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FIRST DIVISION

[G.R. NO. 103883, November 14, 1996]

JACQUELINE JIMENEZ VDA. DE GABRIEL, PETITIONER, VS. HON. COURT OF APPEALS AND FORTUNE INSURANCE & SURETY COMPANY, INC., RESPONDENTS.

DECISION

VITUG, J.:

The petition for review on *certiorari* in this case seeks the reversal of the decision[1] of the Court of Appeals setting aside the judgment of the Regional Trial Court of Manila, Branch 55, whic has ordered private respondent Fortune Insurance & Surety Company, Inc., to pay petitioner Jacqueline Jimenez vda. de Gabriel, the surviving spouse and benificiary in an accident (group) insurance of her deceased husband, the amount of P100,000.00, plus legal interest.

Marcelino Gabriel, the insured, was employed by Emerald Construction & Development Corporation ("ECDC") at its construction project in Iraq. He was covered by a personal accident insurance in the amount of P100,000.00 under a group policy[2]procured from private respondent by ECDC for its overseas workers. The insured risk was for "(b)odily injury caused by violent accidental external and visible means which injury (would) solely and independently of any other cauyse" [3]result in death or diability.

On 22 May 1982, within the life of the policy, Gabriel died in Iraq. A year later, or on 12 July 1983, ECDC reported Gavriel's death to private respondent by telephone. [4]Among the documents thereafter submitted to private respondent were a copy of the death certificate[5]issued by the Ministry of Health of the Republic of Iraq-which stated

"REASON OF DEATH: UNDER EXAMINATION NOW- NOT YET KNOWN"[6]-

and an autopsy report[7]of the National Bureau of Investigation ("NBI") to the effect that "(d)ue to advanced state of postmortem decomposition, cause of death (could) not be determined."[8]Private respondent referred the insurance claim to Mission Adjustment service, Inc.

Following a series of communications between petitioner and private respondent, the later, on 22 September 1983, ultimately denied the claim of ECDC on the ground of prescription.[9]Petitioner went to the Regional Trial court of Manila. In her complaint against ECDC and the private respondent, she averred that her husband

died of electrocution while in the performance of his work and prayed for the recovery of P100,000.00 for insurance indemnification and of various other sums by way of actual, moral, and exemplary dam,ages, plus attorney's fees and cost of suit.

Private respondent fired its answer, which was not verified, admitting the genuineness and due execution of the insurance policy; it alleged, however, that since both the death certificate issued by the Iraqi Ministry of Health and the autopsy report of the NBi failed to disclose the cause of Gabriel's death, it denied liability under the policy. In addition, private respondent raised the defense of "prescription," invoking Section 384[10]of the Insurance Code. Later, private respondent filed an amended answer, still unverified, reiterating its original defenses but, this time, additionally putting up a counterclaim and crossclaim.

The trial court dismissed the case against ECDC for the failure of petitioner to take steps to cause the service of the fourth *alias*summons on ECDC. The dismissal was without prejudice.

The case proceeded against private respondent alone. On 28 May 1987, the trial court rendered its decision[11]in favor (party) of petitioner's claim. In arriving at its conclusion the trial court held that private respondent was deemed to have waived the defense,i.e., that the cause of gabriel's death was not covered by the policy, when the latter failed to impugn by evidence petitioner's averment on the matter. With regard to thew defense of prescription, the court considered the complaint to have been timely filed or within one (1) year from private respondent's denial of the claim.

Petitioner and private respondent both appealed to the Court of Appeals. Petitioner contended that the lower court should have awarded all the claims she had asked for. Private respondent asserted, on its part, that the lower court erred in rukling (a) that the insular had waived ther defense that Gabriel's death was not caused by the insured peril ("violent accidental external and visible means")specified in the policy and (b) that the cause of action had not prescribed.

The Court of appeals, on 18 september 1991, reversed the decision of the lower court. The appellate court held that the petitioner had failed to substantiate her allegation that her husband's death was caused by a risks insured against. The appellate court observed that the only evidence presented by petitioner, in her attempt to show the circumstances that led to the death of the insured, were her own affidavit and letter allegedly written by a co-worker of the deceased in Iraq which, unfortunately for her, were held to be both hearsay.[12]

The motion for reconsideration was denied.[13]

Petitioner's recouirse to this Court must also fail.

On the issue of "prescription," private respondent correctly invoked Section 384 of thew Insurtance Code;*viz*:

> "Sec.384. Any person having any claim upon the policy issued pursuant to this chapter shall, without any unecessary delay, present to the

> insurance company concerned a written notice of claim setting forth the nature, extent and duration of the injuries sustained as certified by a duly licensed physician. Notice of claim must be filed within six months from date of the accident, otherwise, the claim shall be deemed waived. Action or suit for recovery of damage due to loss or injury must be brought, in proper cases, with the Commissioner or the Courts within one year from denial of the claim, otherwise, the claimant's right of action shall prescribe."

The notice of death was given to private respondent of death was given to private respondent, concededly, more than a year after the death of petitioner's husband. Private respondent, in invoking prescription, was not referring to the one-year period from the denial of the claim within which to file an action against an insurer but obviously to the written notice of claim that had to be submitted within six months from the time of the accident.

Petitioner argues that private respondent must be deemed to haver waived its right to controvert the claim, that is, to show that the cause of death is an accident is an excepted peril, by failing to have its answers (to the Request for Admission sent by petitioner) duly verified. It is true that the matter of which a written request for admission is made shall be deemed impliedly admitted" unless, within a period designated in the request, which shall not be less than ten (10) days after service thereof, or within such further time as the court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters,"[14] however, the verification, like in most cases required by the rules of procedure, is a formal, not jurisdictional, requirement, and mainly intended to secure an assurance that matters which are alleged are done in good faith or are true and correct and not of mere speculation. When circumstances warrant, the court may simply order the correction of unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may thereby be served.[15]In the case of answers to written requests for admission particularly, the court can allow the party making the admission whether made expressly or deemed to have been made impliedly, "to withdraw or amend it upon such terms as may be just."[16]

The appellate court acted neither erroneously nor with grave abuse of discretion when it seconded the court *a quo* and ruled:

> "As to the allegation of the plaintiff-appellant that the matters requested by her to be admitted by the defendant-appellant under the Request for Admission were already deemed admitted by the latter for its failure to answer it under oath, has already been properly laid to rest when the lower court in its Order of May 28, 1987 correctly ruled:
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> "At the outset, it must be stressed that the defendant indeed filed a written answer to the request for admission, sans verification. The case of *Motor Service Co., Inc. vs. Yellow Taxicab Co., Inc., et al.* may not