

FIRST DIVISION

[G.R. No. 82036, May 22, 1997]

**TRAVELLERS INSURANCE & SURETY CORPORATION,
PETITIONER, VS. HON. COURT OF APPEALS AND VICENTE
MENDOZA, RESPONDENTS.
D E C I S I O N**

HERMOSISIMA, JR., J.:

The petition herein seeks the review and reversal of the decision^[1] of respondent Court of Appeals^[2] affirming in toto the judgment^[3] of the Regional Trial Court^[4] in an action for damages^[5] filed by private respondent Vicente Mendoza, Jr. as heir of his mother who was killed in a vehicular accident.

Before the trial court, the complainant lumped the erring taxicab driver, the owner of the taxicab, and the alleged insurer of the vehicle which featured in the vehicular accident into one complaint. The erring taxicab was allegedly covered by a third-party liability insurance policy issued by petitioner Travellers Insurance & Surety Corporation.

The evidence presented before the trial court established the following facts:

"At about 5:30 o'clock in the morning of July 20, 1980, a 78-year old woman by the name of Feliza Vineza de Mendoza was on her way to hear mass at the Tayuman Cathedral. While walking along Tayuman corner Gregorio Perfecto Streets, she was bumped by a taxi that was running fast. Several persons witnessed the accident, among whom were Rolando Marvilla, Ernesto Lopez and Eulogio Tabalno. After the bumping, the old woman was seen sprawled on the pavement. Right away, the good Samaritan that he was, Marvilla ran towards the old woman and held her on his lap to inquire from her what had happened, but obviously she was already in shock and could not talk. At this moment, a private jeep stopped. With the driver of that vehicle, the two helped board the old woman on the jeep and brought her to the Mary Johnston Hospital in Tondo.

x x x Ernesto Lopez, a driver of a passenger jeepney plying along Tayuman Street from Pritil, Tondo, to Rizal Avenue and vice-versa, also witnessed the incident. It was on his return trip from Rizal Avenue when Lopez saw the plaintiff and his brother who were crying near the scene of the accident. Upon learning that the two were the sons of the old woman, Lopez told them what had happened. The Mendoza brothers were then able to trace their mother at the Mary Johnston Hospital where they were advised by the attending physician that they should bring the patient to the National Orthopedic Hospital because of her fractured bones. Instead,

the victim was brought to the U.S.T. Hospital where she expired at 9:00 o'clock that same morning. Death was caused by 'traumatic shock' as a result of the severe injuries she sustained x x x x.

x x x The evidence shows that at the moment the victim was bumped by the vehicle, the latter was running fast, so much so that because of the strong impact the old woman was thrown away and she fell on the pavement. x x x In truth, in that related criminal case against defendant Dumlao x x x the trial court found as a fact that therein accused 'was driving the subject taxicab in a careless, reckless and imprudent manner and at a speed greater than what was reasonable and proper without taking the necessary precaution to avoid accident to persons x x x considering the condition of the traffic at the place at the time aforementioned' x x x. Moreover, the driver fled from the scene of the accident and without rendering assistance to the victim. x x x

x x x Three (3) witnesses who were at the scene at the time identified the taxi involved, though not necessarily the driver thereof. Marvilla saw a lone taxi speeding away just after the bumping which, when it passed by him, said witness noticed to be a Lady Love Taxi with Plate No. 438, painted maroon, with baggage bar attached on the baggage compartment and with an antennae[sic] attached at the right rear side. The same descriptions were revealed by Ernesto Lopez, who further described the taxi to have x x x reflectorized decorations on the edges of the glass at the back. x x x A third witness in the person of Eulogio Tabalno x x x made similar descriptions although, because of the fast speed of the taxi, he was only able to detect the last digit of the plate number which is '8'. x x x [T]he police proceeded to the garage of Lady Love Taxi and then and there they took possession of such a taxi and later impounded it in the impounding area of the agency concerned. x x x [T]he eyewitnesses x x x were unanimous in pointing to that Lady Love Taxi with Plate No. 438, obviously the vehicle involved herein.

x x x During the investigation, defendant Armando Abellon, the registered owner of Lady Love Taxi bearing No. 438-HA Pilipinas Taxi 1980, certified to the fact 'that the vehicle was driven last July 20, 1980 by one Rodrigo Dumlao x x x' x x x It was on the basis of this affidavit of the registered owner that caused the police to apprehend Rodrigo Dumlao, and consequently to have him prosecuted and eventually convicted of the offense x x x. x x x [S]aid Dumlao absconded in that criminal case, specially at the time of the promulgation of the judgment therein so much so that he is now a fugitive from justice."^[6]

Private respondent filed a complaint for damages against Armando Abellon as the owner of the Lady Love Taxi and Rodrigo Dumlao as the driver of the Lady Love taxicab that bumped private respondent's mother. Subsequently, private respondent amended his complaint to include petitioner as the compulsory insurer of the said taxicab under Certificate of Cover No. 1447785-3.

After trial, the trial court rendered judgment in favor of private respondent, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff, or more particularly the 'Heirs of the late Feliza Vineza de Mendoza,' and against defendants Rodrigo Dumlao, Armando Abellon and Travellers Insurance and Surety Corporation, by ordering the latter to pay, jointly and severally, the former the following amounts:

(a) The sum of P2,924.70, as actual and compensatory damages, with interest thereon at the rate of 12% per annum from October 17, 1980, when the complaint was filed, until the said amount is fully paid;

(b) P30,000.00 as death indemnity;

(c) P25,000.00 as moral damages;

(d) P10,000.00 as by way of corrective or exemplary damages; and

(e) Another P10,000.00 by way of attorney's fees and other litigation expenses.

Defendants are further ordered to pay, jointly and severally, the costs of this suit.

SO ORDERED."^[7]

Petitioner appealed from the aforecited decision to the respondent Court of Appeals. The decision of the trial court was affirmed by respondent appellate court. Petitioner's Motion for Reconsideration^[8] of September 22, 1987 was denied in a Resolution^[9] dated February 9, 1988.

Hence this petition.

Petitioner mainly contends that it did not issue an insurance policy as compulsory insurer of the Lady Love Taxi and that, assuming arguendo that it had indeed covered said taxicab for third-party liability insurance, private respondent failed to file a written notice of claim with petitioner as required by Section 384 of P.D. No. 612, otherwise known as the Insurance Code.

We find the petition to be meritorious.

I

When private respondent filed his amended complaint to implead petitioner as party defendant and therein alleged that petitioner was the third-party liability insurer of the Lady Love taxicab that fatally hit private respondent's mother, private respondent did not attach a copy of the insurance contract to the amended complaint. Private respondent does not deny this omission.

It is significant to point out at this juncture that the right of a third person to sue the insurer depends on whether the contract of insurance is intended to benefit third persons also or only the insured.

"[A] policy x x x whereby the insurer agreed to indemnify the insured 'against all sums x x x which the Insured shall become legally liable to

pay in respect of: a. death of or bodily injury to any person x x x is one for indemnity against liability; from the fact then that the insured is liable to the third person, such third person is entitled to sue the insurer.

The right of the person injured to sue the insurer of the party at fault (insured), depends on whether the contract of insurance is intended to benefit third persons also or on the insured. And the test applied has been this: Where the contract provides for indemnity against liability to third persons, then third persons to whom the insured is liable can sue the insurer. Where the contract is for indemnity against actual loss or payment, then third persons cannot proceed against the insurer, the contract being solely to reimburse the insured for liability actually discharged by him thru payment to third persons, said third persons' recourse being thus limited to the insured alone."^[10]

Since private respondent failed to attach a copy of the insurance contract to his complaint, the trial court could not have been able to apprise itself of the real nature and pecuniary limits of petitioner's liability. More importantly, the trial court could not have possibly ascertained the right of private respondent as third person to sue petitioner as insurer of the Lady Love taxicab because the trial court never saw nor read the insurance contract and learned of its terms and conditions.

Petitioner, understandably, did not volunteer to present any insurance contract covering the Lady Love taxicab that fatally hit private respondent's mother, considering that petitioner precisely presented the defense of lack of insurance coverage before the trial court. Neither did the trial court issue a subpoena duces tecum to have the insurance contract produced before it under pain of contempt.

We thus find hardly a basis in the records for the trial court to have validly found petitioner liable jointly and severally with the owner and the driver of the Lady Love taxicab, for damages accruing to private respondent.

Apparently, the trial court did not distinguish between the private respondent's cause of action against the owner and the driver of the Lady Love taxicab and his cause of action against petitioner. The former is based on torts and quasi-delicts while the latter is based on contract. Confusing these two sources of obligations as they arise from the same act of the taxicab fatally hitting private respondent's mother, and in the face of overwhelming evidence of the reckless imprudence of the driver of the Lady Love taxicab, the trial court brushed aside its ignorance of the terms and conditions of the insurance contract and forthwith found all three - the driver of the taxicab, the owner of the taxicab, and the alleged insurer of the taxicab - jointly and severally liable for actual, moral and exemplary damages as well as attorney's fees and litigation expenses. This is clearly a misapplication of the law by the trial court, and respondent appellate court grievously erred in not having reversed the trial court on this ground.

"While it is true that where the insurance contract provides for indemnity against liability to third persons, such third persons can directly sue the insurer, however, the direct liability of the insurer under indemnity