680 Phil. 813

THIRD DIVISION

[G.R. No. 194320, February 01, 2012]

MALAYAN INSURANCE CO., INC., PETITIONER, VS. RODELIO ALBERTO AND ENRICO ALBERTO REYES, RESPONDENTS.

D E C I S I O N

VELASCO JR., J.:

The Case

Before Us is a Petition for Review on Certiorari under Rule 45, seeking to reverse and set aside the July 28, 2010 Decision[1] of the Court of Appeals (CA) and its October 29, 2010 Resolution[2] denying the motion for reconsideration filed by petitioner Malayan Insurance Co., Inc. (Malayan Insurance). The July 28, 2010 CA Decision reversed and set aside the Decision[3] dated February 2, 2009 of the Regional Trial Court, Branch 51 in Manila.

The Facts

At around 5 o'clock in the morning of December 17, 1995, an accident occurred at the corner of EDSA and Ayala Avenue, Makati City, involving four (4) vehicles, to wit: (1) a Nissan Bus operated by Aladdin Transit with plate number NYS 381; (2) an Isuzu Tanker with plate number PLR 684; (3) a Fuzo Cargo Truck with plate number PDL 297; and (4) a Mitsubishi Galant with plate number TLM 732.[4]

Based on the Police Report issued by the on-the-spot investigator, Senior Police Officer 1 Alfredo M. Dungga (SPO1 Dungga), the Isuzu Tanker was in front of the Mitsubishi Galant with the Nissan Bus on their right side shortly before the vehicular incident. All three (3) vehicles were at a halt along EDSA facing the south direction when the Fuzo Cargo Truck simultaneously bumped the rear portion of the Mitsubishi Galant and the rear left portion of the Nissan Bus. Due to the strong impact, these two vehicles were shoved forward and the front left portion of the Mitsubishi Galant rammed into the rear right portion of the Isuzu Tanker.[5]

Previously, particularly on December 15, 1994, Malayan Insurance issued Car Insurance Policy No. PV-025-00220 in favor of First Malayan Leasing and Finance Corporation (the assured), insuring the aforementioned Mitsubishi Galant against third party liability, own damage and theft, among others. Having insured the vehicle against such risks, Malayan Insurance claimed in its Complaint dated October 18, 1999 that it paid the damages sustained by the assured amounting to PhP 700,000.[6]

Maintaining that it has been subrogated to the rights and interests of the assured by operation of law upon its payment to the latter, Malayan Insurance sent several

demand letters to respondents Rodelio Alberto (Alberto) and Enrico Alberto Reyes (Reyes), the registered owner and the driver, respectively, of the Fuzo Cargo Truck, requiring them to pay the amount it had paid to the assured. When respondents refused to settle their liability, Malayan Insurance was constrained to file a complaint for damages for gross negligence against respondents.[7]

In their Answer, respondents asserted that they cannot be held liable for the vehicular accident, since its proximate cause was the reckless driving of the Nissan Bus driver. They alleged that the speeding bus, coming from the service road of EDSA, maneuvered its way towards the middle lane without due regard to Reyes' right of way. When the Nissan Bus abruptly stopped, Reyes stepped hard on the brakes but the braking action could not cope with the inertia and failed to gain sufficient traction. As a consequence, the Fuzo Cargo Truck hit the rear end of the Mitsubishi Galant, which, in turn, hit the rear end of the vehicle in front of it. The Nissan Bus, on the other hand, sideswiped the Fuzo Cargo Truck, causing damage to the latter in the amount of PhP 20,000. Respondents also controverted the results of the Police Report, asserting that it was based solely on the biased narration of the Nissan Bus driver.[8]

After the termination of the pre-trial proceedings, trial ensued. Malayan Insurance presented the testimony of its lone witness, a motor car claim adjuster, who attested that he processed the insurance claim of the assured and verified the documents submitted to him. Respondents, on the other hand, failed to present any evidence.

In its Decision dated February 2, 2009, the trial court, in Civil Case No. 99-95885, ruled in favor of Malayan Insurance and declared respondents liable for damages. The dispositive portion reads:

> ***WHEREFORE***, judgment is hereby rendered in favor of the plaintiff against defendants jointly and severally to pay plaintiff the following:
>
> 1. The amount of P700,000.00 with legal interest from the time of the filing of the complaint;
> 2. Attorney's fees of P10,000.00 and;
> 3. Cost of suit.
>
> **SO ORDERED.**[9]

Dissatisfied, respondents filed an appeal with the CA, docketed as CA-G.R. CV No. 93112. In its Decision dated July 28, 2010, the CA reversed and set aside the Decision of the trial court and ruled in favor of respondents, disposing:

> **WHEREFORE**, the foregoing considered, the instant appeal is hereby **GRANTED** and the assailed Decision dated 2 February 2009 **REVERSED** and **SET ASIDE**. The Complaint dated 18 October 1999 is hereby **DISMISSED** for lack of merit. No costs.
>
> **SO ORDERED.**[10]

The CA held that the evidence on record has failed to establish not only negligence on the part of respondents, but also compliance with the other requisites and the consequent right of Malayan Insurance to subrogation.[11] It noted that the police report, which has been made part of the records of the trial court, was not properly identified by the police officer who conducted the on-the-spot investigation of the subject collision. It, thus, held that an appellate court, as a reviewing body, cannot rightly appreciate firsthand the genuineness of an unverified and unidentified document, much less accord it evidentiary value.[12]

Subsequently, Malayan Insurance filed its Motion for Reconsideration, arguing that a police report is a *prima facie* evidence of the facts stated in it. And inasmuch as they never questioned the presentation of the report in evidence, respondents are deemed to have waived their right to question its authenticity and due execution. [13]

In its Resolution dated October 29, 2010, the CA denied the motion for reconsideration. Hence, Malayan Insurance filed the instant petition.

The Issues

In its Memorandum[14] dated June 27, 2011, Malayan Insurance raises the following issues for Our consideration:

I

WHETHER THE CA ERRED IN REFUSING ADMISSIBILITY OF THE POLICE REPORT SINCE THE POLICE INVESTIGATOR WHO PREPARED THE SAME DID NOT ACTUALLY TESTIFY IN COURT THEREON.

II

WHETHER THE SUBROGATION OF MALAYAN INSURANCE IS IMPAIRED AND/OR DEFICIENT.

On the other hand, respondents submit the following issues in its Memorandum[15] dated July 7, 2011:

I

WHETHER THE CA IS CORRECT IN DISMISSING THE COMPLAINT FOR FAILURE OF MALAYAN INSURANCE TO OVERCOME THE BURDEN OF PROOF REQUIRED TO ESTABLISH THE NEGLIGENCE OF RESPONDENTS.

II

WHETHER THE PIECES OF EVIDENCE PRESENTED BY MALAYAN INSURANCE ARE SUFFICIENT TO CLAIM FOR THE AMOUNT OF DAMAGES.

III

WHETHER THE SUBROGATION OF MALAYAN INSURANCE HAS PASSED COMPLIANCE AND REQUISITES AS PROVIDED UNDER PERTINENT LAWS.

Essentially, the issues boil down to the following: (1) the admissibility of the police report; (2) the sufficiency of the evidence to support a claim for gross negligence; and (3) the validity of subrogation in the instant case.

Our Ruling

The petition has merit.

Admissibility of the Police Report

Malayan Insurance contends that, even without the presentation of the police investigator who prepared the police report, said report is still admissible in evidence, especially since respondents failed to make a timely objection to its presentation in evidence.[16] Respondents counter that since the police report was never confirmed by the investigating police officer, it cannot be considered as part of the evidence on record.[17]

Indeed, under the rules of evidence, a witness can testify only to those facts which the witness knows of his or her personal knowledge, that is, which are derived from the witness' own perception.[18] Concomitantly, a witness may not testify on matters which he or she merely learned from others either because said witness was told or read or heard those matters.[19] Such testimony is considered hearsay and may not be received as proof of the truth of what the witness has learned. This is known as the hearsay rule.[20]

As discussed in *D.M. Consunji, Inc. v. CA*,[21] "Hearsay is not limited to oral testimony or statements; the general rule that excludes hearsay as evidence applies to written, as well as oral statements."

There are several exceptions to the hearsay rule under the Rules of Court, among which are entries in official records.[22] Section 44, Rule 130 provides:

> Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law are prima facie evidence of the facts therein stated.

In *Alvarez v. PICOP Resources*,[23] this Court reiterated the requisites for the admissibility in evidence, as an exception to the hearsay rule of entries in official records, thus: (a) that the entry was made by a public officer or by another person specially enjoined by law to do so; (b) that it was made by the public officer in the performance of his or her duties, or by such other person in the performance of a duty specially enjoined by law; and (c) that the public officer or other person had

sufficient knowledge of the facts by him or her stated, which must have been acquired by the public officer or other person personally or through official information.

Notably, the presentation of the police report itself is admissible as an exception to the hearsay rule even if the police investigator who prepared it was not presented in court, as long as the above requisites could be adequately proved.[24]

Here, there is no dispute that SPO1 Dungga, the on-the-spot investigator, prepared the report, and he did so in the performance of his duty. However, what is not clear is whether SPO1 Dungga had sufficient personal knowledge of the facts contained in his report. Thus, the third requisite is lacking.

Respondents failed to make a timely objection to the police report's presentation in evidence; thus, they are deemed to have waived their right to do so.[25] As a result, the police report is still admissible in evidence.

Sufficiency of Evidence

Malayan Insurance contends that since Reyes, the driver of the Fuzo Cargo truck, bumped the rear of the Mitsubishi Galant, he is presumed to be negligent unless proved otherwise. It further contends that respondents failed to present any evidence to overturn the presumption of negligence.[26] Contrarily, respondents claim that since Malayan Insurance did not present any witness who shall affirm any negligent act of Reyes in driving the Fuzo Cargo truck before and after the incident, there is no evidence which would show negligence on the part of respondents.[27]

We agree with Malayan Insurance. Even if We consider the inadmissibility of the police report in evidence, still, respondents cannot evade liability by virtue of the *res ipsa loquitur* doctrine. The *D.M. Consunji, Inc.* case is quite elucidating:

> Petitioner's contention, however, loses relevance in the face of the application of *res ipsa loquitur* by the CA. The effect of the doctrine is to warrant a presumption or inference that the mere fall of the elevator was a result of the person having charge of the instrumentality was negligent. As a rule of evidence, the doctrine of *res ipsa loquitur* is peculiar to the law of negligence which recognizes that *prima facie* negligence may be established without direct proof and furnishes a substitute for specific proof of negligence.
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> The concept of *res ipsa loquitur* has been explained in this wise:
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> > While negligence is not ordinarily inferred or presumed, and while the mere happening of an accident or injury will not generally give rise to an inference or presumption that it was due to negligence on defendant's part, under the doctrine of *res ipsa loquitur*, which means, literally, the thing or transaction speaks for itself, or in one jurisdiction, that the thing or instrumentality speaks for itself, the facts or circumstances accompanying an injury may be such as to