

**PASCUAL, ROMANO AND JUANA LLEANZA DE ROMANO, PLAINTIFFS
AND APPELLANTS, VS. CEISOSTOMO PARINAS AND CARIDAD
DONATO DE PARINAS, DEFENDANTS AND APPELLEES.**

G. R. No. L-10129. April 22, 1957

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an action instituted by plaintiffs against defendants in the Court of First Instance of Abra to recover damages in the amount of P10,000. Basis of the action is that defendants, being the legitimate parents of Antonio Parinas, a minor, allowed the latter to drive a motor vehicle having a passenger one Editha Romano, and because of his lack of foresight and experience, the vehicle overturned resulting in the death of Editha.

Defendants, in their answer, set up the defense that they never permitted their son to drive any motor vehicle, and if on the occasion alleged in the complaint he drove a jeep, it was upon the persistent plea of Editha Romano. They alleged that the accident, if it happened, was due to her fault and negligence.

After filing their answer, defendant also filed a motion asking that Caridad Donato, wife of defendant Crisostomo Parinas, be dropped from the complaint on the ground of misjoinder of parties-defendants, contending that under Article 2180 of the new Civil Code, the father is primarily responsible for the damages caused by the minor children, except only in case of his death or incapacity when the mother also becomes answerable.

On February 14, 1955, the court sustained the motion, ordering that Caridad Donato be dropped from the complaint on the ground of misjoinder of parties, pursuant to Section 11, Rule 3, of the Rules of Court. Hence this appeal.

There is no dispute that defendants are the parents of minor Antonio Parinas whose negligent act gave rise to the untimely death of Editha Romano. There is also no dispute that both are living and are not incapacitated. The question now to be determined is whether their inclusion in the complaint as defendants is proper, or whether the lower court acted correctly in dropping the mother on the ground of misjoinder of parties-defendants.

The legal provisions on which the action of plaintiffs is predicated are Articles 2176 and 2180 of the new Civil Code, the pertinent portions of which are quoted hereunder for ready reference:

"Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is, so pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter."

"Art. 2180. The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible,

"The father and, in case of his death or incapacity, the mother, are, responsible for the damages caused by the minor children who live in their company."

It appears clear from the above that whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done, and this obligation is demandable not only for one's own acts or omissions, but also for those persons for whom one is responsible. And one of the cases mentioned therein is that "The father and, in case of his death or incapacity, the mother", answers for the damages caused by their minor children who live in their company. It is therefore clear that the responsibility of the father and mother is not simultaneous, but alternate, the father being primarily responsible, and the mother answering only "In case of his death or incapacity." Since in the instant case the father is both living and capable, as can be gleaned from the allegations of the complaint, it follows that it is improper to join the mother as party-defendant.

It is true, as appellants contend, that there is sufficient averment in the complaint that both the father and the mother have allowed their son to drive a motor vehicle without proper license or permit thereby imputing acts of negligence to both of them. But from this it cannot be inferred that there is a cause of action against the mother, for under the law her liability can only be exacted in case of death or incapacity of her husband. The lower court therefore acted properly in dropping her from the complaint.

The order appealed from is affirmed, with costs against appellants.

Bengzon, Padilla, Montemayor, Reyes, A, Labrador, Conception, Reyes, J. B. L. Endencia, and Felix, JJ., concur.

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