

SECOND DIVISION

[G.R. No. 140023, August 14, 2003]

**RUDY LAO, PETITIONER, VS. STANDARD INSURANCE CO., INC.,
RESPONDENT.**

DECISION

QUISUMBING, J.:

The instant petition seeks the reversal of the Court of Appeals' Decision^[1] dated February 4, 1999, as well as its Resolution,^[2] dated September 7, 1999, in CA-G.R. CV No. 47227. The assailed decision dismissed petitioner's appeal and the resolution denied petitioner's motion for reconsideration.

The original action was lodged before the Regional Trial Court of Iloilo City, Branch 25, as Civil Case No. 17045 for breach of contract and damages, as a result of the insurance company's refusal of petitioner's claim on the insurance policy of his truck which figured in an accident during the effectivity of the policy.

The following are the antecedent facts:

Petitioner Rudy Lao is the owner of a Fuso truck with Plate No. FCG-538. The truck was insured with respondent Standard Insurance Co., Inc. under Policy No. CV-21074^[3] for the maximum amount of P200,000 and an additional sum of P50,000 to cover any damages that might be caused to his goods.

While the policy was in effect, an accident occurred. At around 8:00 p.m. of April 24, 1985, in Barangay Buhang, Jaro, Iloilo City, the insured truck bumped another truck, with Plate No. FBS-917, also owned by petitioner Lao. The latter truck was running ahead of the insured truck and was bumped from the rear. The insured truck sustained damages estimated to be around P110,692, while the damage to the other truck and to properties in the vicinity of the accident, were placed at P35,000 more or less.

Petitioner filed a claim with the insurance company for the proceeds from his policy. However, the claim was denied by the insurance company on the ground that when its adjuster went to investigate the matter, it was found that the driver of the insured truck, Leonardo Anit, did not possess a proper driver's license at the time of the accident. The restriction^[4] in Leonardo Anit's driver's license provided that he can only drive four-wheeled vehicles weighing not more than 4,500 kgs. Since the insured truck he was driving weighed more than 4,500 kgs., he therefore violated the "authorized driver" clause^[5] of the insurance policy. In addition, respondent cited the following excerpts from the police blotter of the Iloilo INP, to wit:

C-UN-85 DAMAGE TO PROPERTY W/ PHY INJURIES - R/ IMPRUDENCE

11:30 PM - Sgt. A. Bernas informed this office that a collision took place at Brgy. Buhang, Jaro, IC. Investigation conducted by Pat. Villahermosa, assisted by Lt. P. Baclaron (OD), disclosed that at about 8:00 PM this date at the aforementioned place, a collision took place between a truck (Hino) with Plate Nr FB[S] 917 owned by Rudy Lao and driven by BOY GIDDIE Y COYEL, 38 yrs, a res. of Balasan, Iloilo, with License Nr DLR 1108142 and another truck with Plate Nr. FCG-538 owned by Rudy Lao and driver (sic) by LEONARDO ANIT Y PANES, 33 yrs, a res. of Brgy Laya, Balasan, Iloilo with License Nr 1836482.... (Emphasis supplied.)^[6]

Petitioner claims that at the time of the accident, it was in fact another driver named Giddie Boy Y Coyel who was driving the insured truck. Giddie Boy possessed a driver's license authorizing him to drive vehicles such as the truck which weighed more than 4,500 kgs. As evidence, petitioner presented the Motor Vehicle Accident Report^[7] wherein the Investigating Officer, Pat. Felipe D. Villahermosa, stated that it was Giddie Boy driving the insured truck and not Leonardo Anit. The said report was made three days after the accident or on April 27, 1985. However, respondent insurance company was firm in its denial of the claim.

Hence, petitioner filed the civil case before the RTC. After trial, the court disposed of the case as follows:

WHEREFORE, premises considered, the Court finds that plaintiff lacks sufficient cause of action against the defendant and hence ordered his case dismissed and further orderes (sic) him to pay the defendant the following:

- 1) P20,000.00 as attorney's fees plus P500.00 for appearance fee; and
- 2) P50,000.00 as exemplary damages.

SO ORDERED.^[8]

On appeal with the Court of Appeals, the RTC decision was affirmed. The petition was dismissed and the motion for reconsideration was denied. The CA stated:

IN VIEW OF THE FOREGOING, the decision appealed from is hereby AFFIRMED. Consequently, the complaint is DISMISSED for lack of merit.

SO ORDERED.^[9]

In his petition for review now before us, petitioner cites the following as grounds therefor:

- A. THE HONORABLE COURT OF APPEALS AND THE LOWER COURT RELIED MAINLY ON SECTION 44, RULE 130 OF THE RULES OF COURT IN UPHOLDING THE ENTRY IN THE POLICE BLOTTER WHICH STATED THAT THE DRIVER OF THE INSURED VEHICLE WAS LEONARDO ANIT Y PANES, WHO WAS NOT AN AUTHORIZED DRIVER. UNDER THE SAID SECTION 44, RULE 130 ITSELF HOWEVER, THE POLICE BLOTTER IS MERELY A PRIMA FACIE EVIDENCE OF THE FACTS STATED THEREIN WHICH MAY BE

NULLIFIED BY OTHER EVIDENCE;^[10]

- B. PERCEPTION OF THE HONORABLE COURT OF APPEALS' ON THE "DIMINISHED" CREDIBILITY OF PAT. FELIPE VILLAHERMOSA, THE TRAFFIC POLICE INVESTIGATOR, IS MISPLACED AND UNFOUNDED;^[11]
- C. THE DRIVER OF THE INSURED TRUCK WITH PLATE NR. FCG-538 WAS GIDDIE BOY Y COYEL, AN AUTHORIZED DRIVER OF THE SAID TRUCK. THE DRIVER OF THE OTHER TRUCK INVOLVED IN THE ACCIDENT WITH PLATE NR. FBS-917 WAS LEONARDO ANIT Y PANES;^[12]
- D. THE HONORABLE COURT OF APPEALS MISAPPLIED ARTICLES 2232 AND 2208 OF THE NEW CIVIL CODE IN GRANTING EXEMPLARY DAMAGES AND ATTORNEY'S FEES TO RESPONDENT. UNDER ARTICLES 2229 AND 2234 OF THE NEW CIVIL CODE, EXEMPLARY DAMAGES CANNOT BE AWARDED IN THE ABSENCE OF AN AWARD FOR MORAL, TEMPERATE, LIQUIDATED OR COMPENSATORY DAMAGES;^[13]
- E. TESTIMONIES OF THE WITNESSES OF RESPONDENT NAMELY, SGT. BERNAS, THE DESK OFFICER AND ROMEO GUIERGEN, INSURANCE ADJUSTER, WERE INCONSISTENT AND UNRELIABLE;^[14] and
- F. THE HONORABLE COURT OF APPEALS UPHELD THE DECISION OF THE LOWER COURT DESPITE GLARING MISAPPLICATION OF THE LAW AND JURISPRUDENCE ESTABLISHED BY THIS HONORABLE SUPREME COURT AS WELL AS CLEAR MISAPPREHENSION OF THE FACTS IN THIS CASE.^[15]

Three issues must be resolved: (1) The admissibility and probative value of the police blotter as evidence; (2) The assessment of the credibility of witnesses; and (3) The propriety and basis of the awards for exemplary damages and attorney's fees. Also pertinent here is the factual issue of whether or not Leonardo Anit, an unauthorized driver, was driving the insured truck at the time of the accident.

Petitioner assails the admissibility and evidentiary weight given to the police blotter, as a basis for the factual finding of the RTC and the CA. He contends that the same entry was belied by the Motor Vehicle Accident Report and testimony of the investigating policeman himself, attesting that it was Giddie Boy Coyel, not Leonardo Anit, who was driving the insured vehicle.^[16]

Respondent avers that the same police report and testimony were of dubious nature. Both trial and appellate courts noted that the report was made three days after the accident and did not form part of the official police records.^[17]

The police blotter was admitted under Rule 130, Section 44 of the Rules of Court.^[18] Under the said rule, the following are the requisites for its admissibility:

- (a) that the entry was made by a public officer, or by another