

RUBEN, BELLA, ARNULFO, CARUSO, ANITA, ELSIE, ALL SURNAMED MELGAR, AND ERLINA MELGAR ASECO, PETITIONERS, VS. THE HON. CARLOS R. BUENVIAJE, JUDGE, COURT OF FIRST INSTANCE OF CAMAR...

G.R. No. 55750. November 08, 1989

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari (not petition for review on certiorari) seeking the annulment of the Order of Branch VII[*] of the Court of First Instance of Camarines Sur in Iriga City dated September 23, 1980 denying the motion to dismiss filed by the defendants, the petitioners herein, in Civil Case No. IR-858, and its Order dated November 11, 1980 denying the motion for reconsideration of the said September 23, 1980 order, as well as admitting the amended complaint filed by the plaintiffs therein.

The questioned Order of September 23, 1980 reads as follows:

"Resolving the motion to dismiss filed by defendants on the ground of lack of sufficient cause of action in the light of the averments stated in the complaint, this Court is of the belief and so holds that the said motion to dismiss cannot be granted for lack of merit." (p. 16, Rollo)

The equally questioned order of November 11, 1980 states:

"Resolving defendant's motion for reconsideration filed on October 3, 1980 which, among other things, seeks dismissal of the complaint on the ground that the 'steps taken by the plaintiffs are procedurally erroneous and substantially improper.' In the light of the opposition interposed by counsel for the plaintiff filed on November 10, 1980 which emphasized the argument that said defendants as heirs of the estate of Felicidad Balla cannot properly argue that they can sue as heirs and at the same time maintain that they cannot be used as such heirs, and which opposition is found to be well taken, the motion for reconsideration is, as it is, denied.

"The Amended Complaint filed by counsel for the plaintiffs on November 7, 1980 is hereby admitted. Plaintiffs are required to furnish sufficient copies of the Amended Complaint." (p. 27, Rollo)

The antecedents of the case are as follows:

In the early morning of January 13, 1980 a vehicular accident happened along the National Highway of Barangay Agos, Polangui, Albay, whereby a passenger bus bearing Plate No. PUB 4J-136 '79 owned and operated by the late Felicidad Balla and driven by Domingo Casin swerved to the left lane and came into head-on-collision with a Ford Fiera with Plate No. S 860 4F '79 owned by Mateo Lim Relucio and driven by Ruben Lim Relucio coming from the opposite direction. It then swerved further to the left this time colliding head-on-with a passenger bus, FUSO with Plate No. PUB 45 255 '79 owned by Benjamin

Flores and driven by Fabian Prades. As a result of the accident, Felicidad Balla, owner and operator of the passenger bus with Plate No. PUB 4J 136 '79, and mother of herein petitioners together with Domingo Casin,

driver of the bus, died on the spot. Ruben Lim Relucio, driver of the service jeep and Fabian Prades, driver of the other passenger bus died in the same accident. (Rollo, pp. 3, 10 & 19)

On July 4, 1980 the spouses Oscar Prades and Victoria Prades, private respondents herein as the only surviving forced heirs of the deceased Fabian Prades, filed a complaint in the Court of First Instance of Camarines Sur against the children of deceased Felicidad Balla, petitioners herein for damages, docketed as Civil Case No. IR-858 (Rollo, p. 9). The complaint (Rollo, p. 9) alleged, among others:

"5. That it was Felicidad Balla's driver Domingo Casin of 'Fuso' with Plate No. PUB4J 136 Pil '79, who drove his vehicle in a reckless and imprudent manner which was the sole, direct and proximate cause of the incident which resulted to the death of Fabian Prades;

"6. That both driver Domingo Casin and owner Felicidad Balla of passenger 'Fuso1 with Plate No. PUB 4J 136 Pil '79 died in said incident;

"7. That defendants' mother, Felicidad Balla, for allowing her driver Casin to drive recklessly and not observing the required diligence in the selection and supervision of her employee, despite her presence in the ill-fated passenger bus, the estate of deceased Felicidad Balla should be held liable to the damages suffered by plaintiff."

The defendants in the complaint, petitioners herein, moved for the dismissal of the case on the ground that the complaint states no cause of action against them, arguing that it is entirely incorrect to hold the children liable for the alleged negligence of their deceased mother and to consider suing the heirs of a deceased person the same as suing the estate of said deceased person inasmuch as the last portion of Section 21 of Rule 3 of the Rules of Court means that the creditor should institute the proper intestate proceedings wherein which he may be able to interpose his claim (Rollo, p. 14).

Respondent court denied the motion to dismiss in its order of September 23, 1980 for lack of merit (Rollo, p. 16). On September 30, 1989 the defendants, petitioners herein, filed a motion for reconsideration (Rollo, p. 17) on the ground that:

"Distinction should be made between a suit against the estate of Felicidad Balla and the present action which is a personal action against the children of Felicidad Balla, considering that the children have absolutely no participation directly or indirectly in the alleged negligent acts of Felicidad Balla, and there is absolutely no logical basis to hold the children liable for damages resulting from alleged negligent acts of Felicidad Balla. In fact that second sentence of Article 1311 of the New Civil Code provides:

". . . The heir is not liable beyond the value of the property he received from the decedent. . ."

In their argument, the defendants adopted and cited the conclusion and ruling of Branch V of the same court in two similar cases brought against them by the owner of the 3rd vehicle that featured in the same accident and by the widow of the deceased driver of the same vehicle docketed as Civil Case Nos. 867-LV and 863-LV, respectively, wherein the defendants also filed a motion to dismiss (Rollo, p. 19). Said court concluded that "the steps taken by the plaintiffs are procedurally erroneous and substantially improper." The same court directed the plaintiffs therein to file their redress in accordance with the Rules of Court.

On November 7, 1980, plaintiff spouses, private respondents herein, filed their comment and motion to admit amended complaint (Rollo, p. 21) together with an amended complaint (Rollo, p. 23), amending the title of the case naming as defendants the Estate of the late Felicidad Balla as represented by the children named in the original complaint.

On November 11, 1980 respondent court issued its order denying the motion for reconsideration and admitting the

amended complaint (Rollo, p. 27).

Hence this petition filed with this Court on December 23, 1980 (Rollo, p. 3).

On June 5, 1981 the Court (Second Division) resolved to give due course to the petition and required the parties to file their respective memoranda within twenty days from notice {Rollo, p. 40}.

On September 14, 1981 the Court (Second Division) resolved to consider the case submitted for decision (Rollo, p. 66).

The sole issue in the instant case is whether or not the Court of First Instance has the power to entertain a suit for damages arising from the death of a person, filed against the estate of another deceased person as represented by the heirs.

As aforesaid, what was originally filed was a complaint for damages against petitioners herein, who are the children and surviving forced heirs of the deceased Felicidad Balla, owner and operator of the passenger bus "FUSO" which allegedly caused the death of the deceased Fabian Prades.

Under Section 5, Rule 86 of the Rules of Court, actions that are abated by death are: (1) All claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due or contingent; (2) All claims for funeral expenses and expenses for the last sickness of the decedent; and (3) Judgments for money against the decedent (*Aguas v. Llemos*, 5 SCRA 959 [1962]). It is evident that the case at bar is not among those enumerated. Otherwise stated, actions for damages caused by the tortious conduct of the defendant survive the death of the latter.

The action can therefore be properly brought under Section 1, Rule 87 of the Rules of Court, against an executor or administrator. The rule provides:

"Section 1. Actions which may and which may not be brought against executor or administrator. — No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; but actions to recover real or personal property, or an interest therein, from the state, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal, may be commenced against him."

Hence, the inclusion of the "estate of Felicidad Balla" in the amended complaint as defendant.

The point of controversy is however on the fact that no estate proceedings exist for the reason that her children had not filed any proceedings for the settlement of her estate, claiming that Balla left no properties (Rollo, p. 6).

Thus, while petitioners may have correctly moved for the dismissal of the case and private respondents have forthwith corrected the deficiency by filing an amended complaint, even before the lower court could act on petitioner's motion for reconsideration of the denial of their motion to dismiss, the action under Section 17 of Rule 3 of the Rules of Court, which allows the suit against the legal representative of the deceased, that is, the executor or administrator of his estate, would still be futile, for the same reason that there appears to be no steps taken towards the settlement of the estate of the late Felicidad Balla, nor has an executor or administrator of the estate been appointed. From the statement made by the petitioners that "many persons die without leaving any asset at all" (Reply to Respondents' Comment, p. 78; Memorandum for Petitioners, Rollo, p. 5), which insinuates that the deceased left no assets, it is reasonable to believe that the petitioners will not take any step to expedite the early settlement of the estate, judicially or extrajudicially if only to defeat the damage suit against the estate. (Note however the deceased Balla apparently left the bus). Under the circumstances the absence of an estate proceeding may be avoided by requiring the heirs to take the place of the deceased (*Javier v. Araneta*, 90 Phil. 292 [1951]).

As restated in a much later case, in case of unreasonable delay in the appointment of an executor or administrator of the estate or in case where the heirs resort to an extrajudicial settlement of the estate, the court may adopt the alternative of allowing the heirs of the deceased to be substituted for the deceased (Lawas v. Court of Appeals, 146SCRA 173 [1986]).

PREMISES CONSIDERED, the petition is hereby dismissed and petitioners are ordered substituted for the deceased Felieidad Balla.

SO ORDERED.

Padilla (Acting Chairman), Sarmiento and Regalado, JJ., concur.

MelenciO'Herrera, J., (Chairperson), on leave.

[*] Penned by Executive Judge Carlos R. Buenviaje.

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