

PHILIPPINE AIRLINES, INC., PETITIONER, VS. THE COURT OF APPEALS AND CHUA MIN, RESPONDENTS.

G.R. No. L-44936. September 25, 1992

Ponente: MELO, J.

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MELO, J.:

On December 10, 1974, the Honorable Francisco de la Rosa, at that time Presiding Judge of Branch 7 of the then Court of First Instance of Rizal of the Seventh Judicial District stationed in Pasay City, adjudged the accountability of herein petitioner as defendant in a suit for a sum of money in this manner:

"WHEREFORE, judgment is hereby rendered in favor of Plaintiff:

(a) Ordering Defendant to pay Plaintiff the amount in Philippine Pesos equivalent to U.S.\$4,000.00 at the rate of exchange obtaining in March, 1972, with legal interest from the filing of this suit until fully paid;

(b) Ordering Defendant to pay the costs; and

(c) Dismissing Defendants' Compulsory Counterclaim." (p. 70, Record on Appeal)

The foregoing conclusion was formulated by the court of origin on the basis of the following facts:

On April 4, 1972, private respondent boarded herein petitioner's Flight PR 301 from Hongkong to Manila and checked in four (4) pieces of baggage. When the plane landed in Manila, private respondent was not able to locate the two pieces of baggage containing cinematographic films despite diligent search therefor. Private respondent made the claim for such loss to petitioner which admitted the loss and offered to compensate private respondent (Annex "3", Answer; page 17, Record on Appeal; page 64, Rollo).

Instead of accepting the offer, private respondent opted to file the case below to principally recover the value of the lost items which he estimated to be worth P20,000.00 (paragraph 7, Complaint; page 3, Record on Appeal). Herein petitioner responded by asserting that:

"(4) Plaintiff has no cause of action against defendant.

(5) On 4 April 1972, plaintiff was a passenger, economy class on defendant's Flight No. PR 301/4 April 1972, from Hongkong to Manila, under Passenger Ticket No. 2974-231418. As such passenger, plaintiff checked-in four (4) pieces of baggage, with a total weight of only twenty (20) kilos, inclusive of their contents, such that it would be physically impossible for the two alleged lost pieces, to have in themselves an aggregate weight of twenty- five (25) kilos.

(6) As such passenger the contractual relationship between plaintiff and defendant is wholly governed by the terms, conditions and stipulations which are clearly printed on plaintiff's Passenger Ticket No. 2974-231418. Among the stipulations embodied in said ticket is a provision granting plaintiff a free baggage allowance of twenty (20) kilos. A copy of this provision, as embodied in plaintiff's ticket is attached hereto as Annex "1" and made part hereof.

(7) In accordance with and in pursuant of this free baggage allowance (Annex "1") plaintiff checked-in his four (4) pieces of baggage on Flight No. PR301/4 April 1972, for which he was issued corresponding baggage-checks, among them, baggage checks Nos. PR 24-89-61 and PR 24-89-76, covering plaintiff's two alleged lost pieces of baggage.

(8) Under Passenger Ticket No. 2974--231-418, which is the contract of carriage between plaintiff and defendant, it is an express condition of the contract that the same shall be 'subject to the rules and limitations relating to liability established by the Warsaw Convention.' A xerox copy of page 2 of plaintiff's Passenger Ticket No. 2974-231418 which contains the aforesaid condition is hereto attached as Annex "2" and made part hereof.

(9) Under applicable rules and regulations of the Warsaw Convention on International Carriage by Air (as amended by the Hague Protocol of 1955), which is the convention referred to in Annex "2" hereof, defendant's liability for plaintiff's two (2) alleged lost pieces of baggage is limited to a maximum of US\$6.50 per kilogram.

(10) The total weight of plaintiff's four (4) pieces of checked-in baggage, inclusive of their contents, was only twenty (20) kilograms, such that each baggage would have an average weight of five (5) kilograms, and the two alleged lost pieces, an average total weight of only ten (10) kilograms. Accordingly, defendant's maximum liability to plaintiff is US\$165.00, or its equivalent in Philippine currency." (pp. 6-8, Record on Appeal)

After issues were joined, then plaintiff, now private respondent Chua Min testified and presented four documents (p. 57, Record on Appeal) while petitioner did not call any witness and merely adopted three exhibits of herein private respondent (p. 58, Record on Appeal).

Petitioner attempted to challenge private respondent's personality to file the suit on the ground that the film rolls belonged to the Hongkong firm of "Loong Kee Pen Co., Film Exchange Dept.", apart from the vacillating testimony spewed by Chua Min on the witness stand which supposedly suggests that he has no right to seek restitution for the lost films, including the damages resulting therefrom. On the merits of private respondent's plea for relief, petitioner tried to call the attention of the trial judge to the herein below quoted provisions of the Warsaw Convention which limit the liability of petitioner as an air carrier to 250 francs per kilogram, thus:

"Article 3 (1). For the transportation of passengers the carrier must deliver a passenger ticket which shall contain the following particulars:

(a) x x x

(b) x x x

(c) x x x

(d) x x x

(e) A statement that the transport-ation is subject to the rules relating to liability established by this convention."

"Article 22 (2). In the transportation of checked baggage and of goods, the liability of the carrier shall be limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the actual value to the consignor at delivery."

In resolving the issue of private respondent's legal standing to sue, the trial court expressed the view that he can be considered as if he were the owner on account of his responsibility for any eventuality that may occur to the film rolls. Verily, private respondent was considered to be a consignee of the lost goods since he accompanied the

films aboard petitioner's plane who is presumed to have accepted the contract of carriage between the consignor and petitioner when he later demanded the delivery to him of the movie films (p. 63, Record on Appeal).

Anent the aspect of liability, the trial court opined that since petitioner did not introduce a single piece of document and merely adopted private respondent's exhibits, it may not invoke the limitation of its liability with respect to 'checked baggage', under the provisions of the Warsaw Convention. The apathy of petitioner seems to have extended its impact on the outcome of the case when the trial court ruled that the films were worth \$4,000.00 based on private respondent's Exhibit "A" which, as aforesaid, was nonchalantly adopted by petitioner as its Exhibit "1" (p. 69, Record on Appeal).

Realizing the vacuum insofar as the evidence is concerned, petitioner tried to fill the hiatus by starting with the proposition in its motion for reconsideration that the ticket under which private respondent was a passenger on petitioner's plane was a passenger ticket and baggage check at the same time. This tactic was resorted to in order to establish the conclusion that petitioner could not have produced the same since the ticket is usually retained by the passenger. Petitioner continued to asseverate that Article 4 paragraph 4 of the Warsaw Convention which reads:

"(4) The absence, irregularity, or loss of the baggage checks shall not affect the existence or the validity of the contract of transportation which shall nonetheless be subject to the rules of this convention. Nevertheless, if the carrier accepts baggage without a baggage check having been delivered, or if the baggage check does not contain the particulars set out at (d), (f), and (h) above, the carrier shall not be entitled to avail himself of those provisions of the convention which exclude or limit his liability."

(p. 66, Record on Appeal; p. 23, Motion for Reconsideration, p. 65, Rollo)

upon which provision the trial court allegedly relied in rejecting petitioner's contention, is in fact applicable judging from what is explicitly stated under the first sentence of the proviso. These ideas, however, did not persuade the trial judge to reconsider his findings of accountability on the part of petitioner (p. 111, Record on Appeal).

The appeal interposed therefrom to the Court of Appeals was likewise rebuffed on September 17, 1976 by the Fifth Division (Fernandez (ponente), Serrano, Batacan, JJ.) which sustained the observations and dispositions reached by the trial court on the same grounds, except that the sum of \$4,000.00 was directed to be paid by petitioner in Philippine Currency, at the exchange rate obtaining on the date the amount is actually paid to herein private respondent (pp. 43-44, Rollo). Petitioner's subsequent recourse to secure re-evaluation of the judgment did not merit the nod of approval of the respondent Court of Appeals (p. 56, Rollo).

Thereupon, petitioner elevated to Us the matter of its liability under the contract of carriage via the instant petition for review on certiorari, asking this Court:

"I

WHETHER OR NOT PETITIONER CAN AVAIL OF THE LIMITATIONS ON LIABILITY UNDER THE WARSAW CONVENTION.

II

WHETHER OR NOT RESPONDENT IS THE REAL PARTY-IN-INTEREST TO ASSERT THE CLAIM FOR COMPENSATION IN THIS CASE."

Before discussing the intrinsic worth of petitioner's discourse, We shall address the issue of private respondent's

personality to seek redress for the loss of the films. We believe, and so hold, that Chua Min is no stranger to the cause of action instituted at the court of origin in spite of the message conveyed by him when he sat on the witness stand which seems to lead to the opposite conclusion, thus:

"ATTY. LAURETA:

Q. Mr. Chua Min, may I invite your attention to Exhibit A, particularly the entry which reads: 'To De Mil Theatrical Corporation.' This is the corporation which bought supposedly the motion picture films listed in this invoice?

WITNESS:

A. It was not bought by the company, sir. It was only entrusted by Loong Kee Pen to be distributed here in the Philippines.

ATTY. LAURETA:

Q. So that the films listed here (Exhibit 'A' for plaintiff) is owned by Loong Kee Pen Company of Hongkong?

WITNESS:

A. Yes sir, and it was only entrusted to De Mil Theatrical Corporation.

Q. This De Mil Theatrical Corporation, is this an existing corporation?

A. Yes, sir.

Q. Now, these films listed herein which numbers 5 in all are still owned by the supplier, Loong Kee Pen Company of Hongkong. Do I understand then that those films which were supposedly lost were not paid for by De Mil Theatrical Corporation?

A. It was not paid, sir. It was authorized to be the distributor but we take responsibility of all losses, of everything.

Q. Now, when you made reference to 'we', you refer actually to the De Mil Theatrical Corporation?

A. Yes, sir.

Q. Do I understand, therefore, that you, De Mil Theatrical Corporation, has already paid for the films in cartoons No. 3, 4 and 5, as specified in the invoice?

A. It's not yet paid, sir.

(pp. 73-75, Record on Appeal)

since what is important, per his narration, is that he assumes the loss while these films are in his custody and that he is accountable either to Loong Kee Pen Company or to the De Mil Theatrical Corporation should he fail to produce the films upon demand. On the hypothetical scenario, had the judgment of the trial court been adverse, in the sense that the complaint was ordered dismissed, the pecuniary burden for the loss will certainly fall on private respondent's shoulders, which obligation, it is needless to stress, will constitute a material and substantial injury to him. Withal, another pivotal factor to consider is the letter from petitioner on August 28, 1972 addressed to herein private respondent that says:

"We are in receipt of your claim for loss of baggage in connection with your travel to Manila from Hongkong on our flight. We sincerely regret that this loss occurred and that despite a careful search we have been unsuccessful in recovering your property. We feel we should settle your claim without further delay.

We wish we could compensate you for the total amount of your loss. However, existing rules and regulations established pursuant to the Warsaw Convention on International Carriage by Air (as amended by the Hague Protocol) limit our liability for losses of this nature to the sum of US\$16.50 for every kilogram of checked-in baggage. The weight of your 4 pieces of baggage inclusive of its contents as stated in the Property Irregularity Report (PIR) and your ticket shows a total weight of 20 kilos. Based thereon, the average weight of 2 pieces of your lost baggage would come out to 10 kilos. Therefore, our maximum liability for the 2 pieces should be for a total amount of US\$165.00 (10 kilos x US\$16.50).

Upon receipt of your advise, we shall have payment remitted in your favor." (pp. 17-18, Record on Appeal)

which seems to be at least a failure to object to, if not an admission of the personality of private respondent to initiate the suit below. The assurance made by petitioner that it will compensate private respondent's loss is a sufficient admission that indeed, private respondent has the right to avail himself of the suit for the sum of money.

It follows, therefore, that whatever testimony may have been extracted through cross-examination from Chua Min, is of no legal bearing to what was expressly conceded previously by petitioner. Otherwise, We will in effect take the cudgels for petitioner and in the process, permit it to extricate itself from the fatal aftermath of an admission as a tenet under substantive law. Of course, the plea of avoidance raised by petitioner along this line is akin to lack of cause of action which may be utilized even for the first time on appeal (Section 1(q), Rule 16; Section 2, Rule 9, Revised Rules of Court), but the adjective norm permitting such a belated defense under Section 2, Rule 9 of the Revised Rules of Court does not totally rule out the application of other legal doctrines under substantive law, like estoppel, to the elastic undertones of petitioner.

Now, as to whether petitioner may utilize the provision under Article 22(2) of the Warsaw Convention which limits the liability of a common carrier for loss of baggage, We have to consider other salient features thereof such as Article 4, paragraph 1 that reads:

"For the transportation of baggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a baggage check."

and the explicit wordings of Article 4, paragraph 4 of the same Convention that:

"The absence, irregularity, or loss of the baggage checks shall not affect the existence or the validity of the contract of transportation which shall nonetheless be subject to the rules of this Convention. Nevertheless, if the carrier accepts baggage without a baggage check having been delivered, or if the baggage check does not contain the particulars set out at (d), (f), and (h) above, the carrier shall not be entitled to avail himself of those provisions of the Convention which exclude or limit his liability."

because these axioms will spell the difference between success and failure of the petition at bar.

It may be recalled that petitioner made a categorical distinction between a passenger ticket and a baggage check when petitioner responded to the complaint for a sum of money (paragraphs 7 and 8, Answer; pp. 6-8, Record on Appeal; p. 2, *supra*). In its motion for reconsideration before the court *a quo*, petitioner had a sudden change of heart by asserting that the passenger ticket and the baggage check are one and the same thing (p. 81, Record on appeal). On a later occasion, it stressed that the 'baggage tags' were erroneously labeled as 'baggage checks' under paragraph 7 of its Answer to the Complaint (p. 3, Reply Brief for the Petitioner; p. 97, Rollo). But the question of semantics on whether the passenger ticket, the baggage check, and the tag refer to the same object is undoubtedly without legal significance and will not obliterate the fact that the baggage check was not presented by petitioner in the trial court inasmuch as it merely relied on, and adopted private respondent's exhibits, none of which was offered for the purpose of proving the missing link, so to speak (pp. 57-58, Record on Appeal). To rectify these lapses, petitioner argued that it is not in a position to introduce the baggage check in evidence since

private respondent as passenger, is the one who retains possession thereof. Yet, such pretense does not sit well with what is expected of petitioner as an air carrier under Article 4(2), Section II of the Warsaw Convention that:

"The baggage check shall be made out in duplicate, one part for the passenger and the other part for the carrier."

Consequently, petitioner can not capitalize on the limited liability clause under Article 22 (2) of the Warsaw Convention because of the unequivocal condition set forth under the second sentence of Article 4, paragraph 4 that:

". . . if the carrier accepts baggage without a baggage check having been delivered, or if the baggage check does not contain the particulars set out at (d), (f), and (h) above, the carrier shall not be entitled to avail himself of those provisions of the Convention which exclude or limit his liability."

Petitioner contends that it is covered by the first and not by the second sentence of Article 4, paragraph 4 (page 8, supra). But the argument as proffered, requires Us to read something which is not so stated between the lines for the first sentence speaks only of the "existence" or the "validity" of the contract of transportation while the query on "liability" is particularly and directly resolved by the second sentence. To be sure, and even assuming in gratia argumenti that an inconsistency exists, the first sentence must be construed as the general proposition governing the existence or validity of the contract of transportation which must yield to the particular rule under the second sentence regarding liability. Furthermore, even if We consider the two sentences as particular in nature, the rule has been laid down that the clause which comes later shall be given effect upon the presumption that it expresses the dominant purpose of the instrument (*Graham Paper Co. vs. National Newspapers Asso. (Mo. App.)* 193 S.W. 1003; *Barnett vs. Merchants' L. Ins. Co.*, 87 Okl. 42).

WHEREFORE, the petition for review is hereby DISMISSED for lack of merit.

SO ORDERED.

Bidin, Davide, Jr., and Romero, JJ., concur.

Gutierrez, Jr., J., (Chairman), on leave.

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