

SWEET LINES, INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS, MICAELA B. QUINTOS, FR. JOSE BACATAN, S.J., MARCIANO CABRAS AND ANDREA VELOSO, RESPONDENTS.

G.R. No. L-46340. April 28, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

For having by-passed a port of call without previous notice, petitioner shipping company and the ship captain were sued for damages by four of its passengers, private respondents herein, before the then Court of First Instance of Cebu, Branch VIII.

Briefly, the facts of record show that private respondents purchased first-class tickets from petitioner at the latter's office in Cebu City. They were to board petitioner's vessel, M/V Sweet Grace, bound for Catbalogan, Western Samar. Instead of departing at the scheduled hour of about midnight on July 8, 1972, the vessel set sail at 3:00 A.M. of July 9, 1972 only to be towed back to Cebu due to engine trouble, arriving there at about 4:00 P.M. on the same day. Repairs having been accomplished, the vessel lifted anchor again on July 10, 1972 at around 8:00 A.M.

Instead of docking at Catbalogan, which was the first port of call, the vessel proceeded direct to Tacloban at around 9:00 P.M. of July 10, 1972. Private respondents had no recourse but to disembark and board a ferryboat to Catbalogan.

Hence, this suit for damages for breach of contract of carriage which the Trial Court, affirmed by respondent Appellate Court, awarded as follows:

"IN THE LIGHT OF THE FOREGOING OBSERVATIONS, judgment is rendered ordering the defendant Sweet Lines, Incorporated to pay to the plaintiffs the following:

- 1) P75,000.00 as moral damages divided among the plaintiffs as follows: P30,000.00 for Mrs. Micaela B. Quintos; P25,000.00 for Jesuit Father Jose Bacatan; P10,000.00 for Mrs. Andrea Veloso and P10,000.00 for plaintiff Mike Cabras;
- 2) P30,000.00 as exemplary or corrective damages;
- 3) Interest at the legal rate of 6% per annum on the moral and exemplary damages as set forth above from the date of this decision until said damages are fully paid;
- 4) P5,000.00 as attorney's fees; and
- 5) The costs.

Counterclaim dismissed."

The governing provisions are found in the Code of Commerce and read as follows:

"ART. 614. A captain who, having agreed to make a voyage, fails to fulfill his undertaking, without being prevented by fortuitous event or force majeure, shall indemnify all the losses which his failure may cause, without prejudice to criminal penalties which may be proper.

and

"ART. 698. In case of interruption of a voyage already begun, the passengers shall only be obliged to pay the fare in proportion to the distance covered, without right to recover damages if the interruption is due to fortuitous event or force majeure, but with a right to indemnity, if the interruption should have been caused by the captain exclusively. If the interruption should be caused by the disability of the vessel, and the passenger should agree to wait for her repairs, he may not be required to pay any increased fare of passage, but his living expenses during the delay shall be for his own account."

The crucial factor then is the existence of a fortuitous event or force majeure. Without it, the right to damages and indemnity exists against a captain who fails to fulfill his undertaking or where the interruption has been caused by the captain exclusively.

As found by both Courts below, there was no fortuitous event or force majeure which prevented the vessel from fulfilling its undertaking of taking private respondents to Catbalogan. In the first place, mechanical defects in the carrier are not considered a caso fortuito that exempts the carrier from responsibility.[1]

In the second place, even granting arguendo that the engine failure was a fortuitous event, it accounted only for the delay in departure. When the vessel finally left the port of Cebu on July 10, 1972, there was no longer any force majeure that justified by-passing a port of call. The vessel was completely repaired the following day after it was towed back to Cebu. In fact, after docking at Tacloban City, it left the next day for Manila to complete its voyage.[2]

The reason for by-passing the port of Catbalogan, as admitted by petitioner's General Manager, was to enable the vessel to catch up with its schedule for the next week. The record also discloses that there were 50 passengers for Tacloban compared to 20 passengers for Catbalogan[3], so that the Catbalogan phase could be scrapped without too much loss for the company.

In defense, petitioner cannot rely on the conditions in small bold print at the back of the ticket reading:

"The passenger's acceptance of this ticket shall be considered as an acceptance of the following conditions:

3. In case the vessel cannot continue or complete the trip for any cause whatsoever, the carrier reserves the right to bring the passenger to his/her destination at the expense of the carrier or to cancel the ticket and refund the passenger the value of his/her ticket;

.....

11. The sailing schedule of the vessel for which this ticket was issued is subject to change without previous notice." (Exhibit "1-A")

Even assuming that those conditions are squarely applicable to the case at bar, petitioner did not comply with the same. It did not cancel the ticket nor did it refund the value of the tickets to private respondents. Besides, it was not the vessel's sailing schedule that was involved. Private respondents' complaint is directed not at the delayed departure the next day but at the by-passing of Catbalogan, their destination. Had petitioner notified them previously, and offered to bring them to their destination at its expense, or refunded the value of the tickets purchased, perhaps, this controversy would not have arisen.

Furthermore, the conditions relied upon by petitioner cannot prevail over Articles 614 and 698 of the Code of

Commerce heretofore quoted.

The voyage to Catbalogan was "interrupted" by the captain upon instruction of management. The "interruption" was not due to fortuitous event or force majeure nor to disability of the vessel. Having been caused by the captain upon instruction of management, the passengers' right to indemnity is evident. The owner of a vessel and the ship agent shall be civilly liable for the acts of the captain.[4]

Under Article 2220 of the Civil Code, moral damages are justly due in breaches of contract where the defendant acted fraudulently or in bad faith. Both the Trial Court and the Appellate Court found that there was bad faith on the part of petitioner in that:

"(1) Defendants-appellants did not give notice to plaintiffs-appellees as to the change of schedule of the vessel;

(2) Knowing fully well that it would take no less than fifteen hours to effect the repairs of the damaged engine, defendants-appellants instead made announcement of assurance that the vessel would leave within a short period of time, and when plaintiffs-appellees wanted to leave the port and gave up the trip, defendants-appellants' employees would come and say, 'we are leaving, already.'

(3) Defendants-appellants did not offer to refund plaintiffs-appellees' tickets nor provide them with transportation from Tacloban City to Catbalogan."[5]

That finding of bad faith is binding on us, since it is not the function of the Court to analyze and review evidence on this point all over again,[6] aside from the fact that we find it faithful to the meaning of bad faith enunciated thus:

"Bad faith means a breach of a known duty through some motive or interest or illwill. Self-enrichment or fraternal interest, and not personal illwill, may have been the motive, but it is malice nevertheless."[7]

Under the circumstances, however, we find the award of moral damages excessive and accordingly reduce them to P3,000.00, respectively, for each of the private respondents.

The total award of attorney's fees of P5,000.00 is in order considering that the case has reached this Tribunal.

Insofar as exemplary damages are concerned, although there was bad faith, we are not inclined to grant them in addition to moral damages. Exemplary damages cannot be recovered as a matter of right; the Court decides whether or not they should be adjudicated.[8] The objective to meet its schedule might have been called for, but petitioner should have taken the necessary steps for the protection of its passengers under its contract of carriage.

Article 2215(2) of the Civil Code[9] invoked by petitioner is inapplicable herein. The harm done to private respondents outweighs any benefits they may have derived from being transported to Tacloban instead of being taken to Catbalogan, their destination and the vessel's first port of call, pursuant to its normal schedule.

ACCORDINGLY, the judgment appealed from is hereby modified in that petitioner is hereby sentenced to indemnify private respondents in the sum of P3,000.00 each, without interest, plus P1,250.00, each, by way of attorney's fees and litigation expenses.

Costs against petitioner.

SO ORDERED.

Teehankee (Chairman), Plana, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

[1] Son vs. Cebu Autobus Co., 94 Phil. 892 (1954); Necesito vs. Paras, 104 Phil. 75 (1958); Landingin vs.

Pangasinan Transportation Co., 33 SCRA 284 (1970).

[2] T.s.n., March 23, 1973, pp. 75; 84.

[3] T.s.n., June 14, 1973, p. 178.

[4] Article 586, Code of Commerce.

[5] Decision, p. 13.

[6] Tiongco vs. de la Merced, 58 SCRA 89 (1974).

[7] Lopez vs. Pan American World Airways, 16 SCRA 431 (1966).

[8] Article 2233, Civil Code.

[9] Art. 2215. In contracts, quasi-contracts, and quasi-delicts, the court may equitably mitigate the damages under circumstances other than the case referred to in the preceding article, as in the following instances:

.....

(2) That the plaintiff has derived some benefit as a result of the contract;

.....

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