

## THIRD DIVISION

[ G.R. No. 156302, April 07, 2009 ]

### THE HEIRS OF GEORGE Y. POE, PETITIONERS, VS. MALAYAN INSURANCE COMPANY, INC., RESPONDENT.

#### DECISION

##### CHICO-NAZARIO, J.:

The instant Petition for Review under Rule 45<sup>[1]</sup> of the Rules of Court assails the Decision<sup>[2]</sup> dated 26 June 2002 of the Court of Appeals in CA-G.R. SP No. 67297, which granted the Petition for *Certiorari* of respondent Malayan Insurance Company, Inc. (MICI) and recalled and set aside the Order<sup>[3]</sup> dated 6 September 2001 of the Regional Trial Court (RTC), Branch 73, of Antipolo City, in Civil Case No. 93-2705. The RTC, in its recalled Order, denied the Notice of Appeal of MICI and granted the Motion for the Issuance of a Writ of Execution filed by petitioners Heirs of George Y. Poe. The present Petition also challenges the Resolution<sup>[4]</sup> dated 29 November 2002 of the appellate court denying petitioners' Motion for Reconsideration.

Records show that on 26 January 1996 at about 4:45 a.m., George Y. Poe (George) while waiting for a ride to work in front of Capital Garments Corporation, Ortigas Avenue Extension, Barangay Dolores, Taytay, Rizal, was run over by a ten-wheeler Isuzu hauler truck with Plate No. PMH-858 owned by Rhoda Santos (Rhoda), and then being driven by Willie Labrador (Willie).<sup>[5]</sup> The said truck was insured with respondent MICI under Policy No. CV-293-007446-8.

To seek redress for George's untimely death, his heirs and herein petitioners, namely, his widow Emercelinda, and their children Flerida and Fernando, filed with the RTC a Complaint for damages against Rhoda and respondent MICI, docketed as Civil Case No. 93-2705.<sup>[6]</sup> Petitioners identified Rhoda and respondent MICI, as follows:

Defendant RHODA SANTOS is likewise of legal age, Filipino and a resident of Real Street, Pamplona, Las Piñas, Metro Manila where she may be served with summons and other court processes.

[Herein respondent] MALAYAN INSURANCE COMPANY, INC. (hereinafter " [MICI]" for brevity) is a corporation duly organized and existing under Philippine law with address at Yuchengco Bldg., 484 Q. Paredes Street, Binondo, Manila where it may be served with summons and other processes of this Honorable Court;

Defendant Rhoda Santos, who is engaged in the business, among others, of selling gravel and sand is the registered owner of one Isuzu Truck, with Plate No. PMH-858 and is the employer of Willie Labrador the

authorized driver of the aforesaid truck.

[Respondent MICI] on the other hand is the insurer of Rhoda Santos under a valid and existing insurance policy duly issued by said [MICI], Policy No. CV-293-007446-8 over the subject vehicle owned by Rhoda Santos, Truck-Hauler Isuzu 10 wheeler with plate no. PMH-858, serial no. SRZ451-1928340 and motor no. 10PA1-403803. Under said insurance policy, [MICI] binds itself, among others, to be liable for damages as well as any bodily injury to third persons which may be caused by the operation of the insured vehicle.<sup>[7]</sup>

And prayed that:

[J]udgment issue in favor of [herein petitioners] ordering [Rhoda and herein respondent MICI] jointly and solidarily to pay the [petitioners] the following:

1. Actual damages in the total amount of THIRTY SIX THOUSAND (P36,000.00) PESOS for funeral and burial expenses;
2. Actual damages in the amount of EIGHT HUNDRED FIVE THOUSAND NINE HUNDRED EIGHTY FOUR (P805,984.00) PESOS as loss of earnings and financial support given by the deceased by reason of his income and employment;
3. Moral damages in the amount of FIFTY THOUSAND (P50,000.00) PESOS;
4. Exemplary damages in the amount of FIFTY THOUSAND (P50,000.00) PESOS;
5. Attorney's fees in the amount of FIFTY THOUSAND (P50,000.00) PESOS and litigation expense in the amount of ONE THOUSAND FIVE HUNDRED (P1,500.00) PESOS for each court appearance;
6. The costs of suit.

Other reliefs just and equitable in the premises are likewise prayed for.<sup>[8]</sup>

Rhoda and respondent MICI made the following admissions in their Joint Answer<sup>[9]</sup>:

That [Rhoda and herein respondent MICI] admit the allegations in paragraphs 2, 3 and 4 of the complaint;

That [Rhoda and respondent MICI] admit the allegations in paragraph 5 of the complaint that the cargo truck is insured with [respondent] Malayan Insurance Company, Inc. [(MICI)] however, the liability of the insured company attached only if there is a judicial pronouncement that the insured and her driver are liable and moreover, the liability of the insurance company is subject to the limitations set forth in the insurance policy.<sup>[10]</sup>

Rhoda and respondent MICI denied liability for George's death averring, among other defenses, that: a) the accident was caused by the negligent act of the victim George, who surreptitiously and unexpectedly crossed the road, catching the driver Willie by surprise, and despite the latter's effort to swerve the truck to the right, the said vehicle still came into contact with the victim; b) the liability of respondent MICI, if any, would attach only upon a judicial pronouncement that the insured Rhoda and her driver Willie are liable; c) the liability of MICI should be based on the extent of the insurance coverage as embodied in Rhoda's policy; and d) Rhoda had always exercised the diligence of a good father of a family in the selection and supervision of her driver Willie.

After the termination of the pre-trial proceedings, trial on the merits ensued.

Petitioners introduced and offered evidence in support of their claims for damages against MICI, and then rested their case. Thereafter, the hearings for the reception of the evidence of Rhoda and respondent MICI were scheduled, but they failed to adduce their evidence despite several postponements granted by the trial court. Thus, during the hearing on 9 June 1995, the RTC, upon motion of petitioners' counsel, issued an Order<sup>[11]</sup> declaring that Rhoda and respondent MICI had waived their right to present evidence, and ordering the parties to already submit their respective Memorandum within 15 days, after which, the case would be deemed submitted for decision.

Rhoda and respondent MICI filed a Motion for Reconsideration<sup>[12]</sup> of the Order dated 9 June 1995, but it was denied by the RTC in another Order dated 11 August 1995.<sup>[13]</sup>

Consequently, Rhoda and respondent MICI filed a Petition for *Certiorari, Mandamus*,<sup>[14]</sup> Prohibition and Injunction with Prayer for a Temporary Restraining Order and Writ of Preliminary Injunction, assailing the Orders dated 9 June 1995 and 11 August 1995 of the RTC foreclosing their right to adduce evidence in support of their defense. The Petition was docketed as CA-G.R. SP No. 38948.

The Court of Appeals, through its Third Division, promulgated a Decision<sup>[15]</sup> on 29 April 1996, denying due course to the Petition in CA-G.R. SP No. 38948. Rhoda and respondent MICI elevated the matter to the Supreme Court *via* a Petition for *Certiorari*,<sup>[16]</sup> docketed as G.R. No. 126244. This Court likewise dismissed the Petition in G.R. No. 126244 in a Resolution dated 30 September 1996.<sup>[17]</sup> Entry of Judgment was made in G.R. No. 126244 on 8 November 1996.<sup>[18]</sup>

On 28 February 2000, the RTC rendered a Decision in Civil Case No. 93-2705, the dispositive portion of which reads:

Wherefore, [Rhoda and herein respondent MICI] are hereby ordered to pay jointly and solidarily to the [herein petitioners] the following:

1. Moral damages amounting to P100,000.00;
2. Actual damages for loss of earning capacity amounting to P805,984.00;

3. P36,000.00 for funeral expenses;
4. P50,000.00 as exemplary damages;
5. P50,000.00 for attorney's fees plus P1,500 per court appearance;  
and
6. Cost of suit.<sup>[19]</sup>

Rhoda and respondent MICI received their copy of the foregoing RTC Decision on 14 March 2000.<sup>[20]</sup> On 22 March 2000, respondent MICI and Rhoda filed a Motion for Reconsideration<sup>[21]</sup> of said Decision, averring therein that the RTC erred in ruling that the obligation of Rhoda and respondent MICI to petitioners was solidary or joint and several; in computing George's loss of earning capacity not in accord with established jurisprudence; and in awarding moral damages although it was not buttressed by evidence.

Resolving the Motion of respondent MICI and Rhoda, the RTC issued an Order<sup>[22]</sup> on 24 January 2001 modifying and amending its Decision dated 28 February 2000, and dismissing the case against respondent MICI.

The RTC held that:

After a careful evaluation of the issues at hand, the contention of the [herein respondent MICI] as far as the solidary liability of the insurance company with the other defendant [Rhoda] is meritorious. However, the assailed Decision can be modified or amended to correct the same honest inadvertence without necessarily reversing it and set aside to conform with the evidence on hand.

The RTC also re-computed George's loss of earning capacity, as follows:

The computation of actual damages for loss of earning capacity was determined by applying the formula adopted in the American Expectancy Table of Mortality or the actuarial of Combined Experience Table of Mortality applied in *x x x Villa Rey Transit, Inc. v. Court of Appeals* (31 SCRA 521). Moral damages is awarded in accordance with Article 2206 of the New Civil Code of the Philippines. While death indemnity in the amount of P50,000.00 is automatically awarded in cases where the victim had died (*People v. Sison*, September 14, 1990 [189 SCRA 643]).<sup>[23]</sup>

In the end, the RTC decreed:

WHEREFORE, in view of the foregoing consideration, the Decision of this Court dated 28 February 2000 is hereby amended or modified. Said Decision should read as follows:

"Wherefore, defendant Rhoda Santos is hereby ordered to pay to the [herein petitioners] the following:

1. Moral damages amounting to P100,000.00;

2. Actual damages for loss of earning capacity amounting to P102,106.00;
3. P36,000.00 for funeral expenses;
4. P50,000.00 as death indemnity;
5. P50,000.00 for attorney's fees plus P1,500.00 per court appearance;
6. Costs of the suit.

The case against Malayan Insurance Company, Inc. is hereby dismissed."<sup>[24]</sup>

It was petitioners' turn to file a Motion for Reconsideration<sup>[25]</sup> of the 24 January 2001 Order, to which respondent MICI filed a "Vigorous Opposition to the Plaintiff's Motion for Reconsideration."<sup>[26]</sup>

On 15 June 2001, the RTC issued an Order reinstating its Decision dated 28 February 2000, relevant portions of which state:

Finding the arguments raised by the [herein petitioners] in their Motion for Reconsideration of the Order of this Court dated January 24, 2001 to be more meritorious to [herein respondent's] Malayan Insurance Co., Inc. (sic) arguments in its vigorous opposition thereto, said motion is hereby granted.

Accordingly, the Order under consideration is hereby reconsidered and set aside. The decision of this Court dated February 28, 2000 is hereby reinstated.

Notify parties herein.<sup>[27]</sup>

Respondent MICI received a copy of the 15 June 2001 Order of the RTC on 27 June 2001.

Aggrieved by the latest turn of events, respondent MICI filed on 9 July 2001 a Notice of Appeal<sup>[28]</sup> of the 28 February 2000 Decision of the RTC, reinstated by the 15 June 2001 Resolution of the same court. Rhoda did not join respondent MICI in its Notice of Appeal.<sup>[29]</sup>

Petitioners filed their Opposition<sup>[30]</sup> to the Notice of Appeal of respondent MICI, with a Motion for the Issuance of Writ of Execution.

After considering the recent pleadings of the parties, the RTC, in its Order dated 6 September 2001, denied the Notice of Appeal of respondent MICI and granted petitioners' Motion for the Issuance of Writ of Execution. The RTC reasoned in its Order:

The records disclosed that on February 28, 2000 this Court rendered a Decision in favor of the [herein petitioners] and against [Rhoda and