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SECOND DIVISION

[G.R. No. 59919. November 26, 1986]

MALAYAN INSURANCE CO., INC., *petitioner-appellant, vs.* THE HONORABLE COURT OF APPEALS and AURELIO LACSON, *respondents-appellees.*

SYLLABUS

COMMERCIAL LAW; INSURANCE; PRIVATE CAR COMPREHENSIVE POLICY; CONVICTION OF THEFT IS SUFFICIENT TO PLACE THE VEHICLE WITHIN THE AMBIT OF WORD "THEFT" AS CONTEMPLATED IN THE POLICY. — Petitioner alleged that the respondent Court of Appeals erred in holding that conviction of theft is not necessary for claim to be compensable under the "theft" coverage of the insurance policy, which ruling establishes a bad and dangerous precedent to the detriment and prejudice of insurance industry. Petitioner's contentions hold no water. The first assignment of error was satisfactorily disposed of by the trial court as well as by the appellate court as shown by the ruling that "the taking of the vehicle by another person without permission or authority from the owner or person-in-charge thereof is sufficient to place it within the ambit of the word theft as contemplated in the policy, and is therefore, compensable." The fact that one of the accused persons in the criminal case (filed against those who took the jeep from the repair shop) pleaded guilty to the charge of having unlawfully taken the insured vehicle did away with the necessity of a final disposition of the criminal case in order for plaintiff to recover under his insurance policy. At any rate, accused Rogelio Mahinay was convicted of Theft after he pleaded guilty to the charge.

APPEARANCES OF COUNSEL

Edgardo Elumba Yulo Sedonio Alejandro & Associates for petitioner-appellant.

Filomeno B. Tan, Jr. Soberrano Leong Amihan Tan Escuerte Parel & Associates for private respondent-appellee.

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DECISION

PARAS, *J.*:

This is an appeal by *certiorari*, for the review of the Decision of the respondent Court of Appeals (C.A.) in CA-G.R. No. 63398-R, entitled "Aurelio Lacson, (appellee) *vs.* Malayan Insurance Co., Inc., (appellant), which affirmed the decision of the Court of First Instance (CFI) of Negros Occidental holding petitioner liable to pay private respondent Aurelio Lacson the amount of P20,000.00, less deductible franchise, which is the maximum coverage of the insurance policy, with legal interest thereon from the date of filing of the complaint, the amount of P5,000.00 as attorney's fees and expenses in litigation, and to pay the costs.

Plaintiff Aurelio Lacson (private respondent herein) is the owner of a Toyota NP Land Cruiser, Model 1972, bearing Plate No. NY-362 and with engine Number F-374325. Said vehicle was insured with defendant company (petitioner herein) under "private car comprehensive" policy No. BIFC/PV-0767 for a one year period, from Dec. 3, 1974 to Dec. 3, 1975. On Dec. 1, 1975 plaintiff caused the delivery of subject vehicle to the shop of Carlos Jamelo for repair. On Dec. 2, 1975 while the vehicle was in Carlos Jamelo's shop, a certain Rogelio Mahinay, together with his other co-employees in the shop, namely Johnny Mahinay, Rogelio Macapagong and Rogelio Francisco took and drove the Toyota Land Cruiser, as a result of which it met with an accident at Bo. Taculing, Bacolod City, causing damage thereto, in an estimated amount of P21,849.62. Shopowner Carlos Jamelo reported the incident to the police and later on instituted a criminal case for Qualified Theft against his employees who had taken plaintiff's vehicle. Plaintiff sought indemnification under his insurance policy from defendant company but the latter refused to pay on the ground that the claim is not covered by the policy inasmuch as the driver of the insured vehicle at the time of the accident was not a duly licensed driver. This act of defendant company prompted plaintiff to file a civil case for damages docketed as Civil Case No. 12447 of the CFI of Negros

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Occidental. Defendant in its answer raised among other things as affirmative and special defenses that plaintiff has no cause of action, claim is not covered by the insurance policy, and nonjoinder of indispensable party. After trial, the Court *a quo* rendered a favorable judgment for the plaintiff. On appeal, the Court of Appeals affirmed said decision and denied a motion for reconsideration of the same. Hence, the instant petition by defendant company relying on the following grounds:

1. the respondent Court of Appeals erred in holding that conviction of theft is not necessary for claim to be compensable under the "theft" coverage of the insurance policy, which ruling establishes a bad and dangerous precedent to the detriment and prejudice of insurance industry.
2. the respondent Court of Appeals erred in holding petitioner liable for actual damage of the vehicle without sufficient and competent evidentiary basis.
3. the respondent Court of Appeals erred in holding petitioner liable to private respondent Aurelio Lacson in disregard of the real party in interest BIFC, in violation of the principle embodied in the Rules of Court, that every action must be prosecuted in the name of the real party in interest.
4. the respondent Court of Appeals erred in holding petitioner liable for interest from filing of the complaint and not from the date of decision or its finality, also in disregard of established doctrines laid down by the Honorable Supreme Court.

Petitioner's contentions hold no water. The first assignment of error was satisfactorily disposed of by the trial court as well as by the appellate court as shown by the ruling that "the taking of the vehicle by another person without permission or authority from the owner or person-in-charge thereof is sufficient to place it within the ambit of the word theft as contemplated in the policy, and is therefore, compensable." The fact that one of the accused persons in the criminal case (filed against those who took the jeep from the repair shop) pleaded guilty to the charge of having unlawfully taken the insured vehicle did away with the necessity of a final disposition of the criminal case in order for

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plaintiff to recover under his insurance policy. At any rate, accused Rogelio Mahinay was convicted of Theft after he pleaded guilty to the charge.

There is no question that the vehicle of private respondent was damaged because the unlawful taker, accused Rogelio Mahinay, drove it and met with a vehicular accident. The damages therefore were sustained in the course of the unlawful taking. The testimonies of plaintiff and his witness in this respect remain unrebutted. The fact remains that plaintiff's claim is substantiated by competent evidence. The appellate court ruled:

"Appellant contends that the trial court erred in awarding the amount of P20,000.00 actual damage without sufficient evidentiary basis and imposing interest from date of filing of the complaint. We do not see anything erroneous with this finding of the trial court. As estimated by a reputed motor company, Fidelity Motor Company, the damage which the insured vehicle sustained amounts to P21,849.62. Actual repair is not necessary for the purpose, as the insured has the option, either to advance expenses for the repair of or to wait for the proceeds of the insurance."

Likewise in the very insurance policy (Exh. "A") covering the damaged vehicle, petitioner's liability is fixed at P20,000 less deductible franchise of P800.00. As borne out by the evidence, private respondent before instituting the present action against petitioner wrote a letter of demand (Exh. "H") to petitioner for the payment of his claim in the amount of P21,849.62 as estimated by Fidelity Motor Company. This notwithstanding, petitioner failed and refused to pay respondent's claim prompting the latter to file the present action in court.

As to petitioner's third assignment of error, after considering the facts and circumstances of the case as found by the trial court and the respondent appellate court, We cannot see any reason to depart from the ruling set down by the respondent Court of Appeals. In this connection, the CA said:

"the memorandum on the policy states LOSS on DAMAGE, IF ANY, under this policy shall be payable to the Bacolod IFC[1] as their interest

[1] Bacolod IFC — Bacolod Industrial Finance Corporation.

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may appear, subject otherwise to the terms and conditions, clauses and warranties of this policy. Since as testified to by plaintiff-appellee,[2] Bacolod IFC's interest in the insured vehicle was in the amount of P2,000.00 only compared to plaintiff's P26,000.00 it is well to presume that Bacolod IFC did not deem it wise to be impleaded as party - plaintiff in this case. Had Bacolod IFC been interested in the insurance proceeds, it could thru its duly authorized office, have taken the initiative to join plaintiff in the suit, but it did not. As a matter of fact, as testified to by the plaintiff, Atty. Morravilla of the BIFC knew fully well that he (plaintiff) was pursuing a claim for insurance from defendant-appellant, This inaction on the part of BIFC will only show that it was not really interested to intervene."

Petitioner's fourth assignment of error is untenable. Respondent has sufficiently established his demand for the award of damages plus interest as sanctioned under Arts. 1169, 1170 and 2209 of the Civil Code. Thus, a debtor who is in delay (default) is liable for damages (Art. 1170) generally from extrajudicial or judicial demand (Art. 1169) in the form of interest. (See Art. 2209, Civil Code).

WHEREFORE, premises considered, the present petition is hereby DENIED for lack of merit and the judgment appealed from AFFIRMED *in toto*.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and *Gutierrez, Jr., JJ.,* concur.

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[2] Private respondent herein, Mr. Aurelio Lacson.