

CLOTILDE CORREOS, ET AL., PLAINTIFFS AND APPELLEES, VS. LADISLAO VALENZUELA Y PEREZ AND EMILIO DIZON, DEFENDANTS AND APPELLANTS.

G.R. No. L-24099. July 20, 1968

Ponente: DIZON, J.

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DIZON, J.:

Appeal from a decision of the Court of First Instance of Manila in Civil Case No. 51466 sentencing Ladislao Valenzuela to pay the plaintiffs "the sum of P3,166.60 as actual damages, plus P5,000.00 as moral damages and P1,000.00 as attorney's fees and the costs of this suit. In case of his failure to pay the said amounts due to insolvency, the defendant Emilio Dizon shall pay the same".

Briefly stated, the facts of the case are as follows:

At around 8:30 in the morning on June 20, 1962, the now deceased Exequiel Correos alighted from a passenger jeepney at Plaza Lawton, Sta. Cruz, Manila. All of a sudden, the passenger jeepney driven by appellant Valenzuela and owned by Emilio Dizon, his co-appellant, came from behind and bumped the rear part of the former, thus pinning Correos between the two vehicles. As a result he sustained body injuries which ultimately caused his death on July 5, 1962, after what the lower court found to be "a prolonged and agonizing illness".

Subsequently, his widow and the children filed the corresponding action for damages. The defendants - now appellants - filed their answer in due time, but failed to appear on the day set for the trial. As a result, the lower court allowed the plaintiffs to present their evidence before the Deputy Clerk of Court appointed as Commissioner for the purpose. On the basis of such evidence the decision appealed from was rendered. Before its rendition, however, or more specifically on November 3, 1962, the defendants filed a motion to set aside the order of October 22 of the same year authorizing the presentation of plaintiffs' evidence before the Deputy Clerk of Court, alleging as grounds therefor that their counsel "was suddenly stricken ill" on the day set for the trial, and that his clients did not appear at said hearing upon his own advice because he did not expect the presentation of the evidence for the plaintiffs to terminate at that hearing. The motion alleged further that the defendants had good, valid and substantial defenses. The motion was not verified nor was it accompanied with affidavits of merit. Consequently, it was denied by the lower court. An urgent motion for reconsideration filed by the defendants on November 27 of the same year was likewise denied for lack of merit.

In the present appeal the appellants contend that the lower court erred: in allowing the presentation of evidence for the plaintiffs before a Commissioner; in not finding that the sickness of defendants counsel constituted excusable negligence, and finally, in not granting the motion for relief from judgment.

The proceedings before the Commissioner appointed by the lower court for the presentation of plaintiffs' evidence are valid and in accordance with current court practice followed in default and similar cases. It must be observed in this connection that the rule invoked by appellants refer to contentious cases where both parties are available for and ready to go to trial.

With regards to the denial of appellants' motion for relief from judgment, the record clearly shows that their and their counsel's inability or failure to appear on the day of the trial was not excusable at all. As a matter of fact, their own motion for relief avers that appellants' failure to appear was due to the advice of their own attorney. Moreover, their aforesaid motion was filed without any supporting affidavit of merit. We have held consistently in this connection that it is not enough to allege in a motion of that kind that the movant has a good and meritorious defense, because that is a mere conclusion and an expression of his own opinion as to the merit of his case. The rules require such motion to be supported by affidavits not only proving the ground re-lied upon but likewise the merits of movant's case, which means that it is the latter's duty to submit to the court for consideration, in the form of depositions or sworn statements, his testimony and that of his witnesses, so that the court may be in a position to decide whether the re-opening of the case would be for a useful purpose or would be a mere empty and useless gesture.

WHEREFORE, the decision appealed from being in accordance with law and the evidence, the same is hereby affirmed. With costs.

Concepcion, C.J., Reyes, JBL, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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