

**KONINKLIJKE LUCHTVAART MAATSCHAPPIJ N.V., OTHERWISE
KNOWN AS KLM ROYAL DUTCH AIRLINES, PETITIONER, VS. THE
HONORABLE COURT OF APPEALS, CONSUELO T. MENDOZA AND
RUFINO T. MENDOZA,...**

G.R. No. L-31150. July 22, 1975

Ponente: CASTRO, J.

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CASTRO, J.:

In this appeal by way of certiorari the Koninklijke Luchtvaart Maatschappij N.V., otherwise known as the KLM Royal Dutch Airlines (hereinafter referred to as the KLM) assails the award of damages made by the Court of Appeals in CA-G.R. 40620 in favor of the spouses Rufino T. Mendoza and Consuelo T. Mendoza (hereinafter referred to as the respondents).

Sometime in March 1965 the respondents approached Tirso Reyes, manager of a branch of the Philippine Travel Bureau, a travel agency, for consultations about a world tour which they were intending to make with their daughter and a niece. Reyes submitted to them, after preliminary discussions, a tentative itinerary which prescribed a trip of thirty-five legs; the respondents would fly on different airlines. Three segments of the trip, the longest, would be via KLM. The respondents expressed a desire to visit Lourdes, France, and discussed with Reyes two alternate routes, namely, Paris to Lourdes and Barcelona to Lourdes. The respondents decided on the Barcelona-Lourdes route with knowledge that only one airline, Aer Lingus, serviced it.

The Philippine Travel Bureau to which Reyes was accredited was an agent for international air carriers which are members of the International Air Transport Association, popularly known as the "IATA," of which both the KLM and the Aer Lingus are members.

After about two weeks, the respondents approved the itinerary prepared for them, and asked Reyes to make the necessary plane reservations. Reyes went to the KLM, for which the respondents had expressed preference. The KLM thereafter secured seat reservations for the respondents and their two companions from the carriers which would ferry them throughout their trip, with the exception of Aer Lingus. When the respondents left the Philippines (without their young wards who had enplaned much earlier), they were issued KLM tickets for their entire trip. However, their coupon for the Aer Lingus portion (Flight 861 for June 22, 1965) was marked "RQ" which meant "on request".

After sightseeing in American and European cities (they were in the meantime joined by their two young companions), the respondents arrived in Frankfurt, Germany. They went to a KLM office there and obtained a confirmation from Aer Lingus of seat reservations on flight 861. After meandering in London, Paris and Lisbon, the foursome finally took wing to Barcelona for their trip to Lourdes, France.

In the afternoon of June 22, 1965 the respondents with their wards went to the Barcelona airport to take their plane which arrived at 4:00 o'clock. At the airport, the manager of Aer Lingus directed the respondents to check

in. They did so as instructed and were accepted for passage. However, although their daughter and niece were allowed to take the plane, the respondents were off-loaded on orders of the Aer Lingus manager who brusquely shoved them aside with the aid of a policeman and who shouted at them, "Conos! Ignorantes Filipinos!"

Mrs. Mendoza later called up the manager of Aer Lingus and requested that they provide her and her husband means to get to Lourdes, but the request was denied. A stranger, however, advised them to take a train, which the two did; despite the third class accommodations and lack of food service, they reached Lourdes the following morning. During the train trip the respondents had to suffer draft winds as they wore only minimum clothing, their luggage having gone ahead with the Aer Lingus plane. They spent \$50 for that train trip; their plane passage was worth \$43.35.

On March 17, 1966 the respondents, referring to KLM as the principal of Aer Lingus, filed a complaint for damages with the Court of First Instance of Manila arising from breach of contract of carriage and for the humiliating treatment received by them at the hands of the Aer Lingus manager in Barcelona. After due hearing, the trial court awarded damages to the respondents as follows: \$43.35 or its peso equivalent as actual damages, P10,000 as moral damages, P5,000 as exemplary damages, and P5,000 as attorney's fees, and expenses of litigation.

Both parties appealed to the Court of Appeals. The KLM sought complete exoneration; the respondents prayed for an increase in the award of damages. In its decision of August 14, 1969 the Court of Appeals decreed as follows: "Appellant KLM is condemned to pay unto the plaintiffs the sum of \$43.35 as actual damages; P50,000 as moral damages; and P6,000 as attorney's fees and costs."

Hence, the present recourse by the KLM.

The KLM prays for exculpation from damages on the strength of the following particulars which were advanced to but rejected by the Court of Appeals:

(a) The air tickets issued to the respondents stipulate that carriage thereunder is subject to the "Convention for the Unification of Certain Rules Relating to International Transportation by Air," otherwise known as the "Warsaw Convention," to which the Philippine Government is a party by adherence, and which pertinently provides:[1]

"ART. 30. (1) In the case of transportation to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article I, each carrier who accepts passengers, baggage, or goods shall be subject to the rules set out in the convention, and shall be deemed to be one of the contracting parties to the contract of transportation insofar as the contract deals with that part of the transportation which is performed, under his supervision.[2]

"(2) In the case of transportation of this nature, the passenger or his representative can take action only against the carrier who performed the transportation during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey." (Italics supplied)

(b) On the inside front cover of each ticket the following appears under the heading "Conditions of Contract":

"1. . . (a) Liability of carrier for damages shall be limited to occurrences on its own line, except in the case of checked baggage as to which the passenger also has a right of action against the first or last carrier. A carrier issuing a ticket or checking baggage for carriage over the lines of others does so only as agent."

(c) All that the KLM did after the respondents completed their arrangements with the travel agency was to request for seat reservations among the airlines called for by the itinerary submitted to the KLM and to issue tickets for the entire flight as a ticket-issuing agent.

The respondents rebut the foregoing arguments, thus:

(a) Article 30 of the Warsaw Convention has no application in the case at bar which involves, not an accident or delay, but a willful misconduct on the part of the KLM's agent, the Aer Lingus. Under article 25 of the same Convention the following is prescribed:

"ART. 25. (1) The carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability, if the damage is caused by his willful misconduct or by such default on his part as, in accordance with the law of the court to which the case is submitted, is considered to be equivalent to willful misconduct.[3]

"(2) Similarly, the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused under the same circumstances by any agent of the carrier acting within the scope of his employment." (Italics by respondents)

(b) The condition in their tickets which purportedly excuse the KLM from liability appears in very small print, to read which, as found by the Court of Appeals, one has practically to use a magnifying glass.

(c) The first paragraph of the "Conditions of Contract" appearing identically on the KLM tickets issued to them indubitably shows that their contract was one of continuous air transportation around the world:

"1.... 'carriage' includes the air carrier issuing this ticket and all carriers that carry or undertake to carry the passenger or his baggage hereunder or perform any other service incidental to such air carriage. . . . Carriage to be performed hereunder by several successive carrier is regarded as a single operation."

(d) The contract of air transportation was exclusively between the respondents and the KLM, the latter merely endorsing its performance to other carriers, like Aer Lingus, as its subcontractors or agents, as evidenced by the passage tickets themselves which on their face disclose that they are KLM tickets. Moreover, the respondents dealt only with KLM through the travel agency.

1. The applicability insisted upon by the KLM of article 30 of the Warsaw Convention cannot be sustained. That article presupposes the occurrence of either an accident or a delay, neither of which took place at the Barcelona airport; what is here manifest, instead, is that the Aer Lingus, through its manager there, refused to transport the respondents to their planned and contracted destination.

2. The argument that the KLM should not be held accountable for the tortious conduct of Aer Lingus because of the provision printed on the respondents' tickets expressly limiting the KLM's liability for damages only to occurrences on its own lines is unacceptable. As noted by the Court of Appeals that condition was printed in letters so small that one would have to use a magnifying glass to read the words. Under the circumstances, it would be unfair and inequitable to charge the respondents with automatic knowledge or notice of the said condition so as to preclude any doubt that it was fairly and freely agreed upon by the respondents when they accepted the passage tickets issued to them by the KLM. As the airline which issued those tickets with the knowledge that the respondents would be flown on the various legs of their journey by different air carriers, the KLM was chargeable with the duty and responsibility of specifically informing the respondents of conditions prescribed in their tickets or, in the very least, to ascertain that the respondents read them before they accepted their passage tickets. A thorough search of the record, however, inexplicably fails to show that any effort was exerted by the KLM officials or employees to discharge in a proper manner this responsibility to the respondents. Consequently, we hold that the respondents cannot be bound by the provision in question by which KLM unilaterally assumed the role of a mere ticket-issuing agent for other airlines and limited its liability only to untoward occurrences on its own lines.

3. Moreover, as maintained by the respondents and the Court of Appeals, the passage tickets of the respondents provide that the carriage to be performed thereunder by several successive carriers "is to be regarded as a single operation," which is diametrically incompatible with the theory of the KLM that the respondents entered into a series of independent contracts with the carriers which took them on the various segments of their trip. This position of KLM we reject. The respondents dealt exclusively with the KLM which issued them tickets for their entire trip and which in effect guaranteed to them that they would have sure space in Aer Lingus flight 861. The respondents, under that assurance of the internationally prestigious KLM, naturally had the right to expect that their tickets would be honored by Aer Lingus to which, in the legal sense, the KLM had indorsed and in effect guaranteed the performance of its principal engagement to carry out the respondents' scheduled itinerary previously and mutually agreed upon between the parties.

4. The breach of that guarantee was aggravated by the discourteous and highly arbitrary conduct of an official of the Aer Lingus which the KLM had engaged to transport the respondents on the Barcelona-Lourdes segment of their itinerary. It is but just and in full accord with the policy expressly embodied in our civil law which enjoins courts to be more vigilant for the protection of a contracting party who occupies an inferior position with respect to the other contracting party, that the KLM should be held responsible for the abuse, injury and embarrassment suffered by the respondents at the hands of a supercilious boor of the Aer Lingus.

ACCORDINGLY, the judgment of the Court of Appeals dated August 14, 1969 is affirmed, at KLM's cost.

Makalintal, C.J., Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] See 51 O.G. 4933, et seq. for text of Presidential Proclamation of adherence dated September 23, 1955. See 51 O.G. 5084 et seq. for full text of the Convention.

[2] Article I (3) provides: "Transportation to be performed by several successive air carriers shall be deemed, for the purposes of this Convention, to be one undivided transportation, if it has been regarded by the parties as a single operation, whether it has been agreed upon under the form of a single contract or of a series of contracts, and it shall not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory subject to the sovereignty, suzerainty, mandate, or authority of the same High contracting Party."

[3] Article 22 of the Convention limits the liability of an air carrier in the transportation of passengers to 125,000 francs except where both carrier and passenger "agree to a higher limit of liability."

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