[Syllabus]

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.*

D E C I S I O N

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, which has ordered private respondent Fortune Insurance & Surety Company, Inc., to pay petitioner Jacqueline Jimenez vda. de Gabriel, the surviving spouse and beneficiary in an accident (group) insurance of her deceased husband, the amount of ₱100,000.00, 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 ₱100,000.00 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 cause[3] result in death or disability.

On 22 May 1982, within the life of the policy, Gabriel died in Iraq. A year later, or on 12 July 1983, ECDC reported Gabriels 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 latter, 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 private respondent, she averred that her husband died of electrocution while in the performance of his work and prayed for the recovery of ₱100,000.00 for insurance indemnification and of various other sums by way of actual, moral, and exemplary damages, plus attorneys fees and costs of suit.

Private respondent filed 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 Gabriels 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 a 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 (partly) of petitioners 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 Gabriels death was not covered by the policy, when the latter failed to impugn by evidence petitioners averment on the matter. With regard to the defense of prescription, the court considered the complaint to have been timely filed or within one (1) year from private respondents 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 ruling (a) that the insurer had waived the defense that Gabriels 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 petitioner had failed to substantiate her allegation that her husbands death was caused by a risk 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 a 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 recourse to this Court must also fail.

On the issue of prescription, private respondent correctly invoked Section 384 of the Insurance Code; viz:

Sec. 384. Any person having any claim upon the policy issued pursuant to this chapter shall, without any unnecessary 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 claimants right of action shall prescribe.

The notice of death was given to private respondent, concededly, more than a year after the death of petitioners 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 have waived its right to controvert the claim, that is, to show that the cause of death is an excepted peril, by failing to

have its answers (to the Request for Admission sent by petitioner) duly verified. It is true that a 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:

"`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 therefore be controlling, or actually opposite. In said case, there was an absolute failure on the part of the defendant to answer the request for admission, and thus the court was justified in rendering a summary judgment. Here, however, as clearly intimated elsewhere above, the defendant answered in writing practically every question posed in the request for admission. The Court believes, under the peculiar circumstance, that the more controlling jurisprudence on the mater would be those cited by the defendant in its memorandum, particularly the case of Quimpo *vs.* de la Victoria, 46 SCRA 139.

Prescinding from the foregoing, there is absolutely no basis in fact and in law for the lower court to hold that the appellant insurance company was deemed to have waived the defense, that the death of plaintiff-appellants husband was not caused by violent accidental external and visible means as contemplated in the insurance policy. The Death Certificate (Exh. 9) and the Autopsy Report (Exh. 10), more than controverted the allegation of the plaintiff-appellant as to the cause of death of her husband.[17]

The insurance policy expressly provided that to be compensable, the injury or death should be caused by violent accidental external and visible means. In attempting to prove the cause of her husbands death, all that petitioner could submit were a letter sent to her by her husbands co-worker, stating that Gabriel died when he tried to haul water out of a tank while its submerged motor was still functioning,[18] and petitioners sinumpaang salaysay[19] which merely confirmed the receipt and stated contents of the letter. Said the appellate court in this regard:

x x x. It must be noted that the only evidence presented by her to prove the circumstances surrounding her husbands death were her purported affidavit and the letter allegedly written by the deceased co-worker in Iraq. The said affidavit however suffers from procedural infirmity as it was not even testified to or identified by the affiant (plaintiff-appellant) herself. This self-serving affidavit therefore is a mere hearsay under the rules, x x x.

x x x x x x x x x.

In like manner, the letter allegedly written by the deceaseds co-worker which was never identified to in court by the supposed author, suffers from the same defect as the affidavit of the plaintiff-appellant.[20]

Not one of the other documents submitted, to wit, the POEA decision, dated 06 June 1984,[21] the death certificate issued by the Ministry of Health of Iraq and the NBI autopsy report,[22] could give any probative value to petitioners claim. The POEA decision did not make any categorical holding on the specific cause of Gabriels death. Neither did the death certificate issued by the health authorities in Iraq nor the NBI autopsy report provide any clue on the cause of death. All that appeared to be clear was the fact of Gabriels demise on 22 May 1982 in Iraq.

Evidence, in fine, is utterly wanting to establish that the insured suffered from an accidental death, the risk covered by the policy. In an accident insurance, the insureds beneficiary has the burden of proof in demonstrating that the cause of death is due to the covered peril. Once that fact is established, the burden then shifts to the insurer to show any excepted peril that may have been stipulated by the parties. An accident insurance is not thus to be likened to an ordinary life insurance where the insureds death, regardless of the cause thereof, would normally be compensable. The latter is akin in property insurance to an all risk coverage where the insured, on the aspect of burden of proof, has merely to show the condition of the property insured when the policy attaches and the fact of loss or damage during the period of the policy and where, thereafter, the burden would be on the insurer to show any excluded peril. When, however, the insured risk is specified, like in the case before us, it lies with the claimant of the insurance proceeds to initially prove that the loss is caused by the covered peril.

While petitioner did fail in substantiating her allegation that the death of her husband was due to an accident, considering, however, the uncertainty on the real cause of death, private respondent might find its way clear into still taking a second look on the matter and perhaps help ease the load of petitioners loss.

WHEREFORE, the decision appealed from is AFFIRMED. No costs.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Kapunan, and *Hermosisima, Jr., JJ.,* concur.

---

[1] Penned by Associate Justice Bonifacio A. Cacdac, Jr. and concurred in by Associate Justices Nathanael P. de Pano, Jr. and Fortunato A. Vailoces.

[2] Policy No. PA 11644, Exh. 7, *Rollo*, p. 76.

[3] *Ibid.*, 76.

[4] TSN, October 19, 1987, p. 4.

[5] *Rollo*, p. 77.

[6] Exh. 9-A, *Rollo*, p. 77.

[7] Autopsy Report No. N-82-1157, Exh. 10, *Rollo*, p. 78.

[8] Exh. 10-A, *Rollo*, p. 78.

[9] Exh. 4, Record, p. 188.

[10] *Infra.*

[11] Penned by Judge Hermogenes R. Liwag.

[12] CA Decision, p. 7, *Rollo*, p. 29.

[13] Penned by Associate Justice Fortunato A. Vailoces and concurred in by Associate Justices Nathanael P. de Pano, Jr. and Asaali S. Isnani.

[14] Sec. 2, Rule 26, Revised Rules of Court.

[15] Sy *vs.* Habacon-Garayblas, 228 SCRA 644, citing the Minute Resolution in Villarica *vs.* Court of Appeals, G.R. No. 96085, March 16, 1992.

[16] See Section 4, Rule 26, Revised Rules of Court.

[17] *Rollo*, p. 84.

[18] Exh. I-1; Record, p. 224.

[19] Exh. I; Record, p. 223.

[20] *Rollo*, p. 85.

[21] Exh. L, Record, pp. 230-233.

[22] Which petitioner herself likewise offered in evidence.