

**VIRGINIA CLAREZA, ET AL., PLAINTIFFS, FELIPE J. ZAMORA,
PLAINTIFF-INTERVENOR-APPELLANT, VS. BENJAMIN A. ROSALES
AND AMADO A. DIMAYUGA, DEFENDANTS-APPELLEES.**

G.R. No. 15364. May 31, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from an order of the Court of First Instance of Manila, dismissing a "complaint in intervention and/or amended complaint" filed by Felipe J. Zamora in Civil Case No. 34997 of said court, entitled "Virginia Clareza, et al., plaintiffs, versus Benjamin A. Rosales, et al., defendants."

In said civil case, Virginia Clareza and her children claim damages for the death of Juan Luno (Virginia's husband and the father of her children), caused by the reckless negligence of the defendant Rosales in colliding with the taxicab driven by the deceased. On February 10, 1958, the defendants filed their answer, claiming that the incident was due to the negligence of the deceased himself, and praying for the dismissal of the complaint. By way of counterclaim they asked for payment of damages to them. On February 12, 1958, plaintiffs filed their answer to the counterclaim.

On January 21, 1959, Felipe J. Zamora filed an urgent motion for leave to intervene and/or be substituted for the plaintiffs attaching thereto his complaint in intervention and/or amended complaint. In his motion, he avers that he is the owner of the Golden Taxicab that the deceased Juan Luno was driving at the time of the collision; that he has paid P4,000.00 to the heirs of the deceased as compensation under the Workmen's Compensation Act, and is therefore subrogated to their rights against the defendants. In his complaint, the intervenor prays for actual, compensatory, exemplary and moral damages, including the P4,000.00 which he paid to the heirs.

The lower court admitted the complaint in intervention and required the defendants to answer it and on January 29, 1959, the defendants filed a motion to dismiss the complaint as well as the complaint in intervention. In support of their motion, defendants allege that inasmuch as plaintiffs have already recovered compensation from the intervenor, they have no more cause of action against the defendants, and, consequently, there is also no basis for the intervention.

Acting upon said motion to dismiss and for the reasons stated therein, the lower court on February 7, 1959 dismissed both the complaint and the complaint in intervention. A motion for reconsideration of the order of dismissal having been denied, Intervenor Zamora has prosecuted this appeal to this Court.

In this appeal, the right of intervenor Zamora to be subrogated to the rights of the plaintiffs against the defendants is not disputed. The only question refers to the correctness of the dismissal of the complaint in intervention.

Fundamentally, intervention is never an independent action, but is ancillary and supplemental to an existing litigation. (91 A.L.R., p. 592; Garcia vs. David, et al., 67 Phil., 279). The above principle was reiterated by us in the case of Reliance Commercial Enterprises, Inc. vs. Board of Tax Appeals, etc. L-6697, November 18, 1955,

although in said case we sustained the resolution of the Board of Tax Appeals dismissing the complaint in intervention .also because the intervenor had not intervened before the Commissioner of Customs. It only did so in an appellate court.

Strictly speaking, as the right of the original plaintiffs to sue the defendants has ceased to exist by virtue of the payment of compensation to them by the intervenor, in accordance with the provisions of Sec. 6, Act 3812, as amended by Republic Act No. 772, the said action of original plaintiffs may no longer be allowed to continue. The right of an intervenor should merely be in aid of the right of the original party, like the plaintiffs in this case. As this right of the plaintiffs has ceased to exist, there is nothing to aid or fight for. So the right of intervention has ceased to exist.

However, the coming in of the intervenor may be allowed under the provisions of Section 20 of Rule 3 of the Rules of Court, which provides:

"In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party."

Under the provisions of Section 6 of the Workmen's Compensation Act, as amended, the employer who paid the compensation to an employee "shall succeed the injured employee to the right of recovery from such person what he paid." We hold that the intervenor, the employer, may well be substituted as party plaintiff. In the case at bar he actually prayed the court to allow him to do so. Thereafter, he presented the amendments to the original complaint, required by the new circumstances surrounding the substituted party's rights. Such a procedure subserves the policy of the Rules avoiding multiplicity of suits. The right of the intervenor herein being the same right of the original party injured by the negligence of the defendant, which right has been transferred to the intervenor, the latter should be allowed to be substituted for the original plaintiff.

Wherefore, the order appealed from is hereby set aside, the intervenor Felipe J. Zamora is substituted for the original plaintiffs Virginia Clareza and her children, and the complaint filed by the intervenor admitted. Let this case be returned to the lower court for further proceedings in accordance herewith. With costs against the defendants-appellees.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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