

HEIRS OF GERVACIO D. GONZALES, NAMELY: PILAR GONZALES DE DARCEA, FELIX GONZALES, RICARDO GONZALES, JOSE GONZALES, FRANCISCO GONZALES AND CHARLITOS GONZALES, PLAINTIFFS AND APPE...

G.R. No. L-7821. May 25, 1956

Ponente: PADILLA, J.

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PADILLA, J.:

This is an action to recover at least P3,000 as compensation for the death of Gervasio D. Gonzales who on 27 June 1953 was run over by a bus known as "Dapitan Transit No. 11" at Irasan, Katipunan, Zamboanga del Norte, and died, as a result, it is alleged, of reckless, negligent and careless driving of its chauffeur; P10,000 for moral damages; P2,000 for exemplary damages; and P2,000 for attorney's fees, and costs. The first five plaintiffs are the sister and brothers of the deceased and the last is his minor son and the third and second defendants are the chauffeur and the owner of the bus, respectively, attached to the line operated by the first defendant. The plaintiffs pray that plaintiff Francisco Gonzales be appointed guardian ad litem for the minor son of the deceased. This petition for appointment of a guardian ad litem was not acted upon.

After summons the defendants appeared and moved for the dismissal of the complaint on the ground that the plaintiffs, the first five being the sister and brothers of the deceased, described as his heirs in the caption of the complaint, and the last who is a minor child of the deceased, not being represented by a guardian, have no legal capacity to sue. The defendants contend that under the laws of descent collateral relatives are excluded when the decedent is survived by a descendant. Acting upon the motion to dismiss, the Court held that the first five plaintiffs who are the sister and brothers of the deceased have no right of action against the defendants and that the last, a minor son of the deceased, should be duly represented by his mother. For that reason the Court dismissed the complaint unless the complaint be amended within 15 days from date of the entry of the order. In their motion for reconsideration the first five plaintiffs claim that under article 2217 of the new Civil Code they are entitled to moral damages, and that the mother of the minor son of the deceased could not legally and morally represent the minor, because she and the deceased had been living separately for 15 years due to her bad character and faithlessness and had never been reconciled. The motion for reconsideration was denied. Hence this appeal.

The ground stated in the motion to dismiss is lack of capacity to sue. This is not the proper and legal ground for a motion to dismiss in this case! because it does not appear on the face of the complaint that the first five plaintiffs are suffering from any disability. The defendants most likely rely on the ground that the complaint states no cause of action insofar as the first five plaintiffs are concerned, because they contend that under the laws of descent collateral relatives are excluded from inheriting if and when the decedent is survived by a descendant who is the only one entitled to sue for damages arising out of or from the death of the decedent caused by a wrongful or tortious act of the defendants. Upon the ground that the complaint states no cause of action the motion to dismiss is well taken. Article 2217 and article 2206 (3) of the new Civil Code do not grant the sister and brothers of the deceased a right to recover moral damages. But the trial Court failed to act upon the petition for the appointment

of a guardian ad litem prayed for in the plaintiffs' complaint. It should have acted on the petition, because Charlitos Gonzales, a minor son of the deceased, is entitled to bring the action.

The order appealed from is affirmed insofar as it dismisses the complaint filed by the sister and brothers of the deceased and set aside insofar as it dismisses the complaint filed by the minor son of the deceased and the case remanded to the court below with instructions to proceed according to law and to appoint a guardian ad litem for the minor, without costs.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Jugo, Bantista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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