

**RAFAEL ZULUETA, ET AL., PLAINTIFF-APPELLEES, VS. PAN AMERICAN WORLD AIRWAYS, INC., DEFENDANT-APPELLANT.***G.R. No. L-28589. February 29, 1972*

Ponente: CONCEPCION, C.J.

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Appeal, taken by defendant Pan American World Airways, Inc., from a decision of the Court of First Instance of Rizal, sentencing said defendant to pay herein plaintiffs - Rafael Zulueta, Telly Albert Zulueta and Carolinda Zulueta – "the sum of P5,502.85, as actual damages; plus the further sum of P1,000,000.00 as moral damages; the further sum of P400,000.00 as exemplary damages; and attorney's fees in the sum of P100,000.00," with the costs against said defendant, hereinafter referred to as PANAM, for the sake of brevity.

It is not disputed that, on October 23, 1964, the spouses Rafael Zulueta and Telly Albert Zulueta - hereinafter referred to as plaintiff and Mrs. Zulueta, respectively as well as their daughter, Carolinda Zulueta – hereinafter referred to as Miss Zulueta – were passengers aboard a PANAM plane, on Flight No. 841-23, from Honolulu to Manila, the first leg of which was Wake Island. As the plane landed on said Island, the passengers were advised that they could disembark for a stopover of about 30 minutes. Shortly before reaching that place, the flight was, according to the plaintiffs, "very rough." Testifying for PANAM, its purser, Miss Schmitz, asserted, however, that it was "very calm"; but her notes, Exhibit 7 – prepared, upon the request of Captain Zentner, on account of the incident involved in this case – state that there was "unusually small amount of roughness," which His Honor, the Trial Judge, considered properly as "an admission that there was roughness, only the degree thereof is in dispute." In any event, plaintiff testified that, having found the need to relieve himself, he went to the men's comfort room at the terminal building, but found it full of soldiers, in view of which he walked down the beach some 100 yards away.

Meanwhile, the flight was called and when the passengers had boarded the plane, plaintiff's absence was noticed. The take-off was, accordingly, delayed and a search for him was conducted by Mrs. Zulueta, Miss Zulueta and other persons. Minutes later, plaintiff was seen walking back from the beach towards the terminal. Heading towards the ramp of the plane, plaintiff remarked, "You people almost made me miss your flight. You have a defective announcing system and I was not paged." At this point, the decision appealed from has the following to say:

"(1) Plaintiffs were on their way to the plane in order to board it, but defendant's employees – Kenneth Sitton, defendant's airport manager, according to plaintiffs; Wayne Pendleton, defendant's airport customer service supervisor, according to defendant – stopped them at the gate. This is what the report of Wayne Pendleton, the airport customer service supervisor, says:

" \* \* \* I made no comment to the passenger but turned and led the group toward the ramp. Just as we reached the boarding gate, Mr. Zulueta spoke to me for the first time saying, 'You people almost made me miss your flight. You have a defective announcing system and I was not paged.'

" 'I was about to make some reply when I noticed the captain of the flight standing on the ramp, midway between the gate and the aircraft, and talking with the senior maintenance supervisor and several other persons. The captain motioned for me to join him which I did, indicating to the Zulueta family that they should wait for a moment at the gate.'

– Exh. 5.

"(2) Thereafter, one of defendant's employees – Mr. Sitton, according to plaintiffs; Mr. Pendleton, according defendants – asked plaintiffs to turn over their baggage claim checks. Plaintiffs did so, handing him four (4) claim checks.

"(3) However, only three (3) bags were located and segregated from the rest of the passenger's luggage. The items hand carried by plaintiffs, except for plaintiff's overcoat, were also brought down. These hand carried items, however, were not opened or inspected; later, plaintiffs Mrs. Zulueta and Miss Zulueta were permitted to reboard the plane with their hand carried luggage; and when the plane took off, about two and a half hours later, it carried plaintiff's fourth bag, his overcoat and the hand carried luggage.

"(4) Once three bags had been identified, and while the search was going on for the fourth bag. Mr. Sitton, defendant's airport manager, demanded that plaintiffs open the bags (actually, they were closed, but not locked) and allow defendant's employees to inspect them. Plaintiff Rafael Zulueta refused and warned that defendant could open the bags only by force and at its peril of a law suit.

"(5) Mr. Sitton, defendant's manager, then told plaintiff that he would not be allowed to proceed to Manila on board the plane and handed Zulueta the following letter:

""24 October 1964

Wake Island

" 'Mr. Zulueta:

Passenger aboard flight 84123

Honolulu/Manila

Sir:

We are forced to offload you from flight 84123, due to the fact that you have refused to open your checked baggage for Inspection as requested.

During your stay on Wake Island, which will be for a minimum of one week, you will be charged \$13.30 per day for each member of your party.

K. Sitton

Airport Manager, Wake Island

Pan American World Airways, Inc.'

Exh. D.

"(6) All this happened in plain view and within earshot of the other passengers on the plane, many of whom were Filipinos who knew plaintiffs;

"The departure of the plane was delayed for about two hours.

"(7) Though originally all three plaintiffs had been off loaded, plaintiff requested that his wife and daughter be permitted to continue with the flight. This was allowed but they were required to leave the three bags behind. Nevertheless, the plane did fly with the plaintiff's fourth bag; it was found among all other 'passengers' luggage flown to Manila upon the plane's arrival here.

"(8) Upon arrival at Manila, Mrs. Zulueta demanded of defendant's Manila office that it reroute plaintiff Rafael Zulueta to Manila at the earliest possible time, by the fastest route, and at its expense; defendant refused; so plaintiffs were forced to pay for his ticket and to send him money as he was without funds.

"(9) On October 27, 1964, plaintiff Zulueta finally arrived at Manila, after spending two nights at Wake, going back to Honolulu, and from Honolulu flying thru Tokyo to Manila.

"(10) On December 21, 1964, plaintiffs demanded that defendant reimburse them in the sum of P1,505,502.85 for damages; but defendants refused to do so; hence this action."

In its brief, PANAM maintains that the trial court erred: (1) "in not granting defendant additional hearing dates (not a postponement) for the presentation of its other witnesses"; (2) "in assuming it to be true that the reason plaintiff Rafael Zulueta did not come aboard when the passengers were reboarded was that he had gone to the beach to relieve himself"; (3) "in not holding that the real reason why plaintiff Rafael Zulueta did not reboard the plane, when the announcement to do so was made, was that he had a quarrel with his wife and after he was found at the beach and his intention to be left behind at Wake was temporarily thwarted he did everything calculated to compel Pan American personnel to leave him behind"; (4) "in accepting as true plaintiff Rafael Zulueta's claim of what occurred when he arrived at the terminal after he was found at the beach"; (5) "in not holding that the captain was entitled to an explanation for Zulueta's failure to reboard and not having received a reasonable explanation and because of Zulueta's irrational behavior and refusal to have his bags examined the captain had the right and duty to leave Zulueta behind"; (6) "in condemning the defendant to pay plaintiffs P5,502.85 as actual damages plus the further sum of P1,000,000.00 as moral damages, and the further sum of P400,000.00 as exemplary damages, and attorneys' fees in the sum of P100,000.00"; and (7) "in not granting defendant's counterclaim of attorneys' fees and expenses of litigation."

PANAM's first assignment of error refers to the denial of its motion, dated October 20, 1966, that it "be granted other hearing dates about two months from today so as to be able to present defendant's other witnesses or their depositions."

It appears that the complaint in this case was filed on September 30, 1965. It was amended on December 1, 1965, and again on April 14, 1966. PANAM answered the second amended complaint on May 6, 1966. After a pre-trial conference, held on May 28, 1966, the case was set for hearing on June 1, 2 and 3, 1966. By subsequent agreement of the parties, the hearing was, on June 3, 1966, reset for August 1, 2 and 3, 1966. Plaintiffs rested their case on August 2, 1966, whereupon it was agreed that PANAM's witnesses would be presented "at a later date," months later, because they would "come from far-flung places like Wake Island, San Francisco, Seattle and it will take time to arrange for their coming here." Accordingly, the case was reset for October 17, 18 and 19, 1966, at 8:30 a.m. On motion of the plaintiffs, the trial scheduled for October 17 was cancelled, without any objection on the part of PANAM; but, to offset said action, additional hearings were set for October 18 and 19, in the afternoon, apart from those originally set in the morning of these dates. Before the presentation of PANAM's evidence, in the morning of October 18, 1966, plaintiffs' counsel asked for the names of the former's witnesses, so that those not on the witness stand could be excluded from the courtroom. PANAM's counsel announced that his witnesses were Marshall Stanley Ho, Kenneth Sitton, Michael Thomas, Wayne S. Pendleton, Capt. Robert Zentner and Miss Carol Schmitz.

The defense then proceeded to introduce the testimony of said witnesses, and consumed therefor the morning and afternoon of October 18 and the morning of October 19. Upon the conclusion, that morning, of the testimony of the last witness for the defense, its counsel asked that it "be given an opportunity to present our other witnesses who are not present today, at the convenience of the Court." The motion was denied, but, said counsel sought a reconsideration and the court gave PANAM a last chance to present its, "other witnesses" the next day, October

20. Instead of doing so, PANAM filed a written motion reiterating its prayer for "other hearing dates about two months from today so as to be able to present defendant's other witnesses or their depositions." Upon denial of this motion, PANAM made an offer of the testimony it expected from one Edgardo Gavino, an unnamed meteorologist, either Sue Welby and/or Helga Schley, and John C. Craig, Ida V. Pomeroy, Herman Jaffe, Gerry Cowles and Col. Nilo de Guia.

His Honor, the Trial Judge, did not commit a reversible error in denying said motion of October 20, 1966. PANAM knew, as early as August 2, 1966, that its turn to present evidence would take place, as agreed upon, about two (2) months and a half later, or on October 17, 18 and 19, 1966. PANAM has not offered any valid excuse for its failure to bring to court the witnesses mentioned in said motion, despite the assurance given by its counsel, on August 2, 1966, that the defense would "spare no effort to bring them here," or, if they could not be brought due to circumstances beyond PANAM's control, to "submit their deposition." The records do not show that any such effort to bring the aforementioned witnesses had been exerted. The defense has not even tried to explain why the deposition of said witnesses was not taken. What is worse, the proffered explanation that the six (6) persons who testified for the defense[1] were believed, by defense counsel, to be enough for the three (3) days of October set for the reception of his evidence[2] – indicates that no effort whatsoever had been made either to bring the "other witnesses"[3] or to take and submit their depositions.

Besides, the testimony allegedly expected of said other witnesses for the defense – namely: (1) that there was, according to official records, no turbulence in the flight from San Francisco to Honolulu, on which the testimony of Carol Schmitz had touched; (2) that Ida V. Pomeroy and John C. Craig would say that the passengers were advised not to go beyond the terminal and that the stopover would be for about 30 minutes only, on which duration of the stopover Miss Schmitz had, also, testified, as she could have similarly testified on said advice, had it been given; (3) that either Helga Schley or Sue Welby would narrate the sympathy with which Mrs. Zulueta was allegedly treated during the flight from Wake Island to Manila, which is not particularly relevant or material in the case at bar; (4) that Herman Jaffe, Gerry Cowles and Nilo de Guia were, also, expected to corroborate the testimony of Capt. Zentner; and (5) that Edgardo Gavino was expected to corroborate Michael Thomas regarding the remarks made by the plaintiff to Mrs. Zulueta and Miss Zulueta when they and other members of the searching party found him in the early morning of October 23, 1964 – were merely cumulative in nature.

Then, again, PANAM did not comply with section 4 of Rule 22 of the Rules of Court, reading:

"SEC. 4. Requisites of motion to postpone trial for absence of evidence.- 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. But if the adverse party admits the facts to be given in evidence, even if he objects or reserves the right to object to their admissibility, the trial must not be postponed."

Although this provision refers to motions "to postpone trial," it applies with equal force to motions like the one under consideration, there being no plausible reason to distinguish between the same and a motion for postponement owing to the "absence of evidence."

The second, third and fourth assignments of error are interrelated. They refer to the question whether the reason why plaintiff went to the beach was to relieve himself, as testified to by him, or to remain in Wake Island because he had quarreled with his wife, as contended by PANAM's counsel.

The latter contention, however, is utterly devoid of merit. To begin with, plaintiff's testimony about what he did upon reaching the beach is uncontradicted. Secondly, other portions of his testimony – such as, for instance, that the flight was somewhat rough, shortly before reaching Wake Island; that there were quite a number of soldiers in

the plane and, later, in the terminal building; that he did not voluntarily remain in Wake Island, but was "off-loaded" by PANAM's agent therein – are borne out by the very evidence for the defense. Thirdly, PANAM's efforts to show that plaintiff had decided to remain in the Island because he had quarreled with Mrs. Zulueta which is ridiculous merely underscores the artificial nature of PANAM's contention.

Fourthly, there is absolutely no direct evidence about said alleged quarrel. Nobody testified about it. Counsel for the defense has, in effect, merely concluded that there must have been such quarrel because, when the searching party located plaintiff, he – according to Stanley Ho – was "shouting in a loud tone of voice" – not at his wife, but – "towards his wife and daughter," who headed said party and to which the words spoken were addressed, according to plaintiff. Capt Zenter said that plaintiff was "angry with them" – Mrs. Zulueta and Miss Zulueta – who – Michael Thomas affirmed – were saying "I am, sorry, I am sorry"; whereas, Wayne S. Pendleton declared that Gavino told him that this "seems to stem from a domestic issue" between Mr. and Mrs. Zulueta. Surely, this alleged surmise, not even by Pendleton, but by Gavino – who was not placed on the witness stand – cannot be taken as competent evidence that plaintiff had quarreled with his wife, apart from the circumstance that such quarrel – if it took place and there is absolutely no evidence or offer to prove that anything had transpired between husband and wife before reaching Wake Island which may suggest a misunderstanding between them does not warrant jumping at the conclusion that plaintiff had decided to remain in the Island, for he would gain nothing thereby.

Needless to say, if plaintiff's purpose in going to the beach was to hide from Mrs. and Miss Zulueta and PANAM's personnel, so that he may be left in the Island, he, surely, would not have walked back from the beach to the terminal, before the plane had resumed its flight to Manila, thereby exposing his presence to the full view of those who were looking for him.

Then, again, the words uttered by him as he saw the search party and approached the plane – "You people almost made me miss your flight. You have a defective announcing system and I was not paged" – and the "belligerent" manner according to Captain Zentner – in which he said it revealed his feeling of distress at the thought that the plane could have left without him.[4]

The second, third and fourth assignments of error are thus clearly untenable.

In connection with the fifth assignment of error, PANAM's witness, Captain Zentner, testified that, while he was outside the plane, waiting for the result of the search, a "man" approached him and expressed concern over the situation; that the "man" said he was with the State Department; that he, his wife and their children, who were on board the aircraft, would not want to continue the flight unless the missing person was found; that the "man" expressed fear of a "bomb," a word he used reluctantly, because he knew it is violative of a Federal law when said at the wrong time; that when plaintiff came, Zentner asked him: "why did you not want to get on the airplane? "; that plaintiff then became "very angry" and spoke to him "in a way I have not been spoken to in my whole adult life"; that the witness explained: "I am Captain of the aircraft and it is my duty to see to the flight's safety"; that he (Zentner) then told Wayne Pendleton - PANAM's Customer Service Supervisor to get plaintiff's "bags off the plane to verify \* \* \* about the bomb"; that PANAM's airport manager (K. Sitton) "got three bags of Mr. Zulueta"; that his fourth bag could not be located despite a thorough search; that believing that it must have been left behind, in Honolulu, "we took off"; and that he (Zentner) would not have done so had he thought it was still aboard.

The lower court did not err in giving no credence to this testimony.

Indeed, Captain Zentner did not explain why he seemingly assumed that the alleged apprehension of his informant was justified. He did not ask the latter whether he knew anything in particular about plaintiff herein, although

some members of the crew would appear to have a notion that plaintiff is an impresario. Plaintiff himself intimated to them that he was well known to the U.S. State Department. Apparently, Captain Zentner did not even know the informant's name. Neither did the captain know whether the informant was really working for or in the State Department. In other words, there was nothing – absolutely nothing – to justify the belief that the luggage of the missing person should be searched, in order to ascertain whether there was a bomb in it; that, otherwise, his presence in the aircraft would be inimical to its safety; and that, consequently, he should be off-loaded.

In fact, PANAM has not given the name of the "man" of the State Department. Neither has the defense tried to explain such omission. Surely, PANAM's records would have disclosed the identity of said "man," if he were not a mere figment of the imagination. The list of passengers has been marked as Exh. A, and yet, PANAM has not pointed out who among them is the aforementioned "man."

The trial court did not believe the testimony of Captain Zentner and rejected the theory of the defense, for the following reasons:

"(1) The defendant had contracted to transport plaintiff from Honolulu to Manila. It was its legal obligation to do so, and it could be excused from complying with the obligation only, if the passenger had refused to continue with the trip or it had become legally or physically impossible, without the carrier's fault, to transport him.

"(2) In this case, it is plain that Zulueta was desirous of continuing with the trip. Although defendant's witnesses claim that Zulueta refused to board the plane, its own evidence belies this claim. The letter, Exh. 'D', shows that it was defendant who off-loaded Zulueta; not Zulueta who desisted from continuing the trip. In his testimony before the Court, Capt. Zentner, defendant's pilot, said that if a passenger voluntarily left the plane, the term used would be 'desistance,' but the term 'off-load' means that it is the decision of the Captain not to allow the passenger or luggage to continue the flight. However, Capt. Zentner admitted in his testimony that 'his drunkenness \* \* \* was of no consequence in my report; (it) \* \* \* had nothing to do with his being belligerent and unfriendly in his attitude towards me and the rest of the members of the crew.' The written report of Capt. Zentner made in transit from Wake to Manila 'intimated he might possibly continue': but 'due to drinking, belligerent attitude, he was off-loaded along with his locked bags.' (Exh. 10). In a later report, Zentner admitted, 'The decision to leave Mr. Zulueta and his locked luggage in Wake was mine and mine alone.' (Exh. 9). Defendant's airport customer service supervisor, W.S. Pendleton, reported that:

" 'After the search for Mr. Zulueta had continued for almost 20 minutes and it was apparent that he was not to be found in the terminal building or immediate vicinity, I proceeded to the parking lot and picked up my jeep to continue the search in more remote areas. Just as I was getting underway, a small group of persons approached from the direction of the beach and a voice called out that the passenger had been found. Having parked the jeep again, I walked toward the group and was met by PAA fleet-serviceman E. Gavino who was walking somewhat ahead of the others. Mr. Gavino remarked to me privately that the trouble seemed to have stemmed from some domestic difference between the passenger and his wife who was not at his side and returning with him to the gate.

" 'On hearing Mr. Gavino's remark, I made no comment to the passenger but turned and led the group toward the ramp. Just as we reached the boarding gate, Mr. Zulueta spoke to me for the first time saying, 'You people almost made me miss your flight. You have a defective announcing system and I was not paged.'

– Exh. 5.

"Evidently, these could not have been the words of a man who refused to board the plane.

"(3) There was no legal or physical impossibility for defendant to transport plaintiff Zulueta from Wake to Manila, as it had contracted to do. Defendant claims that the safety of its craft and of the other passengers

demanding that it inspect Zulueta's luggage and when he refused to allow inspection that it had no recourse but to leave him behind. The truth is that, knowing that of plaintiff's four pieces of luggage, one could still have been – as it was – aboard, defendant's plane still flew on to Manila. Surely, if the defendant's pilot and employees really believed that Zulueta had planted a bomb in one of the bags they would not have flown on until they had made sure that the fourth bag had been left behind at Honolulu or until enough time had lapsed for the bomb to have been exploded, since presumably it had to have been set to go off before they reached Manila.

"At any rate, it was quite evident that Zulueta had nothing to hide; for the report of defendant's witness, Mr. Stanley L. E. Ho, U.S. Marshall on Wake, has this to say:

" 'About twenty minutes later while an attempt was being made to locate another piece of Mr. Zulueta's luggage, his daughter, Carolinda approached her father and wanted to get some clothes from one of the suitcases. Mr. Zulueta asked the undersigned if it was alright if he opened the suitcases and get the necessary clothes. To this I stated he was free to open his luggage and obtain whatever he needed. Mr. Zulueta opened a suitcase and took the dress from her then boarded the aircraft.'

– Exh. 2B.

"(4) What is evident to the Court is that defendant – acted in a manner deliberately calculated to humiliate and shame plaintiffs. Although the plane was held up to wait for plaintiff – for, as the Captain admitted in his testimony, he did so because he knew that it would be a week before another plane would come in for Manila (t.s.n., 18 Oct. 1966, pp. 59-62) – when plaintiff did come, he was met and treated roughly by defendant manager Sitton. Here is what Zulueta testified to:

" 'Q. – When you saw your wife and daughter what happened? A. – Then I started going towards the airplane. At the ramp, I do not know what they call it, as soon as they arrived there, there was a man who subsequently identified himself as Kenneth Sitton. He identified himself as the Airport Manager of Wake Island. He did not ask me what happened, was I sick, he looked at me and said, what in the hell do you think you are? Get on that plane. Then I said, what right have you to talk to me that way, I am a paying passenger. Do not treat me this. And this started the altercation, and then he said, do you know you held up the plane? And I answered, this is not my fault, I was sick. Did it not occur to you to ask me how I feel; then he said get on that plane.

" 'Q. – What happened? A. – we started discussing kept saying, 'You get on that plane' and then I said, 'I don't have to get on that plane.' After a prolonged discussion, he said, give me your baggage tags and I gave him four baggage tickets or tags. I did not realize what he was up to until finally, I saw people coming down the airplane and police cars arrived and people were coming down the ramp. I gave him the four baggage tags and a few minutes later, he brought three baggages and said, open them up. I said, to begin with, there is one baggage missing and that missing bag is my bag. Then I said, you cannot make me open these baggages unless you are United States customs authorities and when I arrive in the Philippines they can be opened by the Philippine Customs authorities. But an Airport Manager cannot make me open my bags unless you do exactly the same thing to all the passengers. Open the bags of all the other passengers and I will open my bag.

" 'Q. – What did he say? A. – He just kept on saying, open your bag, and I drew up my hands and said, if you want, you open yourself or give me search warrant and I shall open this bag but give me a search warrant and then I asked, who is the Chief of Police, and he said, 'I am the Chief of Police,' then I said how can you be the Chief of Police and Airport Manager and then he started to talk about double compensation and by this time we were both quarreling and he was shouting and so with me. Then there was a man who came around and said 'open the bag' and I said, show the warrant of arrest and do all the checking and the discussion kept on going, and finally, I said, look, my fourth bag is missing and he said, 'I don't give a damn.' People at the time were surrounding us and staring at us and also the passengers. My wife and daughter all along had been made to sit on a railing and this man screaming and looking at my wife and daughter. Then he said, will you pull

these three monkeys out of here? And then I said, will you send my wife and daughter up to the plane which he did. However, they have come down in their slippers and when they were allowed to return to the plane none of the defendant's personnel who had brought down the overcoats, shoes and handcarried items of my wife and daughter ever offered to bring back these items to the plane, until I demanded that one of the defendant's should help my wife and daughter which he did. And then one man told me, because you refused to open your bag, 'we shall hold you here in Wake Island.' And then I asked, are we under arrest? and the man answered, no. And further stated, your wife and daughter can continue their flight but you will not go to this flight and we will charge you \$13.30 a day. Then I said, who are you to tell all these things, and he answered, I am the manager. I said, put it in writing, - then left and in a few minutes he came back and handed me this letter (witness referring to Exhibit D).'

– t.s.n., August 1, 1966, pp. 15-21.

"Anyone in Zulueta's position would have reacted the same way if he had had a sense of dignity. Evidently, angered by Zulueta's reaction, irked by the delay he had caused them, defendant's employees decided to teach him a lesson by forcing him to open his bags when there was no justifiable reason to do so:

"(a) Defendant did not make any attempt to inquire from any passenger or even the crew who knew Mr. Zulueta what his character and reputation are, before demanding that he open the bags; if it had done so, Miss Schmitz, the purser, and Col. Villamor would have vouched for plaintiffs; for Miss Schmitz believed she had flown before with the Zuluetas and they had been very nice people.

"(b) Worse, defendant's manager Sitton admits that Zulueta had told him who he was and his social position in Manila; still he insisted that the bags be opened. Moreover, some passengers had informed the supervisor that Zulueta was 'the impresario'; but they persisted in their demands.

"(c) Defendant never identified the alleged State Department men who reportedly approached the Captain and expressed fear about a bomb, nor did they confront him – if he existed – with Mr. Zulueta despite Mr. Zulueta's request.

"(d) Defendant did not take any steps to put the luggage off-loaded far from its passengers and plane, a strange procedure if it really believed the luggage contained a bomb;

"(e) Defendant continued with the flight knowing one bag – Zulueta's bag himself – had not been located and without verifying from Honolulu the bag had been found there, nor even advising Honolulu that a bag possibly containing a bomb had been left there, again an inexplicable procedure if they sincerely believed that Zulueta had planted a bomb;

"(f) Defendant's manager himself took Zulueta and his off-loaded bags, in his own car; from the terminal building to the hotel, which is also inconsistent with a serious belief that the luggages contained a bomb;

"(g) Defendant knew that while Zulueta's bags were on the ground, he had opened one of them with the permission and in the presence of the U.S. Marshall in order to enable his daughter to get a dress from the bag; nothing suspicious was seen; still, defendant insisted on refusing to allow Zulueta to continue unless he opened and allowed inspection of the bags by them;

"(h) Defendant completely changed his tone and behavior towards the Zuluetas after the plane had arrived at Manila and the Captain learned that its Manila manager, Mr. Oppenheimer, was a friend of Zulueta;

"(i) Meantime, the attitude of Pan American towards the Zuluetas caused other passengers to resent Zulueta (Sec reports of Stewardesses and of Captain Zentner, Exhs. 7, 8, 9 and 10). 'Many passengers were angry towards the 'missing passenger,' says Miss Schmitz's report. 'A few inquisitive PA (passengers) – one woman quite rudely stared once we were airborne and left Mr. Zulueta behind \* \* \* anyway I told the woman to sit down – so did Helga – so did the man near her,' say Miss Schmitz's personal notes. This confirms the

testimony of plaintiffs that, all the while the search and discussions were going on, they were the subject of stares, remarks and whispered comments from the passengers and other persons around the plane.

"(j) Defendant did not allow plaintiff Zulueta to board the plane at all, even though it was aware that some of his personal belongings, such as his overcoat were on the plane. Plaintiffs so testified; and though defendant's witness Mr. Sitton denied it, claiming that plaintiff was always free to board the plane, this denial is belied by the report of defendant's own witness, U.S. Marshall Ho, who said that:

" 'Ten minutes later, Mr. Zulueta asked if he could talk to his wife who was aboard the aircraft. I then accompanied him and as we got to the ramp, we met Mr. Sitton who stated he would summon Mrs. Zulueta from the aircraft. Mr. Sitton summoned Mrs. Zulueta and she met her husband at the foot of the ramp. Mr. Zulueta then asked his wife and himself to which I replied I was not concerned what he had to say.'

– Exh. 2-B.

"(k) Finally, to add further humiliation and heap indignity on plaintiffs, when Mrs. Zulueta arrived at Manila and appealed to defendant's Manila manager, Mr. Oppenheimer, to see to it that her husband got back as soon as possible and was made as comfortable as possible, at defendant's expense. Mr. Oppenheimer refused to acknowledge any obligation to transport Mr. Zulueta back to Manila and forcing Mrs. Zulueta to send her husband \$100.00 for pocket money and pay for his fare from Wake to Manila, thru Honolulu and Tokyo."

Upon a review of the record, We are satisfied that the foregoing findings of His Honor, the Trial Judge, are supported by a preponderance of the evidence.

The last two (2) assignments of error are mere consequences of those already disposed of, and, hence, need no extended discussion.

It is urged, however, that plaintiff is, at most, entitled to actual damages only, because he was the first to commit a breach of contract, for having gone over 200 yards away from the terminal, where he could not expect to be paged. But, PANAM has not pointed out what part of the contract has been violated thereby, apart from the fact that the award for damages made in the decision appealed from was due, not to PANAM's failure to so page the plaintiff, but to the former's deliberate act of leaving him at Wake Island, and the embarrassment and humiliation caused to him and his family in the presence of many other persons. Then, also, considering the flat nature of the terrain in Wake Island, and the absence of buildings and structures, other than the terminal and a modest "hotel," as well as plaintiffs need of relieving himself, he had to find a place beyond the view of the people and near enough the sea to wash himself up before going back to the plane.

It is next argued that plaintiff was, also, guilty of contributory negligence for failure to reboard the plane within the 30 minutes announced before the passengers debarked therefrom. This might have justified a reduction of the damages, had plaintiff been unwittingly left by the plane, owing to the negligence of PANAM personnel, or even, perhaps, wittingly, if he could not be found before the plane's departure. It does not, and can not have such justification in the case at bar, plaintiff having shown up before the plane had taken off, and he having been off-loaded intentionally and with malice aforethought, for his "belligerent" attitude, according to 'Captain Zentner; for having dared – despite his being one of "three monkeys," the term used by Captain Zentner to refer to the Zulueta family – to answer him back – when he (Captain Zentner)[5] said: "what in the hell do you think you are?" – in a way he had "not been spoken to" in his "whole adult life," in the presence of the passengers and other PANAM employees; for having responded to a command of either Zentner or Sitton to open his (plaintiff's) bags, with a categorical refusal and a challenge for Zentner or Sitton to open the bags without a search warrant therefor, thereby making manifest the lack of authority of the aforementioned representative of PANAM to issue said command and exposing him to ridicule before said passengers and employees. Besides, PANAM's own

witness and employee, Wayne Pendleton, testified that the plane could not take off at 4:30, as scheduled, because "we were still waiting for two (2) local passengers."

Article 2201 of our Civil Code reads:

"In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

"In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation."

This responsibility applies to common carriers. Pursuant to Article 1759 of the same Code:

"ART. 1759. Common carriers are liable for the death of or injuries to passengers through the negligence or wilful acts of the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers.

"This liability of the common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees."

Referring now to the specific amounts of damages due to plaintiffs herein, We note that the sum of P5,502.85 awarded to them as actual damages is not seriously disputed by PANAM.

As regards the moral and exemplary damages claimed by the plaintiffs, our Civil Code provides:

"ART. 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."

"ART. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission."

"ART. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages."

"ART. 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner."

The records amply establish plaintiffs' right to recover both moral and exemplary damages. Indeed the rude and rough reception plaintiff received at the hands of Sitton or Captain Zentner when the latter met him at the ramp ("what in the hell do you think you are? Get on that plane"); the menacing attitude of Zentner or Sitton and the supercilious manner in which he had asked plaintiff to open his bags ("open your bag," and when told that a fourth bag was missing, "I don't give a damn"); the abusive language and highly scornful reference to plaintiffs as monkeys by one of PANAM's employees (who turning to Mrs. Zulueta and Miss Zulueta remarked, "will you pull these three monkeys out of here?"); the unfriendly attitude, the ugly stares and unkind remarks to which plaintiffs were subjected, and their being cordoned by men in uniform as if they were criminals; while plaintiff was arguing with Sitton; the airline, officials' refusal to allow plaintiff to board the plane on the pretext that he was hiding a bomb in his luggage and their arbitrary and high-handed decision to leave him in Wake; Mrs. Zulueta's having suffered a nervous breakdown for which she was hospitalized as a result of the embarrassment, insults and humiliations to which plaintiffs were exposed by the conduct of PANAM's employees; Miss Zulueta's having suffered shame, humiliation and embarrassment for the treatment received by her parents at the airport[6] -- all

these justify an award for moral damages resulting from mental anguish, serious anxiety, wounded feelings, moral shock, and social humiliation thereby suffered by plaintiffs.

"The relation between carrier and passenger involves special and peculiar obligations and duties, differing in kind and degree, from those of almost every other legal or contractual relation. On account of the peculiar situation of the parties the law implies a promise and imposes upon the carrier the corresponding duty of protection and courteous treatment. Therefore, the carrier is under the absolute duty of protecting his passengers from assault or insult by himself or his servants."[7]

"A contract to transport passengers is quite different in kind and degree from any other contractual relation. And this, because of the relation which an air-carrier sustains with the public. Its business is mainly with the traveling public. It invites people to avail of the comforts and advantages it offers. The contract of air carriage, therefore, generates a relation attended with a public duty. Neglect or malfeasance of the carrier's employees, naturally, could give ground for an action for damages.

"Passengers do not contract merely for transportation. They have a right to be treated by the carrier's employees with kindness, respect, courtesy and due consideration. They are entitled to be protected against personal misconduct, injurious language, indignities and abuses from such employees. So it is, that any rude or discourteous conduct on the part of employees towards a passenger gives the latter an action for damages against the carrier."[8]

"A carrier of passengers is as much bound to protect them from humiliation and insult as from physical injury. \* \* \* It is held in nearly all jurisdictions, if not universally, that a carrier is liable to a passenger for humiliation and mental suffering caused by abusive or insulting language directed at such passenger by an employee of the carrier."[9]

"Where a conductor uses language to a passenger which is calculated to insult, humiliate, or wound the feelings of a person of ordinary feelings and sensibilities, the carrier is liable, because the contract of carriage impliedly stipulates for decent, courteous, and respectful treatment at hands of the carrier's employees."[10]

"The general rule that a carrier owes to a passenger the highest degree of care has been held to include the duty to protect the passenger from abusive language by the carrier's agents, or by others if under such circumstances that the carrier's agents should have known about it and prevented it. Some of the courts have mentioned the implied duty of the carrier, arising out of the contract of carriage, not to insult the passenger, or permit him to be insulted, and even where no mention is made of this basis for liability, it is apparent that it is the ground upon which recovery is allowed."[11]

The question is whether the award of P1,000,000 as moral damages was proper and justified by the circumstances. It has been held that the discretion in fixing moral damages lies in the trial court.[12] Among the factors courts take into account in assessing moral damages are the professional, social, political and financial standing of the offended parties on one hand, and the business and financial position of the offender on the other.[13]

In comparatively recent cases in this jurisdiction, also involving breach of contract of air carriage, this Court awarded the amount of P25,000, where plaintiff, a first-class passenger in an Air France plane from Manila to Rome was, in Bangkok, forced by the manager of the airline company to leave his first class accommodation after he was already seated because there was a white man who, the manager alleged, had a "better right" to the seat;[14] the amount of P200,000, where plaintiffs, upon confirmation of their reservation in defendant airline's flight from Tokyo to San Francisco were issued first class tickets, but upon arrival in Tokyo were informed that there was no accommodation for them in the first class compartment and told they could not go unless they took the tourist class[15] – in both of which cases the Court found the airline companies to have acted in bad faith, or in a wanton, reckless and oppressive manner, justifying likewise the award of exemplary damages.

None of the passengers involved in said cases was, however, off-loaded, much less in a place as barren and isolated as Wake Island, with the prospect of being stranded there for a week. The aforementioned passengers were merely constrained to take a tourist or third class accommodation in lieu of the first class passage they were entitled to. Then, also, in none of said cases had the agents of the carrier acted with the degree of malice or bad faith of those of PANAM in the case at bar, or caused to the offended passengers a mental suffering arising from injuries to feelings, fright and shock due to abusive, rude and insulting language used by the carrier's employees in the presence and within the hearing of others, comparable to that caused by PANAM's employees to plaintiffs herein.

To some extent, however, plaintiff had contributed to the gravity of the situation because of the extreme belligerence with which he had reacted on the occasion. We do not overlook the fact that he justly believed he should uphold and defend his dignity and that of the people of this country; that the discomfort, the difficulties, and, perhaps, the ordeal through which he had gone to relieve himself – which were unknown to PANAM's agents – were such as to put him in no mood to be understanding of the shortcomings of others; and that said PANAM agents should have first inquired, with an open mind, about the cause of his delay, instead of assuming that he was at fault and of taking an arrogant and overbearing attitude, as if they were dealing with an inferior. Just the same, there is every reason to believe that, in all probability, things would not have turned out as bad as they became had he not allowed himself, in a way, to be dragged to the level or plane on which PANAM's personnel had placed themselves.

In view of this circumstance, We feel that the moral and exemplary damages collectible by the plaintiffs should be reduced to one-half of the amounts awarded by the lower court, that is, to P500,000 for moral damages, and P200,000 for exemplary damages, aside from the attorney's fees which should, likewise, be reduced to P75,000.

On April 22, 1971, Mrs. Zulueta filed a motion alleging that she had, for more than two (2) years; been actually living separately from her husband, plaintiff Rafael Zulueta, and that she had decided to settle separately with PANAM and had reached a full and complete settlement of all her differences with said defendant, and praying, accordingly, that this case be dismissed insofar as she is concerned. Required to comment on said motion, PANAM expressed no objection thereto.

Upon the other hand, plaintiff prayed that the motion be denied, upon the ground that the case at bar is one for damages for breach of a contract of carriage, owing to the off-loading of plaintiff Rafael Zulueta, the husband and administrator of the conjugal partnership, with the funds of which the PANAM had been paid under said contract; that the action was filed by the plaintiffs as a family and the lower court had awarded damages to them as such family; that, although PANAM had questioned the award of damages, it had not raised the question whether the lower court should have specified what portion of the award should go to each plaintiff; that although Mr. and Mrs. Zulueta had, for sometime, been living separately, this has been without judicial approval; that Mrs. Zulueta may not, therefore, bind the conjugal partnership or settle this case separately; and that the sum given by PANAM to Mrs. Zulueta is believed to be P50,000, which is less than 3-1/2% of the award appealed from, thereby indicating the advisability of denying her motion to dismiss, for her own protection.

Pursuant to a resolution, dated June 10, 1971, deferring action on said motion to dismiss until the case is considered on the merits, We now hold that the motion should be, as it is hereby denied. Indeed, "(t)he wife cannot bind the conjugal partnership without the husband's consent, except in cases provided by law,"[16] and it not been shown that this is one of the cases so provided. Article 113 of our Civil Code, pursuant to which "(t)he husband must be joined in all suits by or against the wife, except: \* \* \* (2) If they have in fact been separated for at least one year \* \* \* – relied upon by PANAM – does not warrant the conclusion drawn therefrom by the latter. Obviously, the suit contemplated in subdivision (2) of said Article 113 is one in which the wife is the real party –

either plaintiff or defendant – in interest, and, in which, without being so, the husband must be joined as a party, by reason only of his relation of affinity with her. Said provision cannot possibly apply to a case, like the one at bar, in which the husband is the main party in interest, both as the person principally aggrieved and as administrator of the conjugal partnership. Moreover, he having acted in this capacity in entering into the contract of carriage with PANAM and paid the amount due to the latter, under the contract, with funds of the conjugal partnership, the damages recoverable for breach of such contract belongs to said partnership.

MODIFIED, AS ABOVE STATED, in the sense that plaintiffs shall recover from defendant, Pan American World Airways, Inc., the sums of P500,000 as moral damages, P200,000 as exemplary damages, and P75,000 as attorney's fees, apart from P5,502.85 as actual damages, and without prejudice to deducting the aforementioned sum of P50,000 already paid to Mrs. Zulueta, the decision appealed from is hereby affirmed in all other respects, with costs against said defendant.

**SO ORDERED.**

Reyes, J. B. L, Makalintal, Zaldivar, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.

Castro and Teehankee, JJ., took no part.

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[1] Marshall Stanley Ho, Kenneth Sitton, Michael Thomas, Wayne S. Pendleton, Capt. Robert Zentner and Carol Schmitz.

[2] Which actually required half only of said time.

[3] Edgardo Gavino, Sue Welby or Helga Schley, John C. Craig, Ida V. Pomeroy, Herman Jaffe, Gerry Cowles, Col. Nilo de Guia, and an unnamed meteorologist.

[4] According to Wayne Pendleton, plaintiff said: "you people almost made me miss my flight. I was not called."

[5] Although plaintiff may have mistaken him for Sitton.

[6] T.s.n., pp. 72, 79.

[7] Lipman vs. Atlantic Coast Line R, 93 SE, 714; See, also, 4 R.C.L. 1174, 1175.

[8] Air France vs. Carrascoso, et al., L-21438, September 28, 1966. See, also, 15 ALR 2d 136, Sec. 14, cited in 14 Am. Jur. 2d, p. 481.

[9] 15 ALR 2nd 133, Sec. 13, cited in 14 Am. Jur. 2d, p. 481.

[10] Cave vs. Seaboard Airline R. Co., 77 S.E. 1017; See, also: Louisville, -N.O. & T.R. Co. vs. Patterson, 13 So. 697.

[11] 15 ALR 2nd 136.

[12] Coleongco vs. Claparols, L-18616, March 31, 1964; Corpus vs. Cuaderno, Sr., et al., L-23721, March 31, 1965.

In the United States, it has been held that the jury has a wide discretion in awarding damages for mental suffering, and no precise rule is available by which to determine the quantum of damages properly awarded for this element of injury. Each case will alone set its own standard of compensation. (Head vs. Georgia P.R. Co., 7 S.E. 217; Southeastern Greyhound Lines vs. Freels, 144 SW2d 743; Georgia R. & Bkg. Co. vs. Eskew, 12 S.E. 1061, cited in 14 Am. Jur. 2d, p. 604.

[13] Domingding, et al. vs. Ng, et al., 103 Phil. 111; Northwest Airlines, Inc. vs. Cuenca, et al., L-22425, August 31, 1965; Lopez, et al. vs. Pan American World Airways, L-22415, March 30, 1966.

[14] Air France vs. Carrascoso, et al., supra.

[15] Lopez, et al. vs. Pan American World Airways, supra.

[16] Article 172 of our Civil Code.

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