Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. No. L-36413 September 26, 1988

MALAYAN INSURANCE CO., INC., petitioner,
vs.
THE HON. COURT OF APPEALS (THIRD DIVISION) MARTIN C. VALLEJOS, SIO CHOY, SAN LEON RICE MILL, INC. and PANGASINAN TRANSPORTATION CO., INC., respondents.

Freqillana Jr. for petitioner.

B.F. Estrella & Associates for respondent Martin Vallejos.

Vicente Erfe Law Office for respondent Pangasinan Transportation Co., Inc.

Nemesio Callanta for respondent Sio Choy and San Leon Rice Mill, Inc.

PADILLA, *J.:*

Review on *certiorari* of the judgment * of the respondent appellate court in CA-G.R. No. 47319-R, dated 22 February 1973, which affirmed, with some modifications, the decision, ** dated 27 April 1970, rendered in Civil Case No. U-2021 of the Court of First Instance of Pangasinan.

The antecedent facts of the case are as follows:

On 29 March 1967, herein petitioner, Malayan Insurance Co., Inc., issued in favor of private respondent Sio Choy Private Car Comprehensive Policy No. MRO/PV-15753, effective from 18 April 1967 to 18 April 1968, covering a Willys jeep with Motor No. ET-03023 Serial No. 351672, and Plate No. J-21536, Quezon City, 1967. The insurance coverage was for "own damage" not to exceed P600.00 and "third-party liability" in the amount of P20,000.00.

During the effectivity of said insurance policy, and more particularly on 19 December 1967, at about 3:30 o'clock in the afternoon, the insured jeep, while being driven by one Juan P. Campollo an employee of the respondent San Leon Rice Mill, Inc., collided with a passenger bus belonging to the respondent Pangasinan Transportation Co., Inc. (PANTRANCO, for short) at the national highway in Barrio San Pedro, Rosales, Pangasinan, causing damage to the insured vehicle and injuries to the driver, Juan P. Campollo, and the respondent Martin C. Vallejos, who was riding in the ill-fated jeep.

As a result, Martin C. Vallejos filed an action for damages against Sio Choy, Malayan Insurance Co., Inc. and the PANTRANCO before the Court of First Instance of Pangasinan, which was docketed as Civil Case No. U-2021. He prayed therein that the defendants be ordered to pay him, jointly and severally, the amount of P15,000.00, as reimbursement for medical and hospital expenses; P6,000.00, for lost income; P51,000.00 as actual, moral and compensatory damages; and P5,000.00, for attorney's fees.

Answering, PANTRANCO claimed that the jeep of Sio Choy was then operated at an excessive speed and bumped the PANTRANCO bus which had moved to, and stopped at, the shoulder of the highway in order to avoid the jeep; and that it had observed the diligence of a good father of a family to prevent damage, especially in the selection and supervision of its employees and in the maintenance of its motor vehicles. It prayed that it be absolved from any and all liability.

Defendant Sio Choy and the petitioner insurance company, in their answer, also denied liability to the plaintiff, claiming that the fault in the accident was solely imputable to the PANTRANCO.

Sio Choy, however, later filed a separate answer with a cross-claim against the herein petitioner wherein he alleged that he had actually paid the plaintiff, Martin C. Vallejos, the amount of P5,000.00 for hospitalization and other

expenses, and, in his cross-claim against the herein petitioner, he alleged that the petitioner had issued in his favor a private car comprehensive policy wherein the insurance company obligated itself to indemnify Sio Choy, as insured, for the damage to his motor vehicle, as well as for any liability to third persons arising out of any accident during the effectivity of such insurance contract, which policy was in full force and effect when the vehicular accident complained of occurred. He prayed that he be reimbursed by the insurance company for the amount that he may be ordered to pay.

Also later, the herein petitioner sought, and was granted, leave to file a third-party complaint against the San Leon Rice Mill, Inc. for the reason that the person driving the jeep of Sio Choy, at the time of the accident, was an employee of the San Leon Rice Mill, Inc. performing his duties within the scope of his assigned task, and not an employee of Sio Choy; and that, as the San Leon Rice Mill, Inc. is the employer of the deceased driver, Juan P. Campollo, it should be liable for the acts of its employee, pursuant to Art. 2180 of the Civil Code. The herein petitioner prayed that judgment be rendered against the San Leon Rice Mill, Inc., making it liable for the amounts claimed by the plaintiff and/or ordering said San Leon Rice Mill, Inc. to reimburse and indemnify the petitioner for any sum that it may be ordered to pay the plaintiff.

After trial, judgment was rendered as follows:

> WHEREFORE, in view of the foregoing findings of this Court judgment is hereby rendered in favor of the plaintiff and against Sio Choy and Malayan Insurance Co., Inc., and third-party defendant San Leon Rice Mill, Inc., as follows:
>
> (a) P4,103 as actual damages;
>
> (b) P18,000.00 representing the unearned income of plaintiff Martin C. Vallejos for the period of three (3) years;
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> (c) P5,000.00 as moral damages;
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> (d) P2,000.00 as attomey's fees or the total of P29,103.00, plus costs.
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> The above-named parties against whom this judgment is rendered are hereby held jointly and severally liable. With respect, however, to Malayan Insurance Co., Inc., its liability will be up to only P20,000.00.
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> As no satisfactory proof of cost of damage to its bus was presented by defendant Pantranco, no award should be made in its favor. Its counter-claim for attorney's fees is also dismissed for not being proved. [1]

On appeal, the respondent Court of Appeals affirmed the judgment of the trial court that Sio Choy, the San Leon Rice Mill, Inc. and the Malayan Insurance Co., Inc. are jointly and severally liable for the damages awarded to the plaintiff Martin C. Vallejos. It ruled, however, that the San Leon Rice Mill, Inc. has no obligation to indemnify or reimburse the petitioner insurance company for whatever amount it has been ordered to pay on its policy, since the San Leon Rice Mill, Inc. is not a privy to the contract of insurance between Sio Choy and the insurance company. [2]

Hence, the present recourse by petitioner insurance company.

The petitioner prays for the reversal of the appellate court's judgment, or, in the alternative, to order the San Leon Rice Mill, Inc. to reimburse petitioner any amount, in excess of one-half (1/2) of the entire amount of damages, petitioner may be ordered to pay jointly and severally with Sio Choy.

The Court, acting upon the petition, gave due course to the same, but "only insofar as it concerns the alleged liability of respondent San Leon Rice Mill, Inc. to petitioner, it being understood that no other aspect of the decision of the Court of Appeals shall be reviewed, hence, execution may already issue in favor of respondent Martin C. Vallejos against the respondents, without prejudice to the determination of whether or not petitioner shall be entitled to reimbursement by respondent San Leon Rice Mill, Inc. for the whole or part of whatever the former may pay on the P20,000.00 it has been adjudged to pay respondent Vallejos." [3]

However, in order to determine the alleged liability of respondent San Leon Rice Mill, Inc. to petitioner, it is important to determine first the nature or basis of the liability of petitioner to respondent Vallejos, as compared to that of respondents Sio Choy and San Leon Rice Mill, Inc.

Therefore, the two (2) principal issues to be resolved are (1) whether the trial court, as upheld by the Court of Appeals, was correct in holding petitioner and respondents Sio Choy and San Leon Rice Mill, Inc. "solidarily liable" to respondent Vallejos; and (2) whether petitioner is entitled to be reimbursed by respondent San Leon Rice Mill, Inc. for whatever amount petitioner has been adjudged to pay respondent Vallejos on its insurance policy.

As to the first issue, it is noted that the trial court found, as affirmed by the appellate court, that petitioner and respondents Sio Choy and San Leon Rice Mill, Inc. are jointly and severally liable to respondent Vallejos.

We do not agree with the aforesaid ruling. We hold instead that it is only respondents Sio Choy and San Leon Rice Mill, Inc, (to the exclusion of the petitioner) that are solidarily liable to respondent Vallejos for the damages awarded to Vallejos.

It must be observed that respondent Sio Choy is made liable to said plaintiff as owner of the ill-fated Willys jeep, pursuant to Article 2184 of the Civil Code which provides:

> Art. 2184. In motor vehicle mishaps, the owner is solidarily liable with his driver, if the former, who was in the vehicle, could have, by the use of due diligence, prevented the misfortune it is disputably presumed that a driver was negligent, if he had been found guilty of reckless driving or violating traffic regulations at least twice within the next preceding two months.
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> If the owner was not in the motor vehicle, the provisions of article 2180 are applicable.

On the other hand, it is noted that the basis of liability of respondent San Leon Rice Mill, Inc. to plaintiff Vallejos, the former being the employer of the driver of the Willys jeep at the time of the motor vehicle mishap, is Article 2180 of the Civil Code which reads:

> Art. 2180. The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.
>
> xxx xxx xxx
>
> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged ill any business or industry.
>
> xxx xxx xxx
>
> The responsibility treated in this article shall cease when the persons herein mentioned proved that they observed all the diligence of a good father of a family to prevent damage.

It thus appears that respondents Sio Choy and San Leon Rice Mill, Inc. are the principal tortfeasors who are primarily liable to respondent Vallejos. The law states that the responsibility of two or more persons who are liable for a *quasi-delict* is solidarily.[4]

On the other hand, the basis of petitioner's liability is its insurance contract with respondent Sio Choy. If petitioner is adjudged to pay respondent Vallejos in the amount of not more than P20,000.00, this is on account of its being the insurer of respondent Sio Choy under the third party liability clause included in the private car comprehensive policy existing between petitioner and respondent Sio Choy at the time of the complained vehicular accident.

In *Guingon vs. Del Monte*, [5] a passenger of a jeepney had just alighted therefrom, when he was bumped by another passenger jeepney. He died as a result thereof. In the damage suit filed by the heirs of said passenger against the driver and owner of the jeepney at fault as well as against the insurance company which insured the latter jeepney against third party liability, the trial court, affirmed by this Court, adjudged the owner and the driver of the jeepney at fault jointly and severally liable to the heirs of the victim in the total amount of P9,572.95 as damages and attorney's fees; while the insurance company was sentenced to pay the heirs the amount of P5,500.00 which was to be applied as partial satisfaction of the judgment rendered against said owner and driver of the jeepney. Thus, in said *Guingon* case, it was only the owner and the driver of the jeepney at fault, not including the insurance company, who were held solidarily liable to the heirs of the victim.

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, [6] however, the direct liability of the insurer under indemnity contracts against third party liability does not mean that the insurer can be held solidarily liable with the insured and/or the other parties found at fault. The liability of the insurer is based on contract; that of the insured is based on tort.

In the case at bar, petitioner as insurer of Sio Choy, is liable to respondent Vallejos, but it cannot, as incorrectly held by the trial court, be made "solidarily" liable with the two principal tortfeasors namely respondents Sio Choy and San Leon Rice Mill, Inc. For if petitioner-insurer were solidarily liable with said two (2) respondents by reason of the indemnity contract against third party liability-under which an insurer can be directly sued by a third party — this will result in a violation of the principles underlying solidary obligation and insurance contracts.

In solidary obligation, the creditor may enforce the entire obligation against one of the solidary debtors. [7] On the other hand, insurance is defined as "a contract whereby one undertakes for a consideration to indemnify another against loss, damage, or liability arising from an unknown or contingent event." [8]

In the case at bar, the trial court held petitioner together with respondents Sio Choy and San Leon Rice Mills Inc. solidarily liable to respondent Vallejos for a total amount of P29,103.00, with the qualification that petitioner's liability

is only up to P20,000.00. In the context of a solidary obligation, petitioner may be compelled by respondent Vallejos to pay the *entire* obligation of P29,013.00, notwithstanding the qualification made by the trial court. But, how can petitioner be obliged to pay the entire obligation when the amount stated in its insurance policy with respondent Sio Choy for indemnity against third party liability is only P20,000.00? Moreover, the qualification made in the decision of the trial court to the effect that petitioner is sentenced to pay up to P20,000.00 only when the obligation to pay P29,103.00 is made solidary, is an evident breach of the concept of a solidary obligation. Thus, We hold that the trial court, as upheld by the Court of Appeals, erred in holding petitioner, solidarily liable with respondents Sio Choy and San Leon Rice Mill, Inc. to respondent Vallejos.

As to the second issue, the Court of Appeals, in affirming the decision of the trial court, ruled that petitioner is not entitled to be reimbursed by respondent San Leon Rice Mill, Inc. on the ground that said respondent is not privy to the contract of insurance existing between petitioner and respondent Sio Choy. We disagree.

The appellate court overlooked the principle of subrogation in insurance contracts. Thus —

> ... Subrogation is a normal incident of indemnity insurance (Aetna L. Ins. Co. vs. Moses, 287 U.S. 530, 77 L. ed. 477). Upon payment of the loss, the insurer is entitled to be subrogated *pro tanto* to any right of action which the insured may have against the third person whose negligence or wrongful act caused the loss (44 Am. Jur. 2nd 745, citing Standard Marine Ins. Co. vs. Scottish Metropolitan Assurance Co., 283 U.S. 284, 75 L. ed. 1037).
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> The right of subrogation is of the highest equity. The loss in the first instance is that of the insured but after reimbursement or compensation, it becomes the loss of the insurer (44 Am. Jur. 2d, 746, note 16, citing Newcomb vs. Cincinnati Ins. Co., 22 Ohio St. 382).
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> Although many policies including policies in the standard form, now provide for subrogation, and thus determine the rights of the insurer in this respect, the equitable right of subrogation as the legal effect of payment inures to the insurer without any formal assignment or any express stipulation to that effect in the policy" (44 Am. Jur. 2nd 746). Stated otherwise, when the insurance company pays for the loss, such payment operates as an equitable assignment to the insurer of the property and all remedies which the insured may have for the recovery thereof. *That right is not dependent upon , nor does it grow out of any privity of contract* (emphasis supplied) or upon written assignment of claim, and payment to the insured makes the insurer assignee in equity (Shambley v. Jobe-Blackley Plumbing and Heating Co., 264 N.C. 456, 142 SE 2d 18). [9]

It follows, therefore, that petitioner, upon paying respondent Vallejos the amount of riot exceeding P20,000.00, shall become the subrogee of the insured, the respondent Sio Choy; as such, it is subrogated to whatever rights the latter has against respondent San Leon Rice Mill, Inc. Article 1217 of the Civil Code gives to a solidary debtor who has paid the entire obligation the right to be reimbursed by his co-debtors for the share which corresponds to each.

> Art. 1217. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.
>
> He who made the payment may claim from his co-debtors only the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.
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> xxx xxx xxx

In accordance with Article 1217, petitioner, upon payment to respondent Vallejos and thereby becoming the subrogee of solidary debtor Sio Choy, is entitled to reimbursement from respondent San Leon Rice Mill, Inc.

To recapitulate then: We hold that only respondents Sio Choy and San Leon Rice Mill, Inc. are solidarily liable to the respondent Martin C. Vallejos for the amount of P29,103.00. Vallejos may enforce the entire obligation on only one of said solidary debtors. If Sio Choy as solidary debtor is made to pay for the entire obligation (P29,103.00) and petitioner, as insurer of Sio Choy, is compelled to pay P20,000.00 of said entire obligation, petitioner would be entitled, as subrogee of Sio Choy as against San Leon Rice Mills, Inc., to be reimbursed by the latter in the amount of P14,551.50 (which is 1/2 of P29,103.00)

WHEREFORE, the petition is GRANTED. The decision of the trial court, as affirmed by the Court of Appeals, is hereby AFFIRMED, with the modification above-mentioned. Without pronouncement as to costs.

SO ORDERED.

Melencio-Herrera (Chairperson), Paras, Sarmiento and Regalado, JJ., concur.

Footnotes

* Penned by Justice Ramon C. Fernandez, concurred in by Justice Hermogenes Concepcion, Jr. and Emilio A. Gancayco.

** Penned by Judge Vicente M. Santiago, Jr.

1 Record on Appeal, pp. 202-203.

2 Rollo, p.46.

3 Rollo, p. 67.

4 Article 2194, Civil Code.

5 G. R. No. L-22042, August 17, 1967, 20 SCRA 1043.

6 Coquia vs. Fieldman's Insurance Co., Inc., G.R. No. L-23276, November 29, 1968, 26 SCRA 178.

7 The Imperial Insurance, Inc. vs. David, G.R. No. L-32425, November 21, 1984, 133 SCRA 317.

8 Philippine Phoenix Surety Insurance Co. vs. Woodworks, Inc., G.R. No. L-25317, August 6, 1979, 92 SCRA 419.

9 Fireman's Fund Insurance Company, et al. vs. Jamila & Company, Inc., et al., G.R. No. L- 27427, April 7, 1976, 70 SCRA 323.

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