

THELMA VDA. DE CANILANG, PETITIONER, VS. HON. COURT OF APPEALS AND GREAT PACIFIC LIFE ASSURANCE CORPORATION, RESPONDENTS.

G.R. No. 92492. June 17, 1993

Ponente: FELICIANO, J.

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FELICIANO, J.:

On 18 June 1982, Jaime Canilang consulted Dr. Wilfredo B. Claudio and was diagnosed as suffering from "sinus tachycardia." The doctor prescribed the following for him: Trazepam, a tranquilizer; and Aptin, a beta-blocker drug. Mr. Canilang consulted the same doctor again on 3 August 1982 and this time was found to have "acute bronchitis."

On the next day, 4 August 1982, Jaime Canilang applied for a "non-medical" insurance policy with respondent Great Pacific Life Assurance Company ("Great Pacific") naming his wife, petitioner Thelma Canilang, as his beneficiary.[1] Jaime Canilang was issued ordinary life insurance Policy No. 345163, with the face value of P19,700, effective as of 9 August 1982.

On 5 August 1983, Jaime Canilang died of "congestive heart failure," "anemia," and "chronic anemia." [2] Petitioner, widow and beneficiary of the insured, filed a claim with Great Pacific which the insurer denied on 5 December 1983 upon the ground that the insured had concealed material information from it.

Petitioner then filed a complaint against Great Pacific with the Insurance Commission for recovery of the insurance proceeds. During the hearing called by the Insurance Commissioner, petitioner testified that she was not aware of any serious illness suffered by her late husband [3] and that, as far as she knew, her husband had died because of a kidney disorder. [4] A deposition given by Dr. Wilfredo Claudio was presented by petitioner. There Dr. Claudio stated that he was the family physician of the deceased Jaime Canilang [5] and that he had previously treated him for "sinus tachycardia" and "acute bronchitis." [6] Great Pacific for its part presented Dr. Esperanza Quismorio, a physician and a medical underwriter working for Great Pacific. [7] She testified that the deceased's insurance application had been approved on the basis of his medical declaration. [8] She explained that as a rule, medical examinations are required only in cases where the applicant has indicated in his application for insurance coverage that he has previously undergone medical consultation and hospitalization. [9]

In a decision dated 5 November 1985, Insurance Commissioner Armando Ansaldo ordered Great Pacific to pay P19,700.00 plus legal interest and P2,000.00 as attorney's fees after holding that:

1. the ailment of Jaime Canilang was not so serious that, even if it had been disclosed, it would not have affected Great Pacific's decision to insure him;
2. Great Pacific had waived its right to inquire into the health condition of the applicant by the issuance of the policy despite the lack of answers to "some of the pertinent questions" in the insurance application;
3. there was no intentional concealment on the part of the insured Jaime Canilang as he had thought that he was

merely suffering from a minor ailment and simple cold;[10] and

4. Batas Pambansa Blg. 874 which voids an insurance contract, whether or not concealment was intentionally made, was not applicable to Canilang's case as that law became effective only on 1 June 1985.

On appeal by Great Pacific, the Court of Appeals reversed' and set aside the decision of the Insurance Commissioner and dismissed Thelma Canilang's complaint and Great Pacific's counterclaim. The Court of Appeals found that the use of the word "intentionally" by the Insurance Commissioner in defining and resolving the issue agreed upon by the parties at pre-trial before the Insurance Commissioner was not supported by the evidence; that the issue agreed upon by the parties had been whether the deceased insured, Jaime Canilang, made a material concealment as to the state of his health at the time of the filing of insurance application, justifying respondent's denial of the claim. The Court of Appeals also found that the failure of Jaime Canilang to disclose previous medical consultation and treatment constituted material information which should' have been communicated to Great Pacific to enable the latter to make proper inquiries. The Court of Appeals finally held that the Ng Gan Zee case which had involved misrepresentation was not applicable in respect of the case at bar which involves concealment.

Petitioner Thelma Canilang is now before this Court on a Petition for Review on Certiorari alleging that:

"1. x x x the Honorable Court of Appeals, speaking with due respect, erred in not holding that the issue in the case agreed upon between the parties before the Insurance Commission is whether or not Jaime Canilang 'intentionally' made material concealment in stating his state of health;

2. x x x at any rate, the non-disclosure of certain facts about his previous health conditions does not amount to fraud and private respondent is deemed to have waived inquiry thereto."[11]

The medical declaration which was set out in the application for insurance executed by Jaime Canilang read as follows:

"MEDICAL DECLARATION

'I hereby declare that:

(1) I have not been confined in any hospital, sanitarium or infirmary, nor received any medical or surgical advice/attention within the last five (5) years.

(2) I have never been treated nor consulted a physician for a heart condition, high blood pressure, cancer, diabetes, lung, kidney, stomach disorder, or any other physical impairment.

(3) I am, to the best of my knowledge, in good health.

EXCEPTIONS:

GENERAL DECLARATION

I hereby declare that all the foregoing answers and statements are complete, true and correct. I hereby agree that if there be any fraud or misrepresentation in the above statements material to the risk, the INSURANCE COMPANY upon discovery within two (2) years from the effective date of insurance shall have the right to declare such insurance null and void. That the liabilities of the Company under the said Policy/TA/Certificate shall accrue and begin only from the date of commencement of risk stated in the Policy/TA/Certificate,

provided that the first premium is paid and the Policy/TA/Certificate is delivered to, and accepted by me in person, when I am in actual good health.

Signed at Manila this 4th day of August, 1992.

Illegible

Signature of Applicant."[12]

We note that in addition to the negative statements made by Mr. Canilang in paragraphs 1 and 2 of the medical declaration, he failed to disclose in the appropriate space, under the caption "Exceptions," that he had twice consulted Dr. Wilfredo B. Claudio who had found him to be suffering from "sinus tachycardia" and "acute bronchitis."

The relevant statutory provisions as they stood at the time Great Pacific issued the contract of insurance and at the time Jaime Canilang died, are set out in P.D. No. 1460, also known as the Insurance Code of 1978, which went into effect on 11 June 1978. These provisions read as follows:

"Sec. 26. A neglect to communicate that which a party knows and ought to communicate, is called a concealment."

xxx xxx xxx

Sec. 28. Each party to a contract of insurance must communicate to the other, in good faith, all factors within his knowledge which are material to the contract and as to which he makes no warranty, and which the other has not the means of ascertaining." (Emphases supplied)

Under the foregoing provisions, the information concealed must be information which the concealing party knew and "ought to [have] communicate[d]," that is to say, information which was "material to the contract." The test of materiality is contained in Section 31 of the Insurance Code of 1978 which reads:

"Sec. 31. Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries." (Emphases supplied)

"Sinus tachycardia" is considered present "when the heart rate exceeds 100 beats per minute." [13] The symptoms of this condition include pounding in the chest and sometimes faintness and weakness of the person affected. The following elaboration was offered by Great Pacific and set out by the Court of Appeals in its Decision:

"Sinus tachycardia is defined as sinus-initiated; heart rate faster than 100 beats per minute. (Harrison's Principles of Internal Medicine, 8th ed. [1978], p. 1193.) It is, among others, a common reaction to heart disease, including myocardial infarction, and heart failure per se. (Henry J.L. Marriot, M.D., Electrocardiography, 6th ed. [1977], p. 127.) The medication prescribed by Dr. Claudio for treatment of Canilang's ailment on June 18, 1982, indicates the condition that said physician was trying to manage. Thus, he prescribed Trazepam, (Philippine Index of Medical Specialties (PIMS), Vol. 14., No. 3, Dec. 1985, p. 112.) which is anti-anxiety, anti-convulsant, muscle-relaxant; and Aptin, (Idem, p. 36) a cardiac drug, for palpitations and nervous heart. Such treatment could have been a very material information to the insurer in determining the action to be taken on Canilang's application for life insurance coverage." [14]

We agree with the Court of Appeals that the information which Jaime Canilang failed to disclose was material to the ability of Great Pacific to estimate the probable risk he presented as a subject of life insurance. Had Canilang disclosed his visits to his doctor, the diagnosis made and the medicines prescribed by such doctor, in the insurance application, it may be reasonably assumed that Great Pacific would have made further inquiries and would have

probably refused to issue a non-medical insurance policy or, at the very least, required a higher premium for the same coverage.[15] The materiality of the information withheld by Great Pacific did not depend upon the state of mind of Jaime Canilang. A man's state of mind or subjective belief is not capable of proof in our judicial process, except through proof of external acts or failure to act from which inferences as to his subjective belief may be reasonably drawn. Neither does materiality depend upon the actual or physical events which ensue. Materiality relates rather to the "probable and reasonable influence of the facts" upon the party to whom the communication should have been made, in assessing the risk involved in making or omitting to make further inquiries and in accepting the application for insurance; that "probable and reasonable influence of the facts" concealed must, of course, be determined objectively, by the judge ultimately.

The insurance Great Pacific applied for was a "non-medical" insurance policy. In *Saturnino v. Philippine-American Life Insurance Company*,[16] this Court held that:

"x x x if anything, the waiver of medical examination [in a non-medical insurance contract] renders even more material the information required of the applicant concerning previous condition of health and diseases suffered, for such information necessarily constitutes an important factor which the insurer takes into consideration in deciding whether to issue the policy or not x x x." [17] (Emphases supplied)

The Insurance Commissioner had also ruled that the failure of Great Pacific to convey certain information to the insurer was not "intentional" in nature, for the reason that Jaime Canilang believed that he was suffering from minor ailment like a common cold. Section 27 of the Insurance Code of 1978 as it existed from 1974 up to 1985, that is, throughout the time range material for present purposes, provided that:

"Sec. 27. A concealment entitles the injured party to rescind a contract of insurance."

The preceding statute, Act No. 2427, as it stood from 1914 up to 1974, had provided:

"Sec. 26. A concealment, whether intentional or unintentional, entitles the injured party to rescind a contract of insurance." (Emphases supplied)

Upon the other hand, in 1985, the Insurance Code of 1978 was amended by B.P. Blg. 874. This subsequent statute modified Section 27 of the Insurance Code of 1978 so as to read as follows:

"Sec. 27. A concealment whether intentional or unintentional entitles the injured party to rescind a contract of insurance." (Emphases supplied)

The unspoken theory of the Insurance Commissioner appears to have been that by deleting the phrase "intentional or unintentional," the Insurance Code of 1978 (prior to its amendment by B.P. Blg. 874) intended to limit the kinds of concealment which generate a right to rescind on the part of the injured party to "intentional concealments." This argument is not persuasive. As a simple matter of grammar, it may be noted that "intentional" and "unintentional" cancel each other out. The net result therefore of the phrase "whether intentional or unintentional" is precisely to leave unqualified the term "concealment." Thus, Section 27 of the Insurance Code of 1978 is properly read as referring to "any concealment" without regard to whether such concealment is intentional or unintentional. The phrase "whether intentional or unintentional" was in fact superfluous. The deletion of the phrase "whether intentional or unintentional" could not have had the effect of imposing an affirmative requirement that a concealment must be intentional if it is to entitle the injured party to rescind a contract of insurance. The restoration in 1985 by B.P. Blg. 874 of the phrase "whether intentional or unintentional" merely underscored the fact that all throughout (from 1914 to 1985), the statute did not require proof that concealment must be "intentional" in order to authorize rescission by the injured party.

In any case, in the case at bar, the nature of the facts not conveyed to the insurer was such that the failure to

communicate must have been intentional rather than merely inadvertent. For Jaime Canilang could not have been unaware that his heart beat would at times rise to high and alarming levels and that he had consulted a doctor twice in the two (2) months before applying for non-medical insurance. Indeed, the last medical consultation took place just the day before the insurance application was filed. In all probability, Jaime Canilang went to visit his doctor precisely because of the discomfort and concern brought about by his experiencing "sinus tachycardia."

We find it difficult to take seriously the argument that Great Pacific had waived inquiry into the concealment by issuing the insurance policy notwithstanding Canilang's failure to set out answers to some of the questions in the insurance application. Such failure precisely constituted concealment on the part of Canilang. Petitioner's argument, if accepted, would obviously erase Section 27 from the Insurance Code of 1978.

It remains only to note that the Court of Appeals finding that the parties had not agreed in the pretrial before the Insurance Commission that the relevant issue was whether or not Jaime Canilang had intentionally concealed material information from the insurer, was supported by the evidence of record, i.e., the Pre-trial Order itself dated 17 October 1984 and the Minutes of the Pre-trial Conference .dated 15 October 1984, which "readily shows that the word 'intentional' does not appear in the statement or definition of the issue in the said Order and Minutes." [18]

WHEREFORE, the Petition for Review is DENIED for lack of merit and the Decision of the Court of Appeals dated 16 October 1989 in C.A.-G.R. SP No. 08696 is hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Bidin, Davide, Jr., Romero and Melo, JJ., concur.

[1] A non-medical insurance is one "which does away with the usual medical examination before the policy is issued;" *Saturnino v. Philippine-American Life Insurance Company*, 7 SCRA 316 (1963).

[2] Death Certificate, Records, p. 211.

[3] TSN, 18 January 1985, p. 6; 8 March 1985, p. 5.

[4] *Id.*, p. 9.

[5] Deposition, 18 July 1985, p. 4.

[6] *Id.*, p. 5.

[7] TSN, 7 August 1985, p. 8.

[8] *Id.*, p. 10.

[9] *Id.*, p. 19.

[10] Here the Commissioner cited *Ng Gan Zee v. Asian Crusader Life Assurance Corporation*, 122 SCRA 461 (1983).

[11] Petition, p. 5; Rollo, p. 1.

[12] As quoted in the Decision of the Court of Appeals, Rollo, pp. 81-82; underscoring in the original.

[13] *Harrison's Principle of Internal Medicine* (11th Ed., 1987), p. 926. See also: *Dorland's Illustrated Medical Dictionary* (24th Ed., 1965), p. 1503.

[14] As quoted in the Decision of the Court of Appeals, Rollo, pp. 84-85; underscoring partly supplied and partly in the original.

[15] See, e.g., *Yu Pang Cheng, etc. v. Court of Appeals*, 105 Phil. 930 (1959); *Great Pacific Life Assurance Corporation v. Hon. Court of Appeals*, 89 SCRA 543 (1979).

[16] 7 SCRA 316 (1963).

[17] 7 SCRA at 318.

[18] Decision of the Court of Appeals, Rollo, p. 40.

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