

**FRANCISCO ORTIGAS, JR., PLAINTIFF AND APPELLANT-APPELLEE,
VS. LUFTHANSA GERMAN AIRLINES, DEFENDANT AND
APPELLANT-APPELLEE.**

G.R. No. L-28773. June 30, 1975

Ponente: BARREDO, J.

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BARREDO, J.:

Direct appeals of both parties plaintiff, Francisco Ortigas, and defendant Lufthansa German Airlines, from the decision of the Court of First Instance of Manila, Branch X, "condemning the defendant to pay the plaintiff the amount of P100,000 as moral damages, P30,000 as exemplary or corrective damages, with interest on both sums at the legal rate from the commencement of this suit until fully paid, P20,000 as attorney's fees and the costs" for the former's failure to "comply with its obligation to give first class accommodation to (the latter) a (Filipino) passenger holding a first class ticket," aggravated by the giving of the space instead to a Belgian and the improper conduct of its agents in dealing with him during the occasion of such discriminatory violation of its contract of carriage.

Defendant buttresses its appeal on the following:

"ASSIGNMENT OF ERRORS

I

THE LOWER COURT ACTED WITH GRAVE ABUSE OF DISCRETION IN DENYING THE DEFENDANTS URGENT-MOTION FOR POSTPONEMENT DATED SEPTEMBER 24, 1966.

II

THE LOWER COURT CONSEQUENTLY ERRED IN ORDERING THE STRIKING FROM THE RECORDS THE TESTIMONY OF WITNESS IVO LAZZARI AND IN DEEMING THE CASE SUBMITTED FOR DECISION ON THE EVIDENCE OF THE PLAINTIFF ALONE.

III

THE LOWER COURT ERRED IN CONDEMNING DEFENDANT TO PAY THE PLAINTIFF THE AMOUNT OF P100,000.00 AS MORAL DAMAGES, P30,000.00 AS EXEMPLARY OR CORRECTIVE DAMAGES, WITH INTEREST ON BOTH SUMS AT THE LEGAL RATE FROM THE COMMENCEMENT OF THIS SUIT UNTIL FULLY PAID, P20,000.00 AS ATTORNEY'S FEES, AND COSTS."

(Pp. 12-13, p. 118, Record.)

On the other hand, plaintiffs sole ground for his appeal is that "the trial court erred in ordering Lufthansa to pay Ortigas only P100,000 as moral damages, P30,000 as exemplary or corrective damages, and P20,000 as attorney's fees." (Plaintiff-Appellant's Brief, p.a.) Thus, apart from the contention of defendant that it has been denied its full

day in court, the only issue raised by both appellants relate to the amount of the damages awarded by the trial court, plaintiff claiming it is less than he is entitled to and the defendant insisting on the opposite.

Lufthansa maintains it has not had its full day in court because the trial court abruptly ended the trial by denying its last motion for postponement notwithstanding it was well founded and forthwith ordering the striking out of the testimony of its absent witness whose cross-examination had not been finished and then declaring the case submitted for decision. In this connection, the record reveals the following facts:

Plaintiff's complaint was filed with the court below on December 24, 1963 and after issues were joined, a pre-trial was held, the parties submitted a partial stipulation of facts and thereafter went to trial, the last day of which was on September 28, 1966. As to what happened in between, a detailed account is made in the brief of Ortigas as plaintiff-appellee as follows:

"... Thereafter the case was set for hearing twenty four (24) times, or on April 27, 1964, July 9, 1964, August 20, 1964, October 1, 1964, November 11, 1964, December 22, 1964, February 3, 1965, March 18, 1965, May 5, 1965, June 11, 1965, July 22, 1965, August 26, 1965 and September 8, 1965, September 22, 1965, November 3, 1965, November 24, 1965, December 17, 1965, December 29, 1965, January 14, 1966, February 2, 1966, April 19, 1966, April 20, 1966, July 5, 6 and 7, 1966, August 25, 1966 and September 28, 1966.

One (1) hearing, or that of August 25, 1966, was cancelled because the trial judge, Hon. Jose L. Moya, was then sick. Other postponements were as follows:

Postponements at instance of plaintiff

Three (3) settings were cancelled upon motion of plaintiff on grounds that defendant's counsel (Atty. Crispin Baizas) himself must have found sufficient, for he gave his conformity thereto. These were the hearings set for:

July 9, 1964 — postponed upon plaintiff's motion, dated June 27, 1964, or 12 days before the hearing, on the ground that he had to attend an important business matter in Mindanao, which was so urgent that 'for plaintiff to even make a flying trip to Manila for the scheduled hearing might jeopardize and render to naught a project to which plaintiff has already expended considerable time, money and effort' (RA — pp. 28-29. Note: All reference herein will be to plaintiff's Record on Appeal).

August 26, 1965 — postponed upon plaintiff's motion, dated August 23, 1965, for the reason that he was in London for business reasons and could not return to the Philippines on time for the hearing. This motion is not reproduced in any Record on Appeal but is admitted.

July 5-7, 1966 — 18 days before the dates set for the hearing, counsel for plaintiff filed a motion, dated June 17, 1966, for postponement on the ground that Atty. Rodegelio M. Jalandoni, who had been personally handling this case was then in Washington, D.C. on business and would not be back until the middle part of August, 1966. Considering that the trial of the case was far advanced, it would be difficult for another lawyer to substitute for Atty. Jalandoni. Defendant's counsel agreed to the motion (RA — pp. 50-51).

Postponements at instance of both parties

Four (4) settings, or those of August 20, 1964, October 1, 1964, November 11, 1964 and December 22, 1964, were cancelled upon the joint motion of the parties on the ground that negotiations for the possible settlement of this case were pending (RA — pp. 31-34).

While both attorneys for plaintiff and defendant signed the joint motions for postponement, the initiative to have the hearings cancelled actually came from defendant's counsel who claimed that he needed time to consult with his client. Plaintiff welcomed the possibility of compromise and acceded to join the requests for postponement but became impatient at and suspicious of the attempt to delay so that in the motion to postpone the December 22,

1964 hearing, plaintiff insisted on the insertion of the phrase 'be postponed for the last time' (RA — p. 34). These took place after the pre-trial but before plaintiff had started presenting his evidence.

Postponements at instance of defendant

Of the remaining 16 settings, at least TEN (10) were postponed or could not proceed except for a few minutes because either Atty. Crispin Baizas, counsel for defendant, was not available or needed time to prepare or had to attend a meeting somewhere else, or, as in the case of September 28, 1966, defendant's witnesses wanted to avoid the inconvenience of coming to the Philippines. The situation became such that on two (2) occasions the Court a quo warned the defendant and/or its counsel that it was postponing the trial 'for the last time' and 'definitely for the last time.' Thus:

February 3, 1965 — On this date, although plaintiff was ready to present his evidence and the Court to hear the parties, Atty. Baizas asked for postponement for the reason that he had to be somewhere else. The undersigned graciously obliged by not objecting, albeit the motion was made without warning and in open court.

March 18, 1965 Once again the hearing scheduled for this date was postponed on motion of Atty. Baizas in open court. The undersigned did not object because, as far as he can now recall, the excuse given was that opposite counsel had another appointment.

June 11, 1965 —The Court was free the whole morning of this day and plaintiff actually took the witness stand. After plaintiff was through with his direct testimony, Atty. Zaida R. Alberto, who appeared for the defendant, asked that the cross-examination be postponed for the next hearing, on the ground that Atty. Baizas knew more of the defense. The following appears of record:

'ATTY. ALBERTO:

If Your Honor please, may I request to allow the cross examination at the next hearing.

COURT:

You can handle the cross examination now.

ATTY. ALBERTO:

The defense are more in the knowledge of Atty. Baizas.

COURT:

If you postpone the cross examination we will forget the testimony and will be spending much time referring to his testimony, so you better cross-examine him while his testimony is still fresh.

ATTY. ALBERTO:

May I ask for a reconsideration, Your Honor, anyway it is past 11:00 o'clock I do not think there will be enough time.

COURT:

We still have one hour.

ATTY. ALBERTO:

I ask for reconsideration, Your Honor.

COURT:

On motion of the defendant's counsel, the continuation of the trial is postponed to July 22, 1965, at 8:30 a.m. The parties were notified in open court of this new assignment.' (t.s.n., pp. 43-44, June 11, 1965)

Notwithstanding there was an hour left, which was precious considering the crowded calendar of the Court, and Judge Moya wanted to hear the cross-examination because plaintiff's testimony was fresh the Court pleased counsel for the defendant and postponed the hearing to July 22, 1965.

September 22, 1965 — At this hearing the undersigned requested that Dr. Isidro Pertiera be permitted to take the witness stand. He is a heart specialist and it was difficult to bring him to court because of his many patients. His direct testimony did not take long, after which Atty. Baizas asked for postponement, for the reason that he did not expect Dr. Pertiera to testify and since the subject of the testimony was important and technical, he needed time to be able to cross-examine. The undersigned, understanding the predicament of Atty. Baizas, did not offer any objection.

November 3, 1965 — This scheduled hearing was postponed upon motion dated October 7, 1965; of Atty. Baizas on the ground that he was leaving on a business trip abroad. The undersigned again did not object.

November 24, 1965 — It will be recalled that the hearing of September 22, 1965 supra, was postponed to enable Atty. Baizas to prepare for his cross-examination of Dr. Pertiera. On this date, November 24, 1965, Atty. Baizas cross-examined briefly the doctor, but announced:

'ATTY. BAIZAS:

May I announce, Your Honor, that after I cross-examine the Doctor I will ask for a postponement of my cross-examination of Atty. Ortigas because I will have to attend a meeting of the PAL Board of Directors this morning. My cross examination will not be very long.' (t.s.n., pp. 3-4, November 24, 1965)

The PAL Board of Directors' meeting was certainly not more important than the occupation of the Court, and it

was still early, but counsel was insistent. The Court was beginning to be perturbed by the dilatory motions, yet it granted counsel's requested postponement but 'for the last time.' Thus:

'ATTY. BAIZAS:

That is all. May I make that request, Your Honor, that it is simply that I have to be present at the meeting. I wish to finish my cross examination on Atty. Ortigas but it is merely that the meeting is held for today at 10:00 o'clock and I would like to ask for a postponement to continue the cross examination.

COURT:

I will grant this for the last time. On motion of Atty. Baizas, the continuation of the hearing is postponed for the last time to December 17, 1965, at 8:30 a.m. by agreement between him and Atty. Jalandoni.' (t.s.n., p. 17, November 24, 1965)

December 17, 1965 — Although at the hearing of November 24, 1965 trial was postponed for the last time to December 17, 1965, the Court's warning did not seem to register because on December 7, 1965 defendant's counsel filed another motion for postponement alleging that he had received a telegram to the effect that the meeting of the Legal Committee of IATA that he was attending, originally scheduled for December 10-15, had been deferred and would begin on December 13 and as it was for 5 days, it would not be possible for him to return for the December 17 hearing; hence, he requested that said hearing be reset for December 27 and 29. In his undated motion filed on December 7, 1965 counsel averred that:

'There is no intention whatever to delay the case but because of the circumstances above-stated, undersigned counsel is constrained to ask, for the last time, for the cancellation of the hearing on December 17 and for its resetting on such dates as may be convenient to this Honorable Court, preferably December 27 and 29.' (RA- p. 41)

The undersigned opposed said motion and alleged:

'That this case has been pending since December 24, 1963, or almost two years now, and trial thereof has been repeatedly suspended and/or postponed;

That at the hearing of November 24, 1965, this Honorable Court precisely postponed continuation of the trial thereof for the last time to December 17, a date which was fixed by agreement of the parties;

That when counsel for defendant left, as alleged, on December 6, 1965 he did so with full knowledge of the intransferable character of the trial set for December 17;

That defendant can well be represented by Atty. Baizas' associate, Atty. Alberto, who, as a matter of fact, handled this case when trial started on June 11, 1965 and has been actively collaborating with Atty. Baizas since then;

Then when plaintiff testified on direct examination on June 11, 1965 said Atty. Alberto appeared for defendant and that plaintiff is now merely due for further cross-examination.' (RA — p. 43)

In spite of said opposition, the Trial Court once more granted defendant's request but was more categorical this time with its admonition against further postponements and used the word 'definitely' in its order which read:

O R D E R

For the reasons stated in the defendant's motion for postponement and in view of the fact that it seeks a

deferment of the hearing for only a few days, the continuation of the trial is postponed definitely for the last time to December 29, 1965, at 8:30 a.m.

'SO ORDERED.

'Manila, Philippines, December 11, 1965.

JOSE MOYA

Judge

(RA – p. 46)

March 10, 1966 — The hearing on this date lasted for only a few minutes with the undersigned offering the documentary evidence for the plaintiff. Thereupon, defendant's counsel again asked for postponement so he could go over said evidence. Since he had no witnesses to present, the Court once more postponed the trial to April 19, 1966 without any objection on the part of the undersigned.

April 19, 1966 — The hearing for this day was called upon motion of defendant's counsel (RA-p. 49) on his representation that defendant's witness Ivo Lazzari had arrived from Italy at midnight of April 18, 1966 and was not in a condition to take the witness stand. The Court again accommodately transferred the hearing to the following day, April 20, 1966, although it had other cases scheduled for that date and the case at bar was not among them, just so Lazzari's trip would not be useless. The undersigned likewise did not oppose the transfer of hearing. " (Pp. 2-13 — Brief, p. 132 — Record.)

Defendant does not seriously deny these facts. Seemingly, the controversy between the parties revolves around defendant's motion for postponement of the hearing set for September 28, 1966 which was denied by the trial court. It is this denial that is the subject of the first above-quoted alleged errors assigned by Lufthansa in its brief as defendant-appellant.

At the time this incident of postponement arose, plaintiff had already closed his evidence, and so it was the turn of the defendant to prove its defenses. The starting date for this was April 19, 1966, but, upon motion of defendant's counsel, it was deferred to the next day, April 20, 1966, on which date defendant's first witness, Ivo Lazzari, took the witness stand. His testimony, however, was not finished in the morning and afternoon of that day nor during the whole day of April 22, 1966. Atty. Rodegelio M. Jalandoni was still cross-examining him when the hearing was continued "to the first available date in the calendar". Eventually, the next continuation of the trial was set at first for July 5, 6 and 7, 1966, but upon motion of plaintiffs counsel, it was reset for August 25, 1966, on which date, in spite of the presence of Lazzari who came from Rome purposely for the trial together with another expected witness, Severino Caselli, and still another witness, C.H. Dehio, who came from Hongkong, no trial could be held because of the absence of the judge. Hence, another date, September 28, 1966 was fixed with notice to the parties received by them respectively the month previous.

On September 24, 1966, defendant's counsel filed a motion for postponement thus:

"COMES NOW the defendant by undersigned counsel and to this Honorable Court respectfully states:

1

The above-entitled case is set for hearing on September 28, 1966 at 8:00 o'clock in the morning.

2

The witnesses who are scheduled to testify for the defendant at said hearing are to come from Rome, Italy;

3

Word has been received from the defendant that said witnesses will not be able to come for the hearing aforementioned.

WHEREFORE, it is respectfully prayed that the hearing of this case scheduled for September 28 be postponed to some other date most convenient to this Honorable Court, preferably on any of the following dates: October 21, 17; November 3, 8, 9 or 11, 1966. . . ." (Page 53, Record on Appeal, p. 29, Rec.)

On September 27, 1966, plaintiff's counsel filed the following opposition to the above motion:

"COMES NOW plaintiff, through undersigned counsel and, in opposition to defendant's urgent motion for postponement, dated September 24, 1966, to this Honorable Court respectfully states:

That this case has been pending since December, 1963;

That defendant's aforesaid motion does not give any valid reason for postponing the hearing, since it does not state why defendant's witnesses cannot come to Manila on the scheduled dates of continuation of trial;

That the convenience and motive of defendant and its witnesses in not exerting every effort to testify are not the concern of the plaintiff, and more so of this Honorable Court, and that the speedy and proper administration of justice dictates that the hearing proceed irrespective of defendant's obvious disregard of the need thereof;

That defendant's attitude is aggravated by the fact that, being an airline company, it has all facilities to have its employees available as witnesses at any time it desires.

WHEREFORE, it is respectfully prayed that defendant's aforesaid motion for postponement be denied. ..." (Pp. 55-56, id.)

In view of this opposition, on the same day, His Honor issued an order of denial:

"No reason whatsoever having been alleged or shown why the defendant's witnesses will not be able to come from Rome to Manila on the day of the hearing, and this case having been pending since December, 1963, the motion for postponement is denied." (Pp. 56-57, id.)

On the day set for the hearing, September 28, 1966, Atty. Zaida Ruby S. Alberto appeared for defendant and verbally moved for reconsideration of the foregoing order of denial. She argued that:

"Actually, it is not intended to delay the termination of this case. As a matter of fact, on August 15, 1966, the date set for the hearing of this case, we were ready with the presentation of our evidence as our two witnesses from Rome were here. But unfortunately, Your Honor was indisposed, so the hearing was postponed to this date. I really do not know why our witnesses failed to come. However, I intend to make an inquiry about the matter so that I could file the corresponding explanation for their failure to appear in Court today. May I, therefore, reiterate my motion for reconsideration, with the reservation that I be allowed to file my explanation for the failure of these two witnesses coming from Rome to appear for today's hearing." (Page 2, t.s.n., Sept. 28/66.)

But as counsel could not give the exact reason why defendant's witness scheduled to testify were absent, the trial court denied the motion; ruling that "no ground has been alleged in support thereof". (p. 6, t.s.n., September 28, 1966.)

This order was immediately followed by a motion of plaintiff's counsel for the striking out of the entire testimony

of the witness, Ivo Lazzari, upon the ground that counsel had not yet finished his cross-examination of him and his absence was unexplained. No objection appears to have been made to such motion, albeit counsel for defendant tried to point out that Atty. Jalandoni had already finished his cross-examination of the witness. After verifying from the records that such was not the case, His Honor issued the following order:

"The witness Ivo Lazzari not having appeared at the hearing set for today, for which reason his cross-examination cannot be continued, on motion of the plaintiffs counsel, his testimony is stricken from the record, and this case is deemed submitted for decision on the evidence already presented." (Pp. 57-58, Rec. on Ap., id.)

Thus the trial ended and parties were allowed to submit their respective memoranda.

On October 19, 1966, however, defendant's counsel filed the following motion for reconsideration:

"MOTION FOR RECONSIDERATION

COMES NOW defendant by undersigned counsel this Honorable Court moving for a reconsideration of the orders dated September 27 and September 28, 1966, respectively, respectfully states:

1

On September 26, 1966 a motion for postponement of the hearing on September 28, 1966 was filed by undersigned counsel for the reason that word had just been received from the defendant that the witnesses who were scheduled to testify at the said hearing and who were to come from Rome, Italy, would not be able to come to the Philippines for said hearing. This motion was denied in the order of September 27, 1966;

2

No reason could be stated in the aforesaid motion for postponement because at the time it was prepared, counsel for defendant did not really know the specific reasons for the inability of said witnesses to come. A simple telex message had been sent by the Far East Manager of the defendant company to defendant's representatives in Manila advising the latter that the witnesses in question could not come. Copy of said telex message is attached to and made part of this motion for reconsideration as Annex "I";

3

For this reason on September 28, 1966, when the case was called, counsel for the defendant reiterated the motion for postponement and requested this Honorable Court for time to submit an explanation on the failure of defendant's witnesses to come as a letter elaborating on the matter would surely follow the telex message. This request was however denied by the Honorable Court and upon motion of plaintiffs counsel, another order was issued striking out from the record the testimony of defendant's only witness so far, Ivo Lazzari, whose cross-examination was to be continued that date, for the latter's failure to appear at the hearing, and deeming the case submitted for decision;

4

It is alleged by opposing counsel that the witnesses did not come for the hearing of September 28, 1966 because it was inconvenient for them and for defendant. This accusation is absolutely without basis and malicious;

5

If inconvenience were the only reason for the witnesses' failure to come, then they would not also have come previously because it was just as inconvenient for them then. It will be recalled that Ivo Lazzari had been here in April 1966, when he was presented on direct examination and partly on cross-examination. On August 25,

1966, the case was also scheduled for hearing. All of defendant's witnesses came here from Rome, Italy for said hearing. Even Mr. C. H. . Dehio was also here to testify. Unfortunately, the Presiding (Judge) of this Honorable Court was indisposed on that particular morning and so the hearing on said date was cancelled. We mention this only to show that the failure of the witnesses to come for the hearing on September 28 was not caused by mere inconvenience;

6

Defendant had and had no intention to delay the proceedings whatsoever. The witnesses in question could not come because of certain circumstances that rendered their coming over virtually impossible. Both witnesses, Ivo Lazzari and Saverino Casilli are employees of defendant company at the Rome office. The air traffic in Rome has been particularly heavy this season. Some of the personnel of the Lufthansa Rome office were on leave and these two employees had to assume some of the duties of those employees who were on leave, aside from performing their own regular duties. If they were to leave their posts to come for the hearing on September 28, there would be grave disruption to the public service and for this reason they were not able to come. These facts are contained in a letter dated September 29, 1966 written to undersigned counsel by C. H. Dehio, IATA Agency Manager, Far East and Australasia, Lufthansa German Air Lines, copy of which is attached to and made part of this motion for reconsideration as Annex '2'. The envelope in which said letter was contained is likewise attached to and made part of this motion as Annex '2-A';

7

Witness Ivo Lazzari had finished his testimony on direct examination and on September 28, 1966, opposing counsel was to continue cross-examination of said witness. The other witness Saverino Casili was to be presented after Ivo Lazarri would have finished testifying. Both witnesses are material for the defense and no other person could testify on the facts that are the subject of their testimony. The inability of said witnesses to come for the hearing on September 28 was not due to any fault or neglect on the part of defendant who in fact had exerted every effort to have them come, but because of the supervening circumstances above-described, their coming over could not have been possible without seriously disrupting public service;

8

There is no question that the granting or denial of a motion for postponement rests upon the sound discretion of the court. We submit however that under the circumstances, the ends of justice would have been better served by granting the motion in question. The reason for defendant's motion for postponement is valid and meritorious, and the grant of a postponement based on such ground would not have adversely affected the substantial rights of plaintiffs.

'Continuances and postponements of trial are part and parcel of our judicial system of justice, and where no substantial rights are affected and the intention to delay is not manifest, it is sound judicial discretion to allow them. (Rexwell vs. Canlas, No. L-16746, Dec. 30, 1961)

There is even authority for the view that the right to a speedy trial is not violated by granting a continuance on the ground of absence of material witnesses. (People vs. Romero, G.R. No. L-4517-20, May 25, 1953)

"The lower court erred in denying a motion for postponement filed by defense to await arrival of a material witness." (People vs. Narsolis, et al. G.R. No. L-2764, March 24, 1950)

'A miscarriage of justice may result from the accidental or excusable absence of a material witness, where presence can be secured by the grant of a reasonable continuance.' (Luna vs. Arcenas, 34 Phil. 80, 98-99)

9

Defendant has a valid and meritorious defense, and if given opportunity to present its side of the case, it would

certainly diminish if not altogether disprove plaintiff's claim.

'... court litigations are primarily for the search of truth. . . . A trial by which both parties are given the chance to adduce truth is the best way to find out such truth. A denial of this chance would be too technical. The dispensation of justice and the vindication of grievances should not be barred by technicalities.' (Ronquillo vs. Marasigan, L-11621, May 21, 1962; Santiago vs. Joaquin, L-15237, May 31, 1963, italics ours.)

'Judicial experience dictates that it is better that cases are tried on the merits even with a little delay than the substantial rights of a party litigant be sacrificed on the altar of technicality.' (Uy vs. Demetillo, CA-G.R. No. 32665-R, Jan. 14, 1964.)

10

An affidavit of merit by Clarita C. de la Riva, Manager, Rocha & Cia., Inc., General Sales Agents, Lufthansa German Airlines is likewise attached to and made an integral part of this motion for reconsideration as Annex "3";

11

The order dated September 27, denying defendant's motion for postponement and the order of September 28, 1966 striking off from the records the testimony on direct examination of the witness Ivo Lazzari and holding the case submitted for decision on the evidence presented would unduly prejudice defendant's stand, and would amount to a denial of due process to defendant.

'The paramount interests of justice demand such reasonable allowances as would prevent, without doing an injustice to the opposing party, the loss by a litigant of his chance to duly present his side of the case before the court. With a view of avoiding a possible miscarriage of justice, the exercise of the court's discretion ought to lean, in a reasonable degree toward bringing about a presentation of evidence on both sides. ...' (Gerona vs. Calada, CA-G.R. No. 23955-R March 30, 1963, Tormes vs. Balzado, CA-G.R. No. 32019-R, April 17, 1964.)

WHEREFORE, it is respectfully prayed that the orders of the Honorable Court dated September 27, and September 28, 1966, respectively, be reconsidered and set aside; that the testimony of defendant's witness Ivo Lazzari be allowed to remain on record and that a date be set for the continuation of defendant's evidence.

Manila, Philippines, October 19, 1966.

CRISPIN D. BAIZAS & ASSOCIATES

By: s/t/ Crispin D. Baizas

Counsel for the defendant

Suite 305 Shurdut Building

Intramuros, Manila

VERIFICATION

I, CRISPIN D. BAIZAS, after having been sworn according to law, depose and say:

I am the counsel for the defendant in the above-entitled case;

I have prepared the foregoing motion for reconsideration and all the allegations contained therein are true and

correct of my own knowledge and to the best of my information and belief.

s/t CR/SPIN D. BAIZAS

SUBSCRIBED AND SWORN TO BEFORE ME this 19th day of October, 1966 in the City of Manila, affiant exhibiting to me his Res. Cert. No. A-5892423 issued on January 28, 1966 at Makati, Rizal.

s/ (Illegible)

NOTARY PUBLIC

Until December 31, 1967

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(Pages 58-67, Record on Appeal, id.)

to which, plaintiffs counsel filed the following opposition:

"COMES NOW plaintiff, through undersigned counsel, and, in opposition to defendant's motion for reconsideration, dated October 19, 1966, to this Honorable Court respectfully states that:

1. This is in effect the second motion for reconsideration that defendant has filed against the order of September 27, 1966 denying its motion for postponement of the hearing of September 28. The first motion for reconsideration was made in open court by Atty. Zaida S. Alberto and denied on the same date.

2. Defendant now claims that it did not intend to delay the trial of this case and seeks to justify the failure of its witnesses, Ivo Lazzari and Saverino Casilli, to appear on September 28 on the ground that:

‘. . .The air traffic in Rome has been particularly heavy this season. Some of the personnel of the Lufthansa Rome office were on leave and these two employees had to assume some of the duties of these employees who were on leave, aside from performing their own regular duties. If they were to leave their posts to come for the hearing on September 28, there would be grave disruption to the public service and for this reason they were not able to come...’ (p. 3, Defendant's Motion for Reconsideration.)

3. Note that the above alleged facts are contained in a mere letter that was written by a certain Mr. C.H. Dehio, an employee of defendant in Hongkong, to its counsel on September 29, 1966, or one day after the hearing of September 28, when presumably defendant's aforesaid employee had already been informed that this Honorable Court had denied the postponement and considered this case as submitted for decision. Defendant is an airline company and has all the telex facilities to communicate in a matter of minutes with its various agencies. The ground for failure to appear, to wit, supposed pressure of work of said employees, is as easy to conceive and gratuitously state as to flick one's fingers. We wish to call attention to the significant fact that the statement of Mr. Dehio in his letter is not under oath. Incorporating said statement in the body of the motion for reconsideration that is sworn to by counsel merely ‘to the best of his information and belief’, or in an affidavit of Mrs. Clarita C. de la Riva (Annex 3) who was only referring to hearsay information derived from Mr. Dehio's aforesaid letter, is insufficient verification of the motion for reconsideration under Section 6, Rule 7 of the Rules of Court. Even Mr. Dehio had he executed the affidavit himself, would have been disqualified to swear to the facts because he is stationed in Hongkong. So that, when defendant's counsel and Mrs. de la Riva verified the motion on

‘information and belief’ derived from Mr. Dehio's letter, their statements were hearsay thrice removed.

4. But assuming said facts to be true, did this justify the failure of defendant's witnesses to appear at the scheduled hearing or constitute a valid excuse for defendant's inability to present evidence? We respectfully submit that they do not. The September 28 hearing was set as early as August 25, 1966, or more than one (1) month previous, to suit the schedules not only of this Honorable Court but of the parties as well. Surely, it was incumbent on defendant, if it has deference to this Honorable Court and our administration of justice, to see to it that its witnesses, particularly Ivo Lazzari who was on the witness stand and due for cross-examination, would be available, rather than granting leave to its other employees and burdening the two needed witnesses with additional work. Defendant is not a neophyte in the airline business. Assuming *arguendo* that it is true that the volume of air traffic in Europe was high in 'September and early October', it should have foreseen the situation and taken appropriate measures to assure compliance with its obligation to this Honorable Court. The witnesses are defendant's employees and subject to its exclusive control. Instead, defendant allegedly rendered itself short handed by granting leave to its other employees, and now comes to the court with a lame excuse requesting that it be extricated from a predicament that it has deliberately brought upon itself. For, the excuse that with the workload for Mr. Lazzari and Mr. Casilli becoming heavier than usual 'it would seriously disrupt our service to the travelling public if, during this time, they were to leave their jobs for several days' (Please see Mr. Dehio's letter, Annex '2'), is lame, by any standard. The local newspapers are constantly carrying news articles of how large and expanded is the Lufthansa as an airline outfit. Surely, of its hundred (if not thousands) of available employees, two like Lazzari and Casilli could have been dispensed from their work temporarily to defend the company against the just grievance asserted by an injured passenger before a court of justice. At the most, defendant was after the promotion of its own interest in holding the two employees to their jobs, and is not avoiding 'grave disruption to the public service' as counsel exaggerates Mr. Dehio's expression 'seriously disrupt our service to the travelling public' — two distinct ideas, the latter signifying self-interest as distinguished from public necessity. This Honorable Court can take judicial notice that there are many other airlines operating in the same areas as does Lufthansa and competing with it.

5. As we explained at the September 28 hearing, the truth of the matter is that, contrary to the unverified representations of defendant, the reason for the non-attendance of defendant's witnesses was to avoid the inconvenience of coming to the Philippines to testify. In other words, after Ivo Lazzari and Saverino Casilli were unable to testify last August 25, 1966, defendant thought of avoiding having said witnesses come again to Manila. We say this because sometime on September 20, 1966, Atty. Leonardo P. Valmonte (an assistant attorney of plaintiff who is helping in this case) had a telephone conversation with defendant's counsel, Atty. Zaida S. Alberto in connection with the former's request for a copy of a certain exhibit, and in the course of their conversation Atty. Alberto informed Atty. Valmonte that the trial scheduled for September 28, 1966 would not proceed because they were intending 'to secure the permission of the court to take the testimonies of their witnesses by way of depositions'. In short, even before the receipt of the alleged telex (Annex "I" of Motion) by defendant's counsel on September 22, 1966, said counsel announcing that the trial could not proceed because they were going to resort to deposition of their witnesses in Rome, rather than have said witnesses come to Manila. The decision to take deposition having been made on or before September 20, it was an easy matter to have Lufthansa's Hongkong office sent the telex of September 22 stating that they would be unable to provide witnesses on September 28. No reason was given why witnesses could not be provided 6 or 7 days thence. If in truth there was unexpected increase in air traffic, surely 6 or 7 days were more than sufficient to make the necessary arrangements so that the work of Lazzari and Casilli could be taken over temporarily just so these witnesses could appear before this Honorable Court at the appointed date. Attached hereto as Annex "A" is the affidavit of Atty. Leonardo P. Valmonte on his aforesaid conversation with Atty. Alberto.

6. At the hearing on September 28, when we made reference to the above-referred to conversation between Attys. Valmonte and Alberto, the latter did not deny that she had in truth spoken to Atty. Valmonte in the tenor above related. As a matter of fact, she admitted that defendant was intending to take the depositions of its witnesses in Rome.

7. When this Honorable Court denied the motion for postponement on September 28, 1966, it did so in the exercise of its sound judicial discretion, for no valid reason was given why the witnesses could not appear, whereas this case had been pending for about three (3) years and had been postponed several times with repeated warnings or defendant that said postponements were for the last time. And now, in its motion for reconsideration, defendant has failed to effectively allege the ground for the failure of said witnesses to come, and even if said ground be admitted as true for argument's sake, it merely showed 'inofficiousness, lack of resourcefulness and diligence, if not total indifference' on the part of defendant to protect in court its interests and to prevent needless delays in the discharge of judicial business.

'Postponement not based on valid reasons. — Where a party seeks postponement of the hearing of this case for reasons caused by his own inofficiousness, lack of resourcefulness and diligence if not total indifference to his own interests or to the interests of those he represents, thereby resulting in his failure to present his own evidence, the court would not extend to him its mantle of protection. If it was he who created the situation that brought about the resulting adverse consequences, he cannot plead for his day in court nor claim that he was so denied of it.' (De Leon vs. People's Homesite and Housing Corporation, CA-G.R. No. 31169-R, Aug. 31, 1963.)

8. In the case of Hap Hong Hardware Co. vs. Philippine Company, G.R. No. L-16773 (May 23, 1961), the Supreme Court, in sustaining the trial court's denial of a motion for postponement and on the ground that the defendant's witnesses, officers of the company, had not come because it was the beginning of the milling season in the municipality of San Jose, Mindoro Occidental and their presence in the Central was very necessary, held that the trial court was perfectly justified in denying said motion for postponement because the reason adduced was 'not unavoidable and one that could not have been foreseen.' Said the Supreme Court:

'The reason adduced in support of the motion for postponement is not unavoidable and one that could not have been foreseen. Defendant ought to have known long before the date of trial that the milling season would start when the trial of the case would be held. The motion should have been presented long in advance of the hearing, so that the court could have taken steps to postpone the trial without inconvenience to the adverse party. As it is, however, the motion was presented on the day of the trial. knowing as it should have known that postponements lie in the court's discretion and there being no apparent reason why the defendant could not have presented the motion earlier, thus avoiding inconvenience to the adverse party, the appellant cannot claim that the trial court erred in denying postponement. Under all the circumstances we hold that the court was perfectly justified in denying the motion for postponement.' In the case at bar, the same unjustified excuse is adduced — that the witnesses, who are employees (not even officers) of defendant, had work to do, albeit date of trial was set one month previous.

9. The cases cited by defendant are not in point, the facts, involved therein being very different from those attending the case at bar. For example, in the cited case of Lino Luna vs. Arcenas, 34 Phil. 93, the trial judge declined to grant a continuance of a few hours to give counsel an opportunity to secure the presence of the defendant. The Supreme Court held that considering that it did not appear that defendant was indulging in dilatory tactics, the denial of the motion for short postponement was improper. Again, in the case of People vs. Romero, G.R. No. L-4517, May 25, 1953, the prosecution witnesses, although subpoenaed, failed to appear; whereupon the fiscal asked that they be ordered arrested and that in the meantime the trial be postponed. The Supreme Court likewise held that the denial of the postponement was improper. These fact situations, however, as can

immediately be seen are completely different from that of Lufthansa whose non-presentation of its employees-witnesses was motivated by the desire to avoid inconvenience to them, hence its frustrated plan to have their depositions taken in Rome.

10. Complaints' regarding delays in the disposition of court cases are prevalent, and have recently found expression not only in executive pronouncements but in judicial admonitions. The unclogging of court dockets remains a pressing problem to the despair of litigants. As the Court of Appeals put it:

'The records reveals that the trial of the case was postponed five times at the instance of appellants themselves, and for this reason the trial was delayed for more than one year and three months. In granting these several postponements, the trial judge was over liberal already, and to have allowed another postponement would have been to jeopardize plaintiffs interest. Obviously courts cannot unduly protect the interests of one party to the detriment of the other. Already, there are complaints regarding delays in the disposition of court cases. The unclogging of our court dockets still remains a pressing problem in the despair of many a litigant. However to eliminate, at least minimize, these delays is as much our concern and any act of trial courts conducive towards this purposeful end will be encouraged by appellate courts.' (Rosario vs. De Leon, CA-G.R. No. 6495-R, April 25, 1941; 40 O.G. 752.)

11. Prejudice will be occasioned plaintiff if defendant's belated motion for reconsideration is granted. Notwithstanding defendant's counsel's receipt of Mr. Dehio's letter, dated September 25, 1966, a few days after said date, defendant delayed the filing of its motion for consideration until after about three (3) weeks later. In the meantime, it knew as of September 28 that this Honorable Court had stricken out the testimony of Ivo Lazzari, considered the case submitted for decision on the evidence on record, and given plaintiffs counsel 7 days to present his memorandum. Plaintiff and his counsel exerted all efforts and worked overtime just so to be able to submit his memorandum within the short period allowed. Said memorandum was finished on time, and has been served on defendant's counsel add submitted to Court. In other words, defendant purposely waited until the submission of plaintiff's memorandum before presenting its motion for reconsideration based on alleged information received three (3) weeks previous. To grant defendant's instant motion for reconsideration would place plaintiff at a great disadvantage, because defendant is now fully aware of every facet of plaintiffs cause and can simply tailor its defenses and evidence in refutation thereof.

12. Defendant claims that plaintiff is taking undue advantage of a technicality and that it should not be deprived of its day in court on this ground. Suffice it to state that it is never technical to invoke one's rights, and that while the Rules of Court should be liberally construed, their strict observance has been considered indispensable to the prevention of needless delays and the orderly and speedy discharge of judicial business. Thus:

'Although the Rules of Court should be liberally construed, however their strict observance which have been considered indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial business, is as imperative necessity. Thus, the rules prescribing the time within which certain act must be done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial business, is as imperative necessity. Thus, the rules prescribing the time within which certain act must be done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial business and therefore must be strictly complied with.' (Alvero vs. De la Rosa, 76 Phil. 428, cited in Francisco on Civil Procedure, Vol. 1, p. 89)

'Rules of Courts, promulgated by authority of law, have the force and effect of law; and rules of court prescribing the time within which certain acts must be done, or certain proceedings taken are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial business.' Conlu vs. Court of Appeals, et al., G.R. No. L-14027, January 29, 1960, citing Shioji vs.

Harvey, 43 Phil. 333; Alvero vs. De la Rosa, et al., 42 Off. Gaz., p. 316, (supra.)

WHEREFORE, it is respectfully prayed that defendant's motion for reconsideration, dated October 19, 1966, be denied. Manila, October 31, 1966." (Pages 74-88, Record on Appeal, id.)

By way of reply to the above opposition, defendant's counsel alleged:

"Defendant could have from the beginning taken depositions in Rome, but so as to avoid any inconvenience to plaintiff and that the court may see and hear the witnesses testify to better determine the credibility of their testimony defendant had been bringing the witnesses here. As a matter of fact, defendant even without leave of court may take the repositions of its witnesses by merely giving the Court notice of its intention to do so.

'After answer has been filed no leave of court is required as a prerequisite to taking depositions . . . (Marzo vs. Moore McCormick Line, Inc. 8 Fed. Rules of Service, p. 560; cited in Moran Comments on Rules of Court Vol. II, p. 18)

'After issue is joined, depositions may be taken without leave of court. (Lyons vs. Bronx Towing Line, Inc., 1 Fed. Service p. 341)

'After answer is served, depositions may be taken as of course and application should not be made to the court for leave. (Schultz vs. State Mutual Life Assurance Company, 1 Fed. Rules of Service, p. 340, US Dist. Ct. Dist. of Oregon, Oct. 14, 1938)

The statements made by Atty. Valmonte are false and malicious. An affidavit executed by Atty. Zaida Ruby Alberto is attached to and made part of this Reply as Annex '1'." (Pages 92-93, Record on Appeal, id.)

On October 24, 1966, the trial court resolved the incident in a brief order holding that "(f)or the reasons stated in the plaintiffs opposition to the motion for reconsideration, it is denied."

In its appeal, defendant reiterates insistently its position that the denial of its motion for postponement as well as the order striking out the testimony of Ivo Lazzari were issued in grave abuse of discretion and should be set aside. Before going any further, however, it may be mentioned that since defendant has not assigned as error, although it discusses in its brief, the denial of its last motion for reconsideration, plaintiff contends that such failure constitutes a bar to any further consideration of the merits of the arguments of defendant relative to the main denial-of-postponement and striking-out orders. To be sure, there is technical plausibility in such pose of plaintiff, but considering the importance of the other matters involved in this case, it would serve the interests of justice more if We passed on the merits of the substantial issues in this controversy. After all, "this Court is clothed with ample authority to review matters, even if they are not assigned as errors in the appeal, if it finds that their consideration is necessary in arriving at a just decision of the case." (Saura Import & Export Co., Inc. vs. Philippine International Surety Co., Inc., L-15184, May 31, 1963, 8 SCRA 143.) And considering the interrelation between the omitted assignment of error and those actually assigned and discussed by defendant's counsel, We can apply here the ruling in Hernandez vs. Andal, 78 Phil. 196, to the effect that "an unassigned error closely related to an error properly assigned, or upon which the determination of the question raised by the error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as an error." (at pp. 209-210.)

Now, with respect to defendant's first assignment of error, We feel that the rather extended recital We have made above of the incidents and proceedings related to the trial court's order denying defendant's motion for postponement of the hearing set for September 28, 1966 is self-revealing. It argues against the charge that His Honor's order of denial was improper and unjustified.

The case has been pending for about three years and had actually suffered during that period even more than the

usually permissible number of continuances, quite often to suit the convenience of defendant's counsel. Notice of the September 28, 1966 schedule had been served on counsel the month previous. It must be assumed that due preparations and arrangements were to be made since the receipt of that notice to insure the presence in Manila of the expected witnesses on the date set. Under the circumstances, the excuse given by defendant that the witnesses could not leave their respective stations and places of work to attend the trial is plainly unacceptable. There was enough time and opportunity for defendant to have made the corresponding adjustments in the assignments of its personnel so as to enable its witnesses to be in court. The trouble is that defendant relied on the assumption that the court could be made to wait until the volume and other conditions of its business would permit it to comply with the schedule of the court. For an airline company engaged in international transportation and presumably having all the facilities to have any of its employees available practically anywhere in the world at a moment's notice, if it only took due care to do this, defendant's attitude cannot be countenanced.

What is more, the motion of September 24, 1966 gave no reason at all why defendant's witnesses supposed to come from Rome would be unable to be at the trial. Even as late as the day of the hearing, September 28, 1966, the court could not be told the reason for such inability. All that counsel could say was that she "intend(ed) to inquire and file the explanation" later. This was not as it should have been, for the telex advising the Manila office that the witnesses would not be available was received on September 22[nd] yet, and certainly there was enough time to investigate and find out the reason for such unavailability. And as no justifiable reason could be advanced in support of the verbal motion for reconsideration. We cannot say that His Honor acted improperly when he denied the same.

We reiterate, the case had been pending for more than three years, with so many postponements, and the least that defendant should have done to merit favorable action on the part of the trial judge was to be ready with an explanation of its inability to proceed with the trial, giving the detailed and good reasons therefor. As it is, there was actually no basis at all for the exercise of discretion on the part of the trial judge in a manner favorable to it. Trials may be postponed because of the absence of evidence only when such absence is justified. Mere absence is not a justification in itself. Section 4 of Rule 22 is sufficiently clear on this point. It provides that "A motion to postpone a trial on the ground of absence of evidence can be granted only upon affidavit showing the materiality of evidence expected to be obtained, and that due diligence has been used to procure it." This means that it must be shown to the court that due diligence had been exercised in either securing the presence of the evidence (witnesses) or preventing the absence thereof.

There is, of course, defendant's motion for reconsideration of October 19, 1966 praying for the setting aside of the court's order of denial as well as the other order striking out the testimony of witness Lazzari. But, as already noted, the only excuse given in said motion is that:

"...The witnesses in question could not come because of certain circumstances that rendered their coming over virtually impossible. Both witnesses, Ivo Lazzari and Saverino Casilli are employees of defendant company at the Rome office. The air traffic in Rome has been particularly heavy this season. Some of the personnel of the Lufthansa Rome office were on leave and these two employees had to assume some of the duties of those employees who were on leave, aside from performing their own regular duties. If they were to leave their posts to come for the hearing on September 28, there would be grave disruption to the public service and for, this reason they were not able to come. . ." (Page 47, Rec. on Ap., p. 32, Record.)

Indeed, even if such reason were given earlier on September 24, 1966, the court would have been as well justified in denying the requested postponement. We cannot see any reason why, despite its having knowledge of the date of the hearing about a month before, defendant did not see to it that its expected witnesses were not assigned to do duty on the day they were supposed to appear in court. We cannot believe Lufthansa could be so undermanned

that such a simple adjustment of its personnel had to be "impossible."

Moreover, the Rome based witnesses were not the only possible witnesses of defendant. To begin with, Mr. C.H. Dehio, the IATA Agency Manager, Far East and Australasia, Lufthansa German Air Lines, who, according to the record, had already attended previous hearings as a prospective witness could have been made to go to court. There is nothing in the record to show that he was also rendered incapable of doing so. Then, there could still be local witnesses. It is no excuse that presenting other witnesses would have disrupted the presentation of defendant's case, for parties may be allowed to maintain their own way of presenting their evidence only where this can be done without injury to the expeditious disposition of the case and the best interests of the administration of justice.

Coming now to the second assigned error regarding the striking out of the unfinished testimony of Lazzari, the Court is also of the opinion and so holds that the trial court's action cannot be categorized as arbitrary or oppressive or as amounting to a grave abuse of discretion. To be sure, this second order was but a logical consequence of the previous order denying defendant's motion for postponement. With such denial, the next thing in order was to declare the presentation of evidence of the defendant terminated. Accordingly, it was necessary to determine what evidence could be considered to be for the defendant. And so when counsel for plaintiff asked the court to strike out the testimony so far given by Lazzari, there was practically no alternative for the court but to grant the same. Indeed, defendant's counsel could not and did not offer any objection thereto.

Oral testimony may be taken into account only when it is complete, that is, if the witness has been wholly cross-examined by the adverse party or the right to cross-examine is lost wholly or in part thru the fault of such adverse party. But when cross-examination is not and cannot be done or completed due to causes attributable to the party offering the witness, the uncompleted testimony is thereby rendered incompetent.

The right of a party to cross-examine the witnesses of his adversary is invaluable as it is inviolable in civil cases, no less than the right of the accused in criminal cases. The express recognition of such right of the accused in the Constitution does not render the right thereto of parties in civil cases less constitutionally based, for it is an indispensable part of the due process guaranteed by the fundamental law. Subject to appropriate supervision by the judge in order to avoid unnecessary delays on account of its being unduly protracted and to needed injunctions protective of the right of the witness against self-incrimination and oppressive and unwarranted harassment and embarrassment, a party is absolutely entitled to a full cross-examination as prescribed in Section 8 of Rule 132 thus: "Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue." Until such cross-examination has been finished, the testimony of the witness cannot be considered as complete and may not, therefore, be allowed to form part of the evidence to be considered by the court in deciding the case.

In the case at bar, however, We have opted but to rely exclusively on the foregoing considerations. In order to satisfy Ourselves as to whether or not defendant stands to be irreparably prejudiced by the impugned action of the trial court relative to the testimony of Lazzari, We have just the same gone over the transcript thereof. After considering the same, however, We are of the impression that even his direct testimony, without taking into account anymore his answers to the cross-examination questions of counsel for plaintiff, cannot be of much weight in establishing the defenses in defendant's answer. But it would seem more appropriate to elaborate on this point when We come to the discussion of the mutual accusation of the parties that the trial court erred in the portion of its decision awarding damages to plaintiff.

The last issue submitted for Our resolution relates to the award of damages made by the trial court in favor of Ortigas against Lufthansa in the amounts aforesated, as to which, as already noted at the outset, both parties have appealed taking opposite positions. In this respect, the appealed decision made the following findings and discussion of the material facts:

"In October, 1963, the Sharp Travel Service, the travel department of C.F. Sharp, Inc., the majority interest in which is held by Rocha y Cia., Inc., General Agents of the defendant, Lufthansa German Airlines, issued to the plaintiff First Class Pan American Ticket- No. 026492 147076 to 81 which would take him from Manila, the place of departure, to Hongkong, various cities in the United States, Europe, Asia, the Far East, and then back to Manila, the place of destination. Ortigas' ticket for all these different legs of his journey was first class.

He left Manila October 12, 1963, as scheduled. In New York, he decided to leave out some cities, included in his original itinerary, to be in Hongkong on the 19th day of November, 1963, for several appointments he had there. He went to the Trans World Airlines and had his Pan American ticket changed with First Class TWA Ticket No. 115-460-451-878 to 881. His TWA ticket was also first class for the entire trip from New York to several European cities, including Rome, and thence to the Far East, with Manila also as the place of destination.

Ortigas arrived in due course in Rome. To be sure he could fly first class to Hongkong on November 18, 1963, for his appointments there the next day, Ortigas repaired to the office of the Alitalia on Saturday, November 16, 1963, to book passage. The man at the counter of the Alitalia office told him it had no flight on Monday but the Lufthansa had. The man thereupon called up the office of the Lufthansa and, after talking to an employee thereof, told Ortigas that the Lufthansa had no first class, but only economy, seats available on its Monday flight.

Ortigas answered that he was not willing to take an economy seat and requested the employee to call up other airlines. Then the phone rang. The employee answered and afterwards informed Ortigas that the Lufthansa had a first class seat available for its Monday flight. Ortigas immediately asked him to get the seat and to see to it that his ticket be confirmed and validated for the flight and a first class seat. The man thereafter asked for Ortigas' passport and other travel papers and attached a validating sticker (Exhibit 'D-1') on flight coupon No. 4 (Exhibit 'B') which corresponded to the Rome-Hongkong leg of his TWA Ticket No. 115-460-451-878. The sticker recites:

Flight

Res.

Carrier No. Date Time Status

LH

646 18 Nov. 12:35 P.M. O.K.

Wishing to be doubly sure, Ortigas again requested the Alitalia employee to call back the Lufthansa office to recheck whether his ticket was really confirmed and validated. The man did so, after which he told Ortigas that his ticket had been checked, validated, and confirmed as shown by the word 'O.K.' on the sticker. The same employee later wrote on the cover of the plaintiff's ticket '10.15 Terminal-36, Via Gioliti' (Exhibits 'C' and 'C-1')

and told him to be in the air terminal on Monday, November 18, at 10:00 A.M.

The following Monday, Ortigas checked out of his hotel and took a taxi to the terminal, arriving there about 9:30 A.M. He unloaded his baggage and proceeded to the counter in charge of the Lufthansa passengers. The lady at the counter told him the Lufthansa had no space for him that day. Ortigas requested her to check with her main office, which she did by calling it up. After calling, she apologized and said the plaintiff's ticket was in order and would be confirmed and validated. On her request, Ortigas had his luggage weighed and was given the free luggage allowance of a first class passenger. He was furthermore asked to pay 800 liras for bus fare and 700 liras as embarkation tax. Then Ortigas, along with other passengers, one of whom was Amado Castro of the Development Bank of the Philippines, boarded a bus for the airport.

At the airport, the plaintiff handed over his ticket to the man behind the Lufthansa counter, who told him everything was all right. At that juncture, the plaintiff heard his name called. He inquired if he was being called from an employee of the Lufthansa and, on receiving an affirmative answer, said he was Ortigas. The employee asked for his passport and other papers and, after examining his passport, where his Filipino nationality appears, said he could not board the plane that day because his seat would be given to a Belgian. Ortigas asked the man why he was doing that to him when his ticket was confirmed and validated first class. The Lufthansa employee replied he was sorry but Ortigas could not leave.

Fearing he would have a recurrence of his heart ailment, Ortigas took a nitroglycerin pill which his doctor advised him to take on occasions of stress. The plaintiff then told the Lufthansa man to bring the Belgian over so that his papers may be examined to determine whether he had a preferred right to Ortigas' seat but the Lufthansa employee turned down the request, raised his voice, and said if the plaintiff desired, he could take an economy seat and he would be allowed a refund. Ortigas retorted he was not interested in a refund and what he wanted was to travel first class in accordance with his ticket.

This argument occurred in the presence of the other passengers, one of whom was Amado Castro, and the plaintiff felt embarrassed and humiliated because the Lufthansa employee was shouting at him and treating him the way he did. Ortigas made another request, namely, that the employee call other airlines to inquire if they had flights to Hongkong that day but he once more turned down the plea and insisted that Ortigas travel economy, with the promise that he will be transferred to first class in Cairo and onward to Hongkong.

After promising so, the man went inside a room and, after a while, came out and assured the plaintiff he would travel first class from Cairo to Hongkong because he sent a communication that it should be done. He then jotted down some letters on Ortigas' ticket. The plaintiff replied he was not satisfied with the arrangement but was constrained to agree to it because he had to be in Hongkong the next day, his luggage was in all probability already inside the plane, he was not certain he could still secure a hotel reservation, the manager of the hotel where he stayed having told him it would be hard for him to get another reservation once he checks out, and he was assured he would be given first class passage from Cairo onward.

Upon arrival in Cairo, the plaintiff requested the Lufthansa agent to transfer him to first class but the agent said he could not and that he did not receive any communication from Rome to that effect. Ortigas also requested the man to find out if there were other airlines having planes leaving that day but his request was likewise denied. The man, however, promised that at Dharham, Ortigas will be transferred to first class. Ortigas had no alternative but to continue traveling as before but he did so again under protest.

At Dharham, the plaintiff once more requested a transfer to first class but was also told by the Lufthansa agent that he had not received any communication about the change and the request could not be granted. The plaintiff had to travel perforce economy from Dharham. In Calcutta, Ortigas once again requested a transfer or that he be

assisted in booking passage on other planes but was also refused. It was only in Bangkok when the chief steward asked him if he wanted to move over to first class but having been already embarrassed and humiliated and the trip to Hongkong being only three hours, he said he would not as a sign of protest.

In Hongkong, Ortigas protested against the treatment given him but was told by the Lufthansa office he had to file his protest in Manila, it being the point of destination. He did so by means of a letter, dated November 25, 1963 (Exhibit "F"), followed by another letter, dated December 20, 1963 (Exhibit "C"), and not having received any definite answer, he brought his suit.

Although Ortigas' ticket for the flight from Rome to Hongkong was validated and confirmed by the Alitalia, its act bound and obligated the Lufthansa. The Alitalia and Lufthansa are members of the International Air Transport Association (IATA). It is admitted that as such member, the Alitalia can issue tickets for other members of the association like the Lufthansa, Pan American World Airways, and others. Par. 10, Order of April 29, 1964, and Exhibit "H", certification of the manager of the Alitalia. Aside from being members of the IATA, the Alitalia and Lufthansa are pool partners and conduct joint service with interchangeable flights for the European-Far East-and Australia sectors. Par. 11, Order of April 29, 1964. Under the pool agreement (Exhibit "DD") they undertake to adhere to the appropriate IATA regulations and to take measures to provide district sales offices with every possibility for close cooperation in the promotion of the pool services covered by the agreement, including "reservation and booking". They furthermore, in effect confirm in the agreement that tickets of one, other than free and reduced tickets, may be validated by the other.

Finally, Manuel Otayza, general manager of Filital, Inc., which is the general agent of the Alitalia in the Philippines, testified that space reservation through telephone calls between airlines is permitted by IATA's, 'Manual of Traffic Conference Resolutions' and that telephone calls for reservation by one airline to another is in fact accepted procedure in accordance with the official airline guide of the Air Traffic Conference and International Air Transport Association (Exhibit "W").

The placing by the Alitalia of a sticker of the plaintiff's ticket obligated the Lufthansa to give him a first class seat on its flight from Rome to Hongkong on November 18, 1963. The same witness, Manuel Otayza, testified that the placing of a validating sticker on a ticket is standard airline procedure; that a sticker changes the status of a reservation; that consequently while Ortigas' ticket was "open", that is, it had no reservation for a particular flight between Rome and Hongkong, the moment a validating sticker was placed thereon, stating the flight number of the airline, the day and hour of departure, with the letters "O.K.", his ticket was changed from an "open" to a "confirmed" or "validated" ticket; and that the sticker on Ortigas' ticket meant that first class space was confirmed for him on Lufthansa flight 646 to Hongkong on November 18, 1963, at 12:35 P.M.

Aside from Otayza's testimony, it is admitted that in the stipulation of facts that "the letters 'O.K.' (Exhibit D-2) appearing on the 'Res. Status' box of the sticker (Exhibit D-1) attached to Flight Coupon No. 4 of TWA Ticket No. 015-410:451-880 (Exhibit "D") means 'space confirmed', per IATA Resolution 275, page 4, Issue 2, a photostatic copy of which is attached hereto as Exhibit 'O'; that "'validate' means to stamp or write on the passenger ticket an indication that the passenger ticket has been officially issued by the carrier; that "the placing of a sticker on a flight coupon is a revalidation thereof for the flight mentioned in said sticker and is an alteration effected on said coupon, in accordance with the procedure laid down in IATA Resolution 275d, Page 1, Issue 1, a photostatic copy of which is attached thereto as Exhibit "S"; and that "prior endorsement was not necessary for Alitalia to revalidate TWA Ticket No. 015-410-880 Exhibit "D") because Alitalia is the carrier originally designated in the 'Via carrier' box of said ticket, in accordance with IATA Resolution No. 279, photostatic copy of which is attached hereto as Exhibit "T".

There was, therefore, a valid and binding contract between Lufthansa and the plaintiff to transport him as a first class passenger from Rome to Hongkong on November 18, 1963, and this agreement the defendant violated by compelling the plaintiff to travel as an economy passenger. It cannot be said the breach was the result of an honest mistake or excusable negligence. There is evidence the defendant acted with bad faith and in wilful disregard of the plaintiff's rights.

Ortigas' ticket was confirmed on the early morning of November 16, 1963, more than 48 hours before his departure on the afternoon of November 18. There was, therefore, ample, time to send a telex message from Rome to the defendant's main office in Frankfurt, which is only about 2-1 / 2 flying hours away, to reserve a first class seat for the plaintiff.

At the terminal on Via Gioliti, he was again told that he had a first class seat, his luggage was checked in divesting him of control thereof, and transported to the airport some 37 kilometers distant. He was in this manner deprived of the opportunity of availing himself of the facilities of other airlines and compelled to take the Lufthansa flight even against his will.

In the airport, although he was found entitled to fly first class, he was told after his Filipino passport was seen, that his seat would be given to a Belgian, without any reason or explanation whatsoever. His simple request that the Belgian's ticket be produced and examined to see who had a better right to a first class seat was turned down. So was his equally simple request that other airlines be called to find out if any of them could accept him as a first class passenger to Hongkong that day. He was deceived into boarding the Lufthansa plane at Rome by falsely assuring him he will be transferred to first class at Cairo, the next stop in the flight. The same false and deceptive promise was given him at Dharham and Calcutta.

Indubitable proof of the defendant's bad faith is found in the fact that while its employee was assuring the plaintiff he would be transferred to first class in Cairo, he was at the same time writing on his ticket the following notation: 'TRVLDY /c ROME HEG ROME ST', which means 'Travelled economy class Rome to Hongkong St', thereby barring Ortigas from asserting any right to demand first class accommodation. The defendant's employee, therefore, knew all along the plaintiff would not travel first class, and yet he deliberately made him believe he would be transferred to first class from Cairo to Hongkong.

From the circumstances, it is clear that the defendant not only breached its duty to the plaintiff but also did not want to release him as a passenger and wished to hold on to him even if it would cause him inconvenience and embarrassment." (Pages 97-109, Record on Appeal.)

Disputing the foregoing conclusions, Lufthansa claims firstly that the Alitalia employee who validated and confirmed Ortigas' reservation must have made a mistake because actually, he was informed by the Lufthansa Rome office that Ortigas could only be waitlisted. Assuming, however, there was such an error, it has been indisputably proven that under the so-called pool arrangement among different airline companies pursuant to the International Air Transport Association (IATA) agreement of which Alitalia and Lufthansa are signatories, both companies are constituted thereby as agents of each other in the issuing of tickets and other matters pertaining to their relations with those who would need their services, and since there can be no question that on its face, the annotations made by Alitalia on the ticket here in dispute cannot have any other meaning than that the reservation of Ortigas for the Rome — Hongkong flight was validated and confirmed, Lufthansa's disclaimer is unavailing. Besides, it appears that when Ortigas checked in at the airport, the Lufthansa lady employee thereat told him, after making the proper verification, that the reservation was correct. What is more, in the unconcluded testimony of Ivo Lazzari, the striking out of which is questioned by Lufthansa, he admitted that it was a fact that the said reservation of plaintiff for first class was confirmed, albeit he qualified that this was done already in the morning

of November 18th, the day of the flight, almost at the last hour. What seems to have happened was that somehow the first class recommendations for that flight were overbooked and Lufthansa tried to solve the problem by downgrading Ortigas to the economy class in favor of a Belgian, as Ortigas was told by the Lufthansa employee who paged him over the public address system for the purpose just as he was about to go to the departure area, with his luggage already checked and his overweight fees duly paid, so much so that they were already loaded in the plane. Verily, such treatment given to plaintiff was completely wrong and absolutely unjustifiable. Nobody, much less a common carrier who is under constant special obligation to give utmost consideration to the convenience of its customers, may be permitted to relieve itself from any difficult situation created by its own lack of diligence in the conduct of its affairs in a manner prejudicial to such customers. It is Our considered view that when it comes to contracts of common carriage, inattention and lack of care on the part of the carrier resulting in the failure of the passenger to be accommodated in the class contracted for amounts to bad faith or fraud which entitles the passenger to the award of moral damages in accordance with Article 2220 of the Civil Code. But in the instant case, the breach appears to be of graver nature, since the preference given to the Belgian passenger over plaintiff was done willfully and in wanton disregard of plaintiff's rights and his dignity as a human being and as a Filipino, who may not be discriminated against with impunity.

Lufthansa contends, however, that there could not have been any possible discrimination by reason of race against Ortigas because from his appearance, said plaintiff can easily be taken for a European or white more than his own witness Amado Castro and besides, there were other orientals in the same flight on that occasion. It is argued that any such policy would be self-defeating, since it would certainly be damaging to its own business. Again, this ratiocination cannot carry the day for Lufthansa, for what appears from the evidence in this case is not really a case of a general policy of discriminating against orientals or non-whites, but a specific act of Lufthansa's employee at the airport of giving preference to a Belgian after examining Ortigas' passport wherein his Filipino nationality is noted. Indeed, the fact that despite plaintiffs protestations and demand that he be shown how it could happen that somebody else, particularly that Belgian, should be given his place when his reservation was validated and confirmed and actually, he had already checked in and his luggage was already in the plane, nothing was done to satisfy him, merely infused bad faith into the breach of contract already committed of depriving plaintiff of his reserved accommodation. In other words, from the legal standpoint, such preference given to a European surely aggravated the damage or injury suffered by plaintiff, but the very act alone of deliberately downgrading him despite his confirmed reservation for first class accommodation is sufficient ground for relief. And considering that there are already recorded cases in this Court wherein Filipinos have been similarly discriminated against by foreign airline company employees in the treatment of passengers, this new instance can easily be believed and correspondingly dealt with in fixing and assessing the liability of herein defendant.

As found by the court below, what worsened the situation of Ortigas was that Lufthansa succeeded in keeping him as its passenger by assuring him that he would be given first class accommodation at Cairo, the next station, the proper arrangements therefor having been made already, when in truth such was not the case. Thus, instead of complying with the request of Ortigas that other airlines be contacted to find out if they had first class space for him, the Lufthansa employee who had indifferently told him about his downgrading paid very little attention if ever to said request. And to keep him from giving the business to another company, he was made to believe that he would be given first class accommodation at Cairo. Although molested and embarrassed to the point that he had to take nitroglycerine pills to ward off a possible heart attack, Ortigas hardly had any choice, since his luggage was already in the plane. To his disappointment, when the plane reached Cairo, he was told by the Lufthansa office there that no word at all had been received from Rome and they had no space for him in first class. Worse, similar false representations were made to him at Dharham and Calcutta. It was only at Bangkok where for the first time, Ortigas was at last informed that he could have a first class seat in that leg of the flight,

from Bangkok to Hongkong. This Ortigas rejected, if only to make patent his displeasure and indignation at being so inconsiderately treated in the earlier part of his journey.

Lufthansa insists in its brief that it could have proven that there was no such "entrapment of a captive passenger" had it been allowed the postponement it sought of the September 28, 1966 hearing. It is argued that there could have been no way by which its Rome office could have assured Ortigas about what he would be given in Cairo, the flight being fully booked as it was without any assurance of any first class seat being vacated by then. We are not impressed. In view of the insistence of plaintiff that he be given the first class accommodation he had contracted and paid for, the least that the Rome office should have done was to communicate with Cairo and strongly urge that all possible effort be made to comply with his well grounded request. As it happened, however, the Cairo office informed Ortigas when he arrived there that they had not received any word at all from Rome. On the contrary, as pointed out by the trial court, contrary to the verbal assurance given Ortigas, the Lufthansa employee made annotations on his ticket that he was travelling economy class from Rome to Hongkong. If, as contended by Lufthansa, Ortigas was duly advised to make arrangements for transfer to first class as soon as he arrived at each station on the way, why was such notation made that he was travelling up to Hongkong in economy class? All these only go to show that any evidence of defendant tending to disprove the testimony of Ortigas would in any event have been inconclusive or unreliable.

Likewise, Lufthansa maintains that it could have proven that Ortigas did not take offense at being downgraded, as in fact, according to Lufthansa, he was in jovial mood throughout the trip enjoying his conversation and exchange of amenities with his seatmate, who by strange coincidence happened to be the Manager of Lufthansa German Airlines for the district of Australia and New Zealand holding said position since 1962.[1] Moreover, it is argued, the economy class accommodations are not much different from first class and Ortigas was not delayed in his trip. We cannot see the point. A passenger contracts for first class accommodations for many reasons peculiar to himself and pays a higher price therefor, and it is certainly not for the airline to say later, after it deprives him of his space in order to favor another passenger, that economy class is anyway just as good as first class. That Ortigas was rightfully indignant is not difficult to imagine. No person in his normal senses and possessed of human dignity would have been unperturbed and unruffled by the treatment he had received. More, he was under express admonition of his doctor taking care of his ailing coronary condition to travel only in first class. Indeed, that he complained and made himself emphatically clear while still in Rome is sufficiently substantiated in the record, as it was more or less admitted by defendant's witness Lazzari when he testified that he heard about plaintiff's complaint that same day, November 18, 1963.

In the light of all the foregoing, there can be no doubt as to the right of Ortigas to damages, both moral and exemplary. Precedents We have consistently adhered to so dictate. Beginning with Cuenca,[2] wherein the Court rejected the theory that an air carrier is liable only in the event of death or injury suffered by a passenger, because, according to the Court, to so hold would be tantamount to declaring the carrier "exempt from any liability for damages in the event of its absolute refusal, in bad faith, to comply with a contract of carriage, which is absurd", We have uniformly upheld the right of a passenger to damages in all cases wherein, after having contracted and paid for first class accommodations duly confirmed and validated, he is transferred over his objection to economy class, which he has to take in order to be able to arrive at his destination on his scheduled time.

In the case of Nicolas L. Cuenca, then Commissioner of Public Highways of the Philippines, he boarded a Northwest plane in Manila with a first class ticket to Tokyo, but upon arrival at Okinawa, an agent of the company rudely compelled him, over his protest, to move over to the tourist class, which he had to do, so he could reach the international conference he was attending on time. Under these facts, the Court held that the P20,000 awarded by the lower court to Cuenca "may well be considered as nominal and also as exemplary, the Court of

Appeals having modified the trial court's designation thereof as moral, saying it should have been nominal.

In *Lopez*,^[3] Honorable Fernando Lopez, then an incumbent senator and former Vice President of the Philippines, together with his wife and his daughter and son-in-law, made first class reservations with the Pan American World Airways in its Tokyo-San Francisco flight. The reservation having been confirmed, first class tickets were subsequently issued in their favor. Mistakenly, however, defendant's agent cancelled said reservation, but expecting some cancellations before the flight scheduled about a month later, the reservations supervisor decided to withhold the information from them, with the result that upon arrival in Tokyo, the Lopezes discovered they had no first class accommodations and were thus compelled to take the tourist class, just so the senator could be on time for his pressing engagements in the United States. In the light of these facts, the Court held there was a breach of the contract of carriage and viewed as the element of bad faith entitling the plaintiffs to moral damages for such contractual breach, the failure of the agents of the defendant to inform the plaintiffs on time that their reservation for first class had long before been cancelled by mistake. According to the Court, such omission placed plaintiffs in a predicament that enabled the company to keep the plaintiffs as their passengers in the tourist class, thereby retaining the business and promoting the company's self-interest at the expense of, embarrassment, discomfort and humiliation on the part of the plaintiffs.

In *Air France vs. Carrascoso*,^[4] plaintiff Mr. Rafael Carrascoso, a civil engineer who was going to Lourdes, France, as a member of a religious group of pilgrims was issued by the Philippine Air Lines, as agent of the defendant Air France, a ticket for first class round trip from Manila to Rome. From Manila, Carrascoso travelled first class, as per said ticket, but at Bangkok, the Manager of the defendant airline forced him to vacate the first class seat because there was a white man who allegedly had a better right thereto, without, however, showing him the basis for such preference. Upon these factual premises, the Court held:

"It is really correct to say that the Court of Appeals in the quoted portion first transcribed did not use the term 'bad faith'. But can it be doubted that the recital of facts therein points to bad faith? The manager not only prevented Carrascoso from enjoying his right to a first class seat; worse, he imposed his arbitrary will; he forcibly ejected him from his seat, made him suffer the humiliation of having to go to the tourist class compartment — just to give way to another passenger whose right thereto has not been established. Certainly, this is bad faith. Unless, of course, bad faith has assumed a meaning different from what is understood in law. For, 'bad faith' contemplates a 'state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purpose.' (Words & Phrases, Perm. Ed., Vol. 5, p. 13, citing *Warfield Natural Gas Co. vs. Allen*, 59 S.W. (2d) 534, 538.)

And if the foregoing were not yet sufficient, there is the express finding of bad faith in the judgment of the Court of First Instance, thus:

"The evidence shows that defendant violated its contract of transportation with plaintiff in badfaith, with the aggravating circumstances that defendant's Manager in Bangkok went to the extent of threatening the plaintiff in the presence of many passengers to have him thrown out of the airplane to give the 'first class' seat that he was occupying to, again using the words of the witness Ernesto G. Cuento, a 'white man' whom he (defendant's Manager) wished to accommodate, and the defendant has not proven that this 'white man' had any 'better right' to occupy the 'first class' seat that the plaintiff was occupying, duly paid for, and for which the corresponding 'first class' ticket was issued by the defendant to him." (R.A. p. 74; italics supplied.) (at pp. 166-167.)

These precedents, as may be seen, apply four-square to herein plaintiff's case. Defendant's liability for willful and wanton breach of its contract of carriage with plaintiff is, therefore, indubitable.

Coming now to the amount that should be awarded by way of damages to the plaintiff, it is also the teaching of the cases aforesaid that defendant is liable not only for moral but also for exemplary damages. As earlier stated,

the court below fixed the compensation for moral damages at P100,000 and the exemplary at P30,000. The Court believes that these amounts are not enough.

According to the lower court:

"Although the plaintiff has not held any elective public office, he has however, a distinguished record as a private citizen, a lawyer, businessman, a civic and religious leader, a member of numerous government boards and organizations as well as of local and international bodies, and is the recipient of awards and citations for outstanding services and achievements.

He was, and still is, moreover suffering from a heart ailment and has been advised by his physician to travel first class because it is more relaxing and comfortable. His position as chairman of the boards of directors of the corporation he represented also required that he travel in that manner. He was, furthermore, carrying a special passport issued by the Philippine Government to represent it and business corporations abroad.

His sickness and the need for him to travel in the most comfortable manner possible were made known to the defendant's employee, but he paid no heed to them. Instead, he engaged Ortigas in a heated discussion, summarily brushed off his protests and pleas, humiliated him, and tricked him into boarding his employer's plane, endangering thereby his health and obliging him to take medicine to forestall an attack.

There is, finally, evidence that he was discriminated against because of his nationality, for he was told to yield his first class seat to a Belgian only after his passport was examined and his Filipino citizenship must have been noted.

"Under the circumstances and measured by the criterion jurisprudence has followed, the compensation the plaintiff should be entitled to receive must be fixed at P100,000 as moral damages, P30,000.00 as exemplary or corrective damages, and P20,000.00 as attorney's fees." (Pp. 111-113, Record on Appeal.)

We have reviewed the evidence and We are convinced there is more than ample basis for these findings. But under the circumstances revealed in the record, it is Our considered opinion that the award of moral damages should be increased to P150,000.

We cannot go along with defendant's pose that in Cuenca the amount awarded was only P20,000, for the very obvious reason that in that case what was involved was only one leg of the flight contracted for, namely, that from Okinawa to Tokyo, whereas in the case now at bar, the offense was repeated four times, at Rome, Cairo, Dharham and Calcutta, with apparent cold indifference of defendant's agents to plaintiff's plight. Besides, it appears that Cuenca did not appeal from the trial court's decision fixing said amount, hence there was no occasion for the Supreme Court to award more. This was also what happened in the Carrascoso case, where the plaintiff did not complain against the award of only P25,000-moral-and-P10,000-exemplary damages made by the trial court. It was Air France who claimed that these were even excessive. Verily, however, such discriminatory acts of the defendants in those cases which were not only violative of their contractual obligations but also offensive to human dignity and national or racial pride constitute about the most justifiable ground for the award of moral damages, for the resulting injury therefrom cannot but cause immense mental anguish, besmirched reputation, wounded feelings, moral shock and social humiliation. (See Article 2217 of the Civil Code.) We reiterate, they are to be considered as infecting with bad faith the breach of contract committed, under Article 2220 of the same Code. (Lopez vs. Pan Am., supra.)

Lufthansa suggests that compared to the P100,000 awarded to Vice President Lopez in the case aforementioned, the P100,000 given by the trial court to Ortigas are "grossly excessive". It does not appear to Us to be so. As pointed out by His Honor, "although plaintiff has not held any elective public office, he has, however, a distinguished record as a private citizen, a lawyer, businessman, a civic and religious leader, a member of

numerous boards and organizations as well as local and international bodies, and is the recipient of awards and citations for outstanding services and achievements." Indeed, under the proven facts in the record, We cannot regard plaintiff to be in any inferior position vis-a-vis Vice President Lopez in the highest circles of Philippine society and in the business and religious world, not to speak of his standing in government officialdom.

Besides, there is again the disparity between the Lopez case and this one that here the offense, which, as in Cuenca, is aggravated by the Lufthansa employee at Rome having falsely noted on the ticket that Ortigas was travelling in economy from Rome to Hongkong,[5] was repeated four times in the same trip, namely, in Rome, Cairo, Dharham and Calcutta. More importantly, unlike in the case of Lopez, Ortigas was suffering from a weak heart and was under doctor's advice to travel only in first class, hence, his being compelled to stay in economy or tourist class during the major part of his trip, must have given him added apprehensive feelings about his safety. And, moreover, it is to be noted that in the Lopez case, which was decided in 1966, aside from taking into account the personal circumstances of the plaintiff, the Court considered "the present rate of exchange and the terms at which the amount of damages awarded would approximately be in U.S. dollars", hence, We may not justifiably do differently here.

Furthermore, it may not be amiss to mention here that in *Zulueta vs. Pan American World Airways, Inc.*, 43 SCRA 397, the Court awarded the plaintiffs: Zulueta, the husband, his wife and a minor daughter, a total of P775,000 as damages, consisting of P500,000 as moral, P200,000 as exemplary and P75,000 as attorney's fees, apart from actual damages. In that case, the Zuluetas were coming home to Manila from Honolulu in a Pan-American plane. At Wake, however, where the plane arrived at 4:00 o'clock in the morning, Zulueta could not be found at flight time because, without letting anyone know, not even his wife or daughter, he had relieved himself, according to him, at the beach behind the terminal. When at last, he was found, the Pan-Am employee who first met him while walking back from the beach remonstrated him thus: "What in the hell do you think you are? Get on that plane". This angered Zulueta who engaged the said employee in an exchange of angry words. In the meanwhile, the pilot who had been tipped by a "man from the State Department", also a passenger in that flight, that there might be a bomb in the plane and expressed apprehension for the safety of the flight unless Zulueta could be found, ordered the unloading of the bags of the Zuluetas, and when three of the four of them had already been unloaded, he ordered Zulueta to open them, but the latter refused. Another exchange of angry words followed, in the course of which, according to Zulueta's evidence, the pilot went to the extent of referring to him and his family as "those monkeys". Ultimately, the plane left without Zulueta, albeit his wife and daughter were on board, because the captain refused to allow Zulueta to board until after his bags were opened and inspected, which Zulueta refused entirely to do. Although, said decision is not yet final, because of the pendency of a second motion for reconsideration the Court has not yet resolved, the Court has already allowed the partial execution of the judgment, thus enabling the Zuluetas to collect already one-half of the amount or over P335,000, which amount, according to the concurring and dissenting opinion there of the writer of the instant decision could be the least that should anyway be allowed. Of course, the Court did not itemize the award but granted the same to the family as a whole, but it is evident that in the final distribution, Zulueta would get for himself from at least P150,000 to not more than P200,000.[6]

We hold that the foregoing considerations justify the increase of the award of moral damages from P100,000 to P150,000.

Finally, We have the dispute regarding the amount of exemplary damages awarded. In this respect, it is Our considered opinion that defendant should pay P100,000 instead of the P30,000 awarded by the trial court. The record of this case taken together with what are revealed in the other similar cases decided by this Court, those aforesaid, convinces Us that defendant, as an airline, should be made to pay an amount that can really serve

as a deterrent against a seeming pattern of indifference and unconcern, and what is worse, of discrimination for racial reasons, discernible in the treatment of air passengers. This is not the first case, and unless the proper sanctions are applied, it does not appear it is going to be the last yet, of instances wherein Filipino passengers having validated and confirmed tickets for first class would be shoved to the economy class, over their valid objections and without any regard at all to their feelings and convenience, only to favor other passengers presumed by the airlines to be of superior race, hence, deserving preference. It is high time everyone concerned were made to realize that the laws of the Philippines do not permit any act of discrimination against its citizens, specially when this accompanies a clear breach of contractual obligations of common carriers whose business is affected with public interest and must be directed to serve the convenience and comfort of the passengers. When any disregard of such laws is committed, the Supreme Court, as the interpreter of such laws, must exact the commensurate liability which they contemplate.

"Exemplary damages are required by public policy, for wanton acts must be repressed. They are an antidote so that the poison of wickedness may not run through the body politic." (Report of Code Commission, pp. 75-76) By authority of the decided cases aforesaid,[7] acts of similar nature as those herein involved fall within the category of those justifying the imposition of exemplary damages pursuant to the codal concept just stated.

"The rationale behind exemplary or corrective damages is, as the name implies, to provide an example or correction for public good. . . In view of its nature, it should be imposed in such an amount as to sufficiently and effectively deter similar breach of contracts by defendant or other airlines." (Lopez vs. Pan-American World Airways, supra; see also Rotea vs. Halili, 109 Phil. 495; People vs. Medroso Jr., G.R. No. L-37633, Jan. 31, 1975, 62 SCRA 245; Cotabato Timberland Co. Inc. vs. Plaridel Lumber Co., Inc., 13 SCRA 235) Thus, all relevant matters considered, P100,000 of exemplary damages, which practically amounts only to not more than \$15,000 U.S. under the present rate of exchange, would serve the ends for which the liability has been conceived.

WHEREFORE, the judgment appealed from is modified by raising the award of moral and exemplary damages to plaintiff Ortigas to P150,000.00 and P100,000.00, respectively. In all other respects, including as to the payment of interests on the said amounts, the same is affirmed.

Fernando, (Chairman), Antonio, Aquino, and Concepcion Jr., JJ., concur.

[1] Annexed as Appendix I to the Reply Brief of Defendant-Appellant is the affidavit of Max Albert Springweiler, who defendant claims is its newly discovered evidence.

[2] Northwest Airlines Inc. vs. Cuenca, 14 SCRA 1063.

[3] Fernando Lopez, et al. vs. Pan American World Airways, 16 SCRA 431.

[4] 18 SCRA 155.

[5] In Cuenca, supra, his ticket was marked, without his knowledge as W/L or wait-listed despite it had been confirmed. (at p. 1066)

[6] The concurring and dissenting opinion of this writer was relative to the resolution denying the first motion for reconsideration. It disputes the right of Zulueta to moral damages for breach of contract in bad faith but recognizes his right to moral damages because of the inconsiderate and insulting manner he was treated by the employees of Pan-Am — a quasi delict. Said opinion has already been released but it has not yet been published in SCRA.

[7] Cuenca, Carrascoso and Lopez, supra.

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