

TIO KHE CHIO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND EASTERN ASSURANCE AND SURETY CORPORATION, RESPONDENTS.

G.R. Nos. 76101-02. September 30, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

The issue in this petition for certiorari and prohibition is the legal rate of interest to be imposed in actions for damages arising from unpaid insurance claims. Petitioner Tio Khe Chio claims that it should be twelve (12%) per cent pursuant to Articles 243 and 244 of the Insurance Code while private respondent Eastern Assurance and Surety Corporation (EASCO) claims that it should be six (6%) per cent under Article 2209 of the Civil Code.

The facts are as follows: On December 18, 1978, petitioner Tio Khe Chio imported one thousand (1,000) bags of fishmeal valued at \$36,000.30 from Agro Impex, S.A. Dallas, Texas, U.S.A. The goods were insured with respondent EASCO and shipped on board the M/V Peskov, a vessel owned by Far Eastern Shipping Company. When the goods reached Manila on January 28, 1979, they were found to have been damaged by sea water which rendered the fishmeal useless. Petitioner filed a claim with EASCO and Far Eastern Shipping. Both refused to pay. Whereupon, petitioner sued them before the then Court of First Instance of Cebu, Branch II for damages. EASCO, as the insurer, filed a counterclaim against the petitioner for the recovery of P18,387.86 representing the unpaid insurance premiums.

On June 30, 1982, the trial court rendered judgment ordering EASCO and Far Eastern Shipping to pay petitioner solidarily the sum of P105,986.68 less the amount of P18,387.86 for unpaid premiums with interest at the legal rate from the filing of the complaint, the sum of P15,000.00 as attorney's fees and the costs.[1]

The judgment became final as to EASCO but the shipping company appealed to the Court of Appeals and was absolved from liability by the said court in AC-G.R. No. 00161, entitled "Tio Khe Chio vs. Eastern Assurance and Surety Corporation."

The trial court, upon motion by petitioner, issued a writ of execution against EASCO. The sheriff enforcing the writ report-edly fixed the legal rate of interest at twelve (12%). Respondent EASCO moved to quash the writ alleging that the legal interest to be computed should be six (6%) per cent per annum in accordance with Article 2209 of the Civil Code and not twelve (12%) per cent as insisted upon by petitioner's counsel. In its order of July 30, 1986, the trial court denied EASCO's motion. EASCO then filed a petition for certiorari and prohibition before the Court of Appeals.

On July 30, 1986, the Appellate Court rendered the assailed judgment, the dispositive part of which states:

WHEREFORE, the order dated July 30, 1986 is hereby SET ASIDE in so far as it fixes the interest at 12% on the principal amount of P87,598.82 from the date of filing of the complaint until the full payment of the amount, and the interest that the private respondent is entitled to collect from the petitioner is hereby reduced

to 6% per annum.

No pronouncement as to costs."[2]

In disputing the aforesaid decision of the Court of Appeals, petitioner maintains that not only is it unjust and unfair but it is also contrary to the correct interpretation of the fixing of interest rates under Sections 243 and 244 of the Insurance Code. And since petitioner's claim is based on an insurance contract, then it is the Insurance Code which must govern and not the Civil Code.

We rule for respondent EASCO. The legal rate of interest in the case at bar is six (6%) per annum as correctly held by the Appellate Court.

Section 243 of the Insurance Code provides:

"The amount of any loss or damage for which an insurer may be liable, under any policy other than life insurance policy, shall be paid within thirty days after proof of loss is received by the insurer and ascertainment of the loss or damage is made either by agreement between the insured and the insurer or by arbitration; but if such ascertainment is not had or made within sixty days after such receipt by the insurer of the proof of loss, then the loss or damage shall be paid within ninety days after such receipt. Refusal or failure to pay the loss or damage within the time prescribed herein will entitle the assured to collect interest on the proceeds of the policy for the duration of the delay at the rate of twice the ceiling prescribed by the Monetary Board, unless such failure or refusal to pay is based on the ground that the claim is fraudulent."

Section 244 of the aforementioned Code also provides:

"In case of any litigation for the enforcement of any policy or contract of insurance, it shall be the duty of the Commissioner or the Court, as the case may be, to make a finding as to whether the payment of the claim of the insured has been unreasonably denied or withheld; and in the affirmative case, the insurance company shall be adjudged to pay damages which shall consist of attorney's fees and other expenses incurred by the insured person by reason of such undeniable denial or withholding of payment plus interest of twice the ceiling prescribed by the Monetary Board of the amount of the claim due the insured, from the date following the time prescribed in section two hundred forty-two or in section two hundred forty-three, as the case may be, until the claim is fully satisfied; Provided, That the failure to pay any such claim within the time prescribed in said sections shall be considered prima facie evidence of unreasonable delay in payment."

In the case at bar, the Court of Appeals made no finding that there was an unjustified refusal or withholding of payment on petitioner's claim. In fact, respondent court had this to say on EASCO's refusal to settle the claim of petitioner:

" x x x. EASCO's refusal to settle the claim of Tio Khe Chio was based on some ground which, while not sufficient to free it from liability under its policy, nevertheless is sufficient to negate any assertion that in refusing to pay, it acted unjustifiably.

"x x x x x x x x x

"The case posed some genuine issues of interpretation of the terms of the policy as to which persons may honestly differ. This is the reason the trial court did not say EASCO's refusal was unjustified."[3]

Simply put, the aforesaid sections of the Insurance Code are not pertinent to the instant case. They apply only when the court finds an unreasonable delay or refusal in the payment of the claims.

Neither does Circular No. 416 of the Central Bank which took effect on July 29, 1974 pursuant to Presidential Decree No. 116 (Usury Law) which raised the legal rate of interest from six (6%) to twelve (12%) per cent apply to the case at bar as contended by the petitioner. The adjusted rate mentioned in the circular refers only to loans or

forbearances of money, goods or credits and court judgments thereon but not to court judgments for damages arising from injury to persons and loss of property which does not involve a loan.[4]

In the case of Philippine Rabbit Bus Lines, Inc. vs. Cruz G.R. No. 71017, July 28, 1986, 143 SCRA 158, the Court declared that the legal rate of interest is six (6%) per cent per annum, and not twelve (12%) per cent, where a judgment award is based on an action for damages for personal injury, not use or forbearance of money, goods or credit. In the same vein, the Court held in GSIS vs. Court of Appeals, G.R. No. 52478, October 30, 1986, 145 SCRA 311, that the rates under the usury Law (amended by P.D. 116) are applicable only to interest by way of compensation for the use or forbearance of money, interest by way of damages is governed by Article 2209 of the Civil Code.

Clearly, the applicable law is Article 2209 of the Civil Code which reads:

“If the obligation consists in the payment of a sum of money and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of interest agreed upon, and in the absence of stipulation, the legal interest which is six per cent per annum.”

And in the light of the fact that the contending parties did not allege the rate of interest stipulated in the insurance contract, the legal interest was properly pegged by the Appellate Court at six (6%) per cent.

WHEREFORE, in view of the foregoing, the petition is DENIED for lack of merit.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Davide, Jr., JJ., concur.

[1] Rollo, p. 45

[2] Rollo, p. 11

[3] Rollo, pp. 9, 11

[4] Reformina vs. Tomol, Jr., G.R. No. 59096, October 11, 1985, 139 SCRA 260.

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