicle to its former physical and running condition when it was insured however defendant refused and still refuses and fails, despite demands in writing made by plaintiff and its counsel to that effect, copies of said letters attached hereto as Annexes "D" & "E";

6. - That, for purposes of restoring the ISUZU KBD PICK-UP insured by the defendant to its former physical

and running condition when it was insured, as mentioned above, would cost P80,000.00, which will include repair, repainting, replacement of spare parts, labor, etc., the said amount having arrived at upon due consultation with and actual inspection and appraisal of the said motor vehicle by knowledgeable and technical people;

7. - That, as a consequence of defendant's refusal to settle or pay the just claim of plaintiff, plaintiff has been compelled to hire the legal services of counsel for the protection of its rights and interest at the agreed fee of P15,000.00, for and as attorney's fees, which sum plaintiff is claiming from the defendant." (At pp. 29-30, Rollo)

Petitioner further maintains that the order of dismissal was erroneous in that: it overlooked the principle that a motion to dismiss a complaint on the ground of failure to state a cause of action hypothetically admits the allegations in the complaint; no trial was held for the reception of proof that the firing incident was a direct or indirect result of a civil commotion, mutiny, insurrection or rebellion; private respondent had the burden of proof to show that the cause was really an excepted risk; and in any case, the nature of the incident as a "civil disturbance" must first be officially proclaimed by the executive branch of the government. Private respondent, on the other hand, argues that the accident was really a result of a civil commotion, one of the fatalities being a military officer. (Rollo, p. 59)

After a review of the records, the Court finds that the allegations set forth in the complaint sufficiently establish a cause of action. The following are the requisites for the existence of a cause of action: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect, or not to violate such right; and (3) an act or omission on the part of the said defendant constituting a violation of the plaintiff's right or a breach of the obligation of the defendant to the plaintiff. (Cole v. Vda. de Gregoria, 116 SCRA 670 [1982]; Baliwag Transit, Inc. v. Ople, G.R. No. 57642, March 16, 1989)

The facts as alleged clearly define the existence of a right of the petitioner to a just claim against the insurer for the payment of the indemnity for a loss due to an event against which the petitioner's vehicle was insured. The insurance contract mentioned therein manifests a right to pursue a claim and a duty on the part of the insurer or private respondent to compensate the insured in case of a risk insured against. The refusal of the insurer to satisfy the claim and the consequent loss to the petitioner in incurring the cost of acquiring legal assistance on the matter constitutes a violation or an injury brought to the petitioner.

There is, therefore, a sufficient cause of action upon which the trial court can render a valid judgment. (Tañedo v. Bernad, et al G.R. No. 66520, August 30, 1988).

The Court is very much cognizant of the principle that a motion to dismiss on the ground of failure to state a cause of action stated in the complaint hypothetically admits the truth of the facts therein. The Court notes the following limitations on the hypothetical admission:

"The hypothetical admission is however limited to the relevant and material facts well pleaded in the complaint and inferences fairly deducible therefrom. The admission does not extend to conclusions or interpretations of law; nor does it cover allegations of fact the falsity of which is subject to judicial notice." (U. Bañez Electric Light Co. v. Abra Electric Cooperative, Inc., 119 SCRA 90 [1982])

Applying the above principle, we hold that the private respondent's motion to dismiss hypothetically admits the facts alleged in the complaint. We do not find anything in the complaint which does not deserve admission by the motion since there are no "conclusions or interpretations of law" nor "allegations of fact the falsity of which is subject to judicial notice." It is clear that the complaint does no more and no less than state simply that the van

was damaged due to the firing by unidentified armed men. Since the complaint does not explicitly state nor intimate civil strife which private respondent insists to be the cause of the damage, the motion to dismiss cannot go beyond the admission of the facts stated and inferences reasonably deducible from them. Any other assertion by the private respondent is subject to proof. Meanwhile, the sufficiency of the petitioner's cause of action has been shown since, admitting the facts alleged, a valid judgment can be rendered.

The private respondent's invocation of the exceptions clause in the insurance policy as the basis for its non-liability and the consequent dismissal of the complaint is without merit. We also reiterate the established rule that when the terms of an insurance contract contain limitations on liability, the court "should construe them in such a way as to preclude the insurer from non-compliance with his obligations." (*Taurus Taxi Co. Inc. v. Capital Insurance and Surety Company, Inc.*, 24 SCRA 454 [1968]) A policy of insurance with a narration of exceptions tending to work a forfeiture of the policy shall be interpreted liberally in favor of the insured and strictly against the insurance company or the party for whose benefit they are inserted. (*Eagle Star Insurance, Ltd. v. Chia Yu*, 96 Phil. 696 [1955]; *Trinidad v. Orient Protective Asso.*, 67 Phil. 181 [1939]; *Serrano v. Court of Appeals*, 130 SCRA 327 [1984]; and *National Power Corp. v. Court of Appeals*, 145 SCRA 533 [1986])

The facts alleged in the complaint do not give a complete scenario of the real nature of the firing incident. Hence, it was incumbent upon the trial judge to have made a deeper scrutiny into the circumstances of the case by receiving evidence instead of summarily disposing of the case. Contrary to what the respondent appellate court says, this case does not present a pure question of law but demands a factual determination of whether the incident was a result of events falling under the exemptions to the liability of private respondent contained in the policy of insurance.

We agree with the petitioner's claim that the burden of proof to show that the insured is not liable because of an excepted risk is on the private respondent. The Rules of Court in its Section 1, Rule 131 provides that "each party must prove his affirmative allegations." (*Summit Guaranty and Insurance Co., Inc. vs. Court of Appeals*, 110 SCRA 241 [1981]; *Tai Tong Chuache & Co. v. Insurance Commissioner*, 158 SCRA 366 [1988]; *Paris - Manila Perfume Co. v. Phoenix Assurance Co.*, 49 Phil. 753 [1926]). Where the insurer denies liability for a loss alleged to be due to a risk not insured against, but fails to establish the truth of such fact by concrete proofs, the Court rules that the insurer is liable under the terms and conditions of the policy by which it has bound itself. In this case, the dismissal order without hearing and reception of evidence to prove that the firing incident was indeed a result of a civil commotion, rebellion or insurrection constitutes reversible error on the part of the trial court.

The Court stresses that it would be a grave and dangerous procedure for the courts to permit insurance companies to escape liability through a motion to dismiss without the benefit of hearing and evidence every time someone is killed, or as in this case, property is damaged in an ambush. The question on the nature of the firing incident for the purpose of determining whether or not the insurer is liable must first be threshed out and resolved in a full-blown trial.

The evidence to be received does not even have to relate to the existence of an official government proclamation of the nature of the incident because the latter is not an explicit requirement in the exception clause resolved in a mere motion to dismiss and is, for purposes of this petition for review on certiorari, immaterial. This particular issue on when to take cognizance of a rebellion for purposes of the law on contracts and obligations should have been developed during the trial on the merits or may have to await remedial legislation in Insurance Law or a decision in a more appropriate case.

The petitioner also questions the reasoning of the Court of Appeals in denying due course to the petition for certiorari. The appellate court said that even assuming for the sake of argument that the dismissal order by the trial

court was not procedurally correct for lack of hearing, there was only an "error of judgment or procedure" correctible only by appeal then available in the ordinary course of law and not by a special civil action of certiorari which cannot be a substitute for appeal.

The records show that the remedy of appeal was actually intended to be pursued by petitioner. However, the appeal was rendered unfeasible when the trial judge refused to transmit the records to the appellate court. (see Rollo, p. 40) The judge, in effect, ruled out the remedy of appeal which was supposed to be availed of as a matter of right. In filing a petition for certiorari, the petitioner was acting upon the instructions of the judge. Under a situation where there was no more plain, speedy and adequate remedy in the ordinary course of law, the only available recourse was to file a special civil action of certiorari to determine whether or not the dismissal order was issued with grave abuse of discretion.

It is apparent, moreover, that the respondent appellate court failed to appreciate the petitioner's predicament. The trial judge, aside from dismissing the complaint which we now rule to have a sufficient cause of action, likewise prevented an ordinary appeal to prosper in contravention of what is provided for by the rules of procedure.

The April 6, 1988 order of the trial judge stating that the appropriate remedy was a petition for review by way of certiorari is deplorable. The lower court cannot even distinguish between an original petition for certiorari and a petition for review by way of certiorari. A petition for review before the Court of Appeals could have been availed of if what is challenged is an adverse decision of the Regional Trial Court in its appellate capacity affirming, modifying or reversing a decision of a municipal trial court or lower tribunal. (Section 22, Batas Pambansa Blg. 129 and Section 22 (6) of the Interim Rules). In this case, the petitioner assailed the dismissal order of the Regional Trial Court of a complaint originally filed with it. This adverse order which had the effect of a judgment on the merits, may be appealed to the Court of Appeals by filing a notice of appeal within fifteen (15) days from receipt of notice of the order both on questions of law and of fact. (Section 39, Batas Pambansa Blg. 129 and Section 19 (a) of the Interim Rules). This was exactly what petitioner did after its motion for reconsideration was denied. Unfortunately, the trial judge failed to see the propriety of this recourse. And the Court of Appeals compounded the problem when it denied the petitioner any remedy arising from the Judge's wrong instructions.

The filing of the petition for certiorari was proper. Petitioner has satisfactorily shown before the respondent appellate court that the trial judge "acted whimsically in total disregard of evidence material to and even decisive of the controversy". (Pure Foods Corp. v. National Labor Relations Commission, G.R. No. 78591, March 21, 1989).

The extraordinary writ of certiorari is always available where there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. (Tropical Homes, Inc. v. National Housing Authority, 152 SCRA 540 [1987]; Pure Foods Corp. v. NLRC, *supra*)

Since the petitioner was denied the remedy of appeal, the Court deems that a certiorari petition was in order.

WHEREFORE, considering the foregoing, the petition is hereby GRANTED. The decision of the respondent Court of Appeals affirming the dismissal order by the Regional Trial Court is hereby REVERSED and SET ASIDE. Let the case be remanded to the lower court for trial on the merits.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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