Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

G.R. No. L-54171 October 28, 1980

JEWEL VILLACORTA, assisted by her husband, GUERRERO VILLACORTA, petitioner,
vs.
THE INSURANCE COMMISSION and EMPIRE INSURANCE COMPANY, respondents.

TEEHANKEE, *Acting C.J.:*

The Court sets aside respondent Insurance Commission's dismissal of petitioner's complaint and holds that where the insured's car is wrongfully taken without the insured's consent from the car service and repair shop to whom it had been entrusted for check-up and repairs (assuming that such taking was for a joy ride, in the course of which it was totally smashed in an accident), respondent insurer is liable and must pay insured for the total loss of the insured vehicle under the theft clause of the policy.

The undisputed facts of the case as found in the appealed decision of April 14, 1980 of respondent insurance commission are as follows:

> Complainant [petitioner] was the owner of a Colt Lancer, Model 1976, insured with respondent company under Private Car Policy No. MBI/PC-0704 for P35,000.00 — Own Damage; P30,000.00 — Theft; and P30,000.00 — Third Party Liability, effective May 16, 1977 to May 16, 1978. On May 9, 1978, the vehicle was brought to the Sunday Machine Works, Inc., for general check-up and repairs. On May 11, 1978, while it was in the custody of the Sunday Machine Works, the car was allegedly taken by six (6) persons and driven out to Montalban, Rizal. While travelling along Mabini St., Sitio Palyasan, Barrio Burgos, going North at Montalban, Rizal, the car figured in an accident, hitting and bumping a gravel and sand truck parked at the right side of the road going south. As a consequence, the gravel and sand truck veered to the right side of the pavement going south and the car veered to the right side of the pavement going north. The driver, Benito Mabasa, and one of the passengers died and the other four sustained physical injuries. The car, as well, suffered extensive damage. Complainant, thereafter, filed a claim for total loss with the respondent company but claim was denied. Hence, complainant, was compelled to institute the present action.

The comprehensive motor car insurance policy for P35,000.00 issued by respondent Empire Insurance Company admittedly undertook to indemnify the petitioner-insured against loss or damage to the car (a) by accidental collision or overturning, or collision or overturning consequent upon mechanical breakdown or consequent upon wear and tear; (b) by fire, external explosion, self-ignition or lightning or burglary, housebreaking or theft; and (c) by malicious act.

Respondent insurance commission, however, dismissed petitioner's complaint for recovery of the total loss of the vehicle against private respondent, sustaining respondent insurer's contention that the accident did not fall within the provisions of the policy either for the Own Damage or Theft coverage, invoking the policy provision on "Authorized Driver" clause. [1]

Respondent commission upheld private respondent's contention on the "Authorized Driver" clause in this wise: "It must be observed that under the above-quoted provisions, the policy limits the use of the insured vehicle to two (2) persons only, namely: the insured himself or any person on his (insured's) permission. Under the second category, it is to be noted that the words "any person' is qualified by the phrase

> ... on the insured's order or with his permission.' It is therefore clear that if the person driving is other than the insured, he must have been duly authorized by the insured, to drive the vehicle to make the insurance company liable for the driver's negligence. Complainant admitted that she did not know the person who drove her vehicle at the time of the accident, much less consented to the use of the

> same (par. 5 of the complaint). Her husband likewise admitted that he neither knew this driver Benito Mabasa (Exhibit '4'). With these declarations of complainant and her husband, we hold that the person who drove the vehicle, in the person of Benito Mabasa, is not an authorized driver of the complainant. Apparently, this is a violation of the 'Authorized Driver' clause of the policy.

Respondent commission likewise upheld private respondent's assertion that the car was not stolen and therefore not covered by the Theft clause, ruling that "The element of 'taking' in Article 308 of the Revised Penal Code means that the act of depriving another of the possession and dominion of a movable thing is coupled ... with the intention. at the time of the 'taking', of withholding it with the character of permanency (People vs. Galang, 7 Appt. Ct. Rep. 13). In other words, there must have been shown a felonious intent upon the part of the taker of the car, and the intent must be an intent permanently to deprive the insured of his car," and that "Such was not the case in this instance. The fact that the car was taken by one of the residents of the Sunday Machine Works, and the withholding of the same, for a joy ride should not be construed to mean 'taking' under Art. 308 of the Revised Penal Code. If at all there was a 'taking', the same was merely temporary in nature. A temporary taking is held not a taking insured against (48 A LR 2d., page 15)."

The Court finds respondent commission's dismissal of the complaint to be contrary to the evidence and the law.

First, respondent commission's ruling that the person who drove the vehicle in the person of Benito Mabasa, who, according to its finding, was one of the residents of the Sunday Machine Works, Inc. to whom the car had been entrusted for general check-up and repairs was not an "authorized driver" of petitioner-complainant is too restrictive and contrary to the established principle that insurance contracts, being contracts of adhesion where the only participation of the other party is the signing of his signature or his "adhesion" thereto, "obviously call for greater strictness and vigilance on the part of courts of justice with a view of protecting the weaker party from abuse and imposition, and prevent their becoming traps for the unwary. [2]

The main purpose of the "authorized driver" clause, as may be seen from its text, *supra*, is that a person other than the insured owner, who drives the car on the insured's order, such as his regular driver, or with his permission, such as a friend or member of the family or the employees of a car service or repair shop must be duly licensed drivers and have no disqualification to drive a motor vehicle.

A car owner who entrusts his car to an established car service and repair shop necessarily entrusts his car key to the shop owner and employees who are presumed to have the insured's permission to drive the car for legitimate purposes of checking or road-testing the car. The mere happenstance that the employee(s) of the shop owner diverts the use of the car to his own illicit or unauthorized purpose in violation of the trust reposed in the shop by the insured car owner does not mean that the "authorized driver" clause has been violated such as to bar recovery, provided that such employee is duly qualified to drive under a valid driver's license.

The situation is no different from the regular or family driver, who instead of carrying out the owner's order to fetch the children from school takes out his girl friend instead for a joy ride and instead wrecks the car. There is no question of his being an "authorized driver" which allows recovery of the loss although his trip was for a personal or illicit purpose without the owner's authorization.

Secondly, and independently of the foregoing (since when a car is unlawfully taken, it is the theft clause, not the "authorized driver" clause, that applies), where a car is admittedly as in this case unlawfully and wrongfully taken by some people, be they employees of the car shop or not to whom it had been entrusted, and taken on a long trip to Montalban without the owner's consent or knowledge, such taking constitutes or partakes of the nature of theft as defined in Article 308 of the Revised Penal Code, viz. "Who are liable for theft. — Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent," for purposes of recovering the loss under the policy in question.

The Court rejects respondent commission's premise that there must be an intent on the part of the taker of the car "permanently to deprive the insured of his car" and that since the taking here was for a "joy ride" and "merely temporary in nature," a "temporary taking is held not a taking insured against."

The evidence does not warrant respondent commission's findings that it was a mere "joy ride". From the very investigator's report cited in its comment, [3] the police found from the waist of the car driver Benito Mabasa Bartolome who smashed the car and was found dead right after the incident "one cal. 45 Colt. and one apple type grenade," hardly the materials one would bring along on a "joy ride". Then, again, it is equally evident that the taking proved to be quite permanent rather than temporary, for the car was totally smashed in the fatal accident and was never returned in serviceable and useful condition to petitioner-owner.

Assuming, despite the totally inadequate evidence, that the taking was "temporary" and for a "joy ride", the Court sustains as the better view that which holds that when a person, either with the object of going to a certain place, or learning how to drive, or enjoying a free ride, takes possession of a vehicle belonging to another, without the consent of its owner, he is guilty of theft because by taking possession of the personal property belonging to

another and using it, his intent to gain is evident since he derives therefrom utility, satisfaction, enjoyment and pleasure. Justice Ramon C. Aquino cites in his work Groizard who holds that the use of a thing constitutes gain and Cuello Calon who calls it "hurt de uso. " [4]

The insurer must therefore indemnify the petitioner-owner for the total loss of the insured car in the sum of P35,000.00 under the theft clause of the policy, subject to the filing of such claim for reimbursement or payment as it may have as subrogee against the Sunday Machine Works, Inc.

ACCORDINGLY, the appealed decision is set aside and judgment is hereby rendered sentencing private respondent to pay petitioner the sum of P35,000.00 with legal interest from the filing of the complaint until full payment is made and to pay the costs of suit.

SO ORDERED.

Makasiar, Fernandez, Guerrero and Melencio-Herrera, JJ., concur.

Footnotes

1 The "Authorized Driver" clause reads, thus:

AUTHORIZED DRIVER: Any of the following:

(a) The insured

(b) Any person driving on the Insured's Order, or with his permission; Provided, that the person driving is permitted, in accordance with the licensing or other laws or regulations, to drive the Scheduled Vehicle, or has been permitted and is not disqualified by order of a Court of Law or by reason or any enactment or regulation in that behalf."

2 Sweet Lines, Inc. vs. Teves, 83 SCRA 361 (1978), citing Qua Chee Gan vs. Law Union and Rock Insurance Co., Ltd., 98 Phil. 95.

3 Rollo, page 38.

4 Aquino's Revised Penal Code, Vol. III, 1977 Edition, p. 1516.

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