

CHINA AIR LINES, LTD., PETITIONER, VS. COURT OF APPEALS, JOSE PAGSIBIGAN, PHILIPPINE AIR LINES, INC. AND ROBERTO ESPIRITU, RESPONDENTS.

G.R. No. L-45985. May 18, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

These consolidated petitions seek the review of the decision of respondent court in CA-G.R. No. 53023-R entitled "Jose E. Pagsibigan, Plaintiff-Appellant, vs. Philippine Air Lines, Inc. and Roberto Espiritu, Defendants-Appellants; China Air Lines, Ltd., Defendant-Appellee,"[1] the dispositive portion of which declares:

"WHEREFORE, except for a modification of the judgment in the sense that the award of P20,000.00 in favor of the plaintiff shall be in the concept of nominal damages instead of exemplary damages, and that defendant China Air Lines, Ltd. shall likewise be liable with its two co-defendants in a joint and solidary capacity, the judgment appealed from is hereby affirmed in all other respects, without costs."[2]

The challenged decision of respondent court contains a synthesis of the facts that spawned these cases and the judgment of the court a quo which it affirmed with modifications, thus:

"On June 4, 1968, plaintiff Jose E. Pagsibigan, then vice-president and general manager of Rentokil (Phils.) Inc., a local firm dealing in insecticides, pesticides and related services appurtenant thereto, purchased a plane ticket for a Manila-Taipei-Hongkong-Manila flight from the Transaire Travel Agency. The said agency, through its Cecille Baron, contacted the Manila Hotel branch of defendant Philippine Air Lines which at that time was a sales and ticketing agent of defendant China Air Lines. On June 6, 1968, PAL, through its ticketing clerk defendant Roberto Espiritu, cut and issued CAL Ticket No. 017991 for a Manila-Taipei-Hongkong-Manila flight. According to the plane ticket, the plaintiff was booked on CAL CI Flight No. 812 to depart from Manila for Taipei on June 10, 1968 at 1720 hours (5:20 p.m.), Exhibit A.

"On June 10, 1968, one hour before the scheduled time of the flight as stated in his ticket, the plaintiff arrived at the airport to check in for CI Flight No. 812. Upon arriving at the airport, the plaintiff was informed that the plane he was supposed to take for Taipei had left at 10:20 in the morning of that day. The PAL employees at the airport made appropriate arrangements for the plaintiff to take PAL's flight to Taipei the following day, June 11, 1968. The plaintiff took said flight and arrived in Taipei around noontime of the said date.

"On July 8, 1968, the plaintiff, through counsel, made formal demand on defendant PAL for moral damages in not less than P125,000.00 for what the plaintiff allegedly suffered as a result of his failure to take the flight as stated in his plane ticket. (Exhibit E) After a series of negotiations among the plaintiff, PAL and CAL failed to reach an amicable settlement, the plaintiff instituted this action in the Court of First Instance of Rizal, on September 22, 1969. In his complaint, plaintiff prays for the recovery of P125,000.00 as moral damages and P25,000.00 for and as attorney's fees. The moral damages allegedly arose from the gross negligence of defendant Roberto Espiritu in stating on the plane ticket that the time of departure was 1720 hours, instead of 1020 hours which was the correct time of departure in the revised summer schedule of CAL. Plaintiff claims that by reason of his failure to take the plane, he suffered besmirched reputation, embarrassment, mental

anguish, wounded feelings and sleepless nights, inasmuch as when he went to the airport, he was accompanied by his business associates, close friends and relatives. He further averred that his trip to Taipei was for the purpose of conferring with a certain Peng Siong Lim, president of the Union Taiwan Chemical Corporation, scheduled at 9:00 a.m. on June 11, 1968.

"Defendant Philippine Air Lines alleges in its answer that the departure time indicated by Espiritu in the ticket was furnished and confirmed by the reservation office of defendant China Air Lines. It further avers that CAL had not informed PAL's Manila Hotel Branch of the revised schedule of its flight, nor provided it with revised timetable: that when the travel agency sought to purchase the ticket for the plaintiff on CAL CI Flight No. 812 for June 10, 1968, Espiritu who was then the ticketing clerk on duty, checked with the reservation office of CAL on the availability of space, the date and the time of said flight; that CAL's Dory Chan informed Espiritu that the departure time of Flight No. 812 on June 10, 1968 was at 5:20 in the afternoon of said date. PAL asserted a cross-claim against CAL for attorney's fees and for reimbursement of whatever amount the court may adjudge PAL to be liable to the plaintiff. Defendant Espiritu adopted the defenses of his co-defendant PAL.

"Defendant China Air Lines, for its part, disclaims liability for the negligence and incompetence of the employees of PAL. It avers that it had revised its schedule since April 1, 1968, the same to be effective on April 20, 1968, and the said revised schedule was adopted only after proper petition with and approval of the Civil Aeronautics Board of which all airlines, including defendant PAL, were notified; that both printed copies of the international timetable and of the mimeographed notices of the official schedule and flight departure schedules were distributed to all its sales agents, including PAL; that after the effectivity of the new time schedules. PAL's Manila Hotel office had been issuing and selling tickets based on the revised time schedule; and that, assuming that the plaintiff is entitled to recover damages, the liability is on PAL and not on CAL. A cross-claim was likewise asserted by CAL against its co-defendant PAL.

"After due trial, the Court a quo rendered judgment laying the blame for the erroneous entry in the ticket as to the time of departure to defendant Roberto Espiritu, ticketing agent of defendant PAL, and that no employee of CAL contributed to such erroneous entry. It was further ruled that the plaintiff had no reason to claim moral damages but may be entitled to recover exemplary damages. The dispositive portion of the decision makes the following adjudication:

'WHEREFORE, premises considered, judgment is hereby rendered sentencing the defendants Philippine Air Lines, Inc. and Roberto Espiritu, to pay to plaintiff Jose Pagsibigan jointly and severally, by way of exemplary damages, the sum of Twenty Thousand Pesos (P20,000.00) plus Two Thousand Pesos (P2,000.00) as reimbursement for attorney's fees and the costs.

'The complaint is dismissed with respect to the defendant China Air Lines, Ltd. The cross-claim filed by defendant PAL and Espiritu against defendant CAL as well as the cross-claim filed by the defendant CAL against defendant PAL and Espiritu are also hereby dismissed.' "[3]

From said decision of the court below, all the parties, except China Air Lines, Ltd. appealed to respondent court which, however, sustained the ruling of the trial court denying Pagsibigan's claim for moral damages. It concluded that Roberto Espiritu did not act with malice or in bad faith in making a wrong entry of the time of departure on the ticket, and that the mistake committed by Espiritu appears to be an honest one done in good faith.

Respondent court also ruled out the claim for exemplary damages for lack of legal basis. Nonetheless, as earlier noted, it awarded Pagsibigan P20,000.00 as nominal damages, under Article 2221 of the Civil Code, for the vindication of a legal wrong committed against him.

As regards the liability of the parties, respondent court held:

"There can be little question as to the liability of PAL and Espiritu for the damage caused to the plaintiff due to the erroneous entry in the plane ticket made by the latter. They seek to justify the erroneous statement as to the time of departure on the ground that such was the time given by Dory Chan to Espiritu when the latter called up for the reservation in favor of plaintiff. Aside from the fact that Dory Chan had vigorously disclaimed having given such information to Espiritu, We are convinced that, as the trial court had found, CAL had no share in the error committed by Espiritu in indicating the time of departure of Flight No. 812. PAL had shown through the testimony of Carmen Ibazeta Gallaga, ticket representative of PAL at the Manila Hotel Office, that they received circulars and timetables of airlines in the PAL main office. It further appears that on two occasions, defendant PAL cut and issued tickets for CAL based on the new schedule even before June 10, 1968. As a matter of fact, the other entries of time departures in the ticket issued to the plaintiff are in accordance with the revised schedule, and that the only error therein was with respect to the departure from Manila on June 10, 1968.

"However in proving that the fault lied with Espiritu, defendant CAL derives no solace nor gains an advantage. It may not claim exemption from liability by reason thereof. Espiritu was an employee of PAL and whatever negligence was committed by him is attributable to PAL. It is an admitted fact hat PAL is an authorized agent of CAL. In this relationship, the responsibility of defendant PAL for the tortious act of its agent or representative is inescapable. x x x

x x x

"A similar principle is recognized in our Civil Code in its Art. 2180 x x x. Unlike in the doctrine of respondeat superior, however, the Civil Code permits the employer to escape this liability upon proof of having observed all the diligence of a good father of a family to prevent the damage, We find the evidence of defendant CAL to be insufficient to overcome the presumption of negligence on its part for the act done by defendant Roberto Espiritu. (Emphasis supplied)

"The liability for the damage sustained by the plaintiff should, therefore, be borne by all of the defendants in a joint and solidary capacity (Art. 2194). The liability of an employer under Art. 2180 is primary and direct. x x x

x x x

"It appearing that defendant CAL, as employer or principal, did not contribute to the negligence committed by defendants PAL and Roberto Espiritu, its liability to the plaintiff could be passed on to said defendants. Defendant CAL, however, did not take an appeal and did not, therefore, take exception to the dismissal of its cross-claim against defendants PAL and Espiritu. This serves as an obstacle for a rendition of judgment favorable to CAL on its said counterclaim."[4]

In its petition for review on certiorari in G.R. No. L-45985, petitioner China Air Lines, Ltd. (CAL) relied on the following grounds:

1. A principal can not be held liable, much less solidarily, for the negligence of the sub-agent, where the former never participated in, ratified or authorized the latter's act or omission.
2. Dismissal of the cross-claim of petitioner against the private respondents Philippine Air Lines, Inc. and Roberto Espiritu will not prevent the release of the petitioner from liability to the private respondent Pagsibigan.
3. The award of damages was unwarranted both legally and factually.[5]

On their part, petitioners Philippine Air Lines, Inc. (PAL) and Roberto Espiritu made the following submissions in G.R. No. L-46036, to wit:

1. The respondent Court of Appeals erred in not holding that respondent China Air Lines, Ltd., being the principal, is solely liable to respondent Pagsibigan.
2. The respondent Court of Appeals erred in awarding respondent Pagsibigan the sum of P20,000.00 as nominal damages.[6]

In G.R. No. L-45985, respondent Pagsibigan contends, by way of refutation, that CAL's liability is based on breach of contract of transportation which was the proximate result of the negligence and/or error committed by PAL and Espiritu, that even assuming that CAL has no share in the negligence of PAL and Espiritu; the liability of CAL does not cease upon proof that it exercised all the diligence of a good father of a family in the selection and supervision of its employees. Traversing such contentions, CAL argues that it can not be made liable under Article 2180 of the Civil Code because of the absence of employer-employee relationship between it and PAL.

On the other hand, in G.R. No. L-46036, respondent Pagsibigan claims that PAL is liable under Article 1909 of the said code which holds an agent responsible not only for fraud but also for negligence which shall be judged with more or less rigor by the courts, according to whether the agency was or was not for a compensation. PAL, however, maintains that for lack of privity with Pagsibigan, the suit for breach of contract should have been directed against CAL.

What surfaces as a procedural maneuver taken by respondent Pagsibigan in the course of the proceedings in these cases has confused the real issues in the controversy subject of both petitions before us.

Respondent Pagsibigan has opted to seek redress by pursuing two remedies at the same time, that is, to enforce the civil liability of CAL for breach of contract and, likewise, to recover from PAL and Espiritu for tort or culpa aquiliana. What he has overlooked is the proscription against double recovery under Article 2177 of the Civil Code which, while not preventing recourse to any appropriate remedy, prevents double relief for a single wrong.

To avoid inequitable effects under such confluence of remedies, the true nature of the action instituted by respondent Pagsibigan must be determined. A careful perusal of the complaint of respondent Pagsibigan will readily disclose that the allegations thereof clearly and unmistakably make out a case for a quasi-delict in this wise:

"4. That at all pertinent times particularly in June of 1968, defendant China Air Lines Ltd. has been operating regular scheduled flights to and from Manila, and has offered accommodations thereon through, among others, defendant PAL as its authorized sales agent and/or ticketing agent, such that China Airlines Ltd. is here impleaded as being the principal of defendant PAL;

"5. That at all pertinent times, particularly in June of 1968, defendant Roberto Espiritu has been in the employ of defendant PAL at its sales counter at the PAL Manila Hotel branch office and is here impleaded as defendant as being the proximate malfeasor in this cause of action;

x x x

"12. That plaintiff missed the initial Manila-Taipei leg (CI Flight 812) on June 10, 1968, as set forth in his ticket (Annex 'A') solely and exclusively by reason of gross incompetence and inexcusable negligence amounting to bad faith of defendant PAL - acting, through its sales representative, the defendant Roberto Espiritu, of its Manila Hotel branch office - in the discharge of its duties as sales agent and/or ticketing agent for defendant China Airlines Ltd. as principal;

"13. That as a direct result of culpable incompetence and negligence of defendant Roberto Espiritu as sales representative of defendant PAL, plaintiff was unable to attend to previously scheduled business commitments in Taipei x x x resulting in direct and indirect prejudice to plaintiff that has yet to be fully assessed." (Emphasis

supplied)[7]

x x x

Had the intention of respondent Pagsibigan been to maintain an action based on breach of contract of carriage, he could have sued CAL alone considering that PAL is not a real party to the contract. Moreover, in cases of such nature, the aggrieved party does not have to prove that the common carrier was at fault or was negligent. All he has to prove is the existence of the contract and the fact of its non-performance by the carrier.[8]

The records disclose that the trial court delved much into the issues of who was at fault, and its decision is primarily anchored on its factual findings regarding the civil liability arising from culpa aquiliana of the erring party, to this effect:

"Plaintiff said that the erroneous entry in his ticket which made it appear that his CAL flight of June 10, 1968 was to be at 5:20 in the afternoon was due to the fault or negligence of PAL's Roberto Espiritu, a co-defendant herein, as well as the employees of the defendant CAL. In making CAL co-responsible, plaintiff appears to rely on the doctrine that the principal is responsible for the act of an agent done within the scope of the agency.

"There is no proof extant that any of the employees of CAL had contributed to the erroneous entry in plaintiff's CAL ticket for Taipei which placed his time of departure to 5:20 o'clock in the afternoon of June 10, 1968. Only defendant Roberto Espiritu appears to be solely and exclusively responsible for such error and therefore the conclusion becomes inevitable that CAL must be absolved from any blame because defendant Roberto Espiritu who committed the error is not an employee or agent of the defendant CAL."[9]

It, therefore, becomes evident that respondent Pagsibigan, having sensed that he can not hold CAL liable on a quasi-delict, decided on appeal to instead make a sinistral detour, so to speak, by claiming that his action against CAL is based on a breach of contract of carriage.

We can not permit respondent Pagsibigan to change his theory at this stage; it would be unfair to the adverse party who would have no more opportunity to present further evidence, material to the new theory, which it could have done had it been aware earlier of the new theory at the time of the hearing before the trial court.[10]

There is indeed no basis whatsoever to hold CAL liable on a quasi-delict or culpa aquiliana. As hereinbefore stated, the court a quo absolved CAL of any liability for fault or negligence. This finding was shared by respondent court when it concluded that defendant CAL did not contribute to the negligence committed by therein defendants-appellants PAL and Roberto Espiritu.

Respondent Pagsibigan insists that CAL was barred from proving that it observed due diligence in the selection and supervision of its employees. This argument is obviously misplaced. CAL is not the employer of PAL or Espiritu. In *Duavit vs. The Hon. Court of Appeals, et al.*, [11] we have stressed the need of first establishing the existence of an employer-employee relationship before an employer may be vicariously liable under Article 2180 of the Civil Code.

With respect to PAL and Espiritu, they disclaim any liability on the theory that the former is merely an agent of CAL and that the suit should have been directed against CAL alone. There is no question that the contractual relation between both air lines is one of agency. Suffice it to say, however, that in an action premised on the employee's negligence, whereby respondent Pagsibigan seeks recovery for the resulting damages from both PAL and Espiritu without qualification, what is sought to be imposed is the direct and primary liability of PAL as an employer under said Article 2180.

When an injury is caused by the negligence of an employee, there instantly arises a presumption of law that there was negligence on the part of the employer either in the selection of the employee or in the supervision over him

after such selection. The presumption, however, may be rebutted by a clear showing on the part of the employer that it has exercised the care and diligence of a good father of a family in the selection and supervision of his employee.[12]

Hence, to escape solidary liability for the quasi-delict committed by Espiritu, it is imperative that PAL must adduce sufficient proof that it exercised such degree of care. PAL failed to overcome the presumption. As found by respondent court, CAL had revised its schedule of flights since April 1, 1968; that after the Civil Aeronautics Board had approved the revised schedule of flights, PAL was duly informed thereof and, in fact, PAL's Manila Hotel branch office had been issuing and selling tickets based on the revised time schedule before June 10, 1968.

PAL'S main defense is that it is only an agent. As a general proposition, an agent who duly acts as such is not personally liable to third persons. However, there are admitted exceptions, as in this case where the agent is being sued for damages arising from a tort committed by his employee.

The respondent court found that the mistake committed by Espiritu was done in good faith. While there is no evidence that he acted with malice, we can not entirely condone his actuations. As an employee of PAL, the nature of his functions requires him to observe for the protection of the interests of another person that degree of care, precaution and vigilance which the circumstances justly demand. He committed a clear neglect of duty.

Ergo, for his negligence, Espiritu is primarily liable to respondent Pagsibigan under Article 2176 of the Civil Code. For the failure of PAL to rebut the legal presumption of negligence in the selection and supervision of its employee, it is also primarily liable under Article 2180 of the same code which explicitly provides that employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

Under the aforesaid provision, all that is required is that the employee, by his negligence, committed a quasi-delict which caused damage to another, and this suffices to hold the employer primarily and solidarily responsible for the tortious act of the employee. PAL, however, can demand from Espiritu reimbursement of the amount which it will have to pay the offended party's claim.[13]

On the issue of damages, we agree, except as to the amount, that nominal damages may be awarded to respondent Pagsibigan to vindicate the legal wrong committed against him. It appearing that the wrong committed was immediately rectified when PAL promptly booked him for the next morning's flight to Taipei where he arrived before noon of June 11, 1968 and was able to attend his scheduled conference, and considering the concept and purpose of nominal damages, the award of P20,000.00 must accordingly be reduced to an amount equal or at least commensurate to the injury sustained.

WHEREFORE, the decision of respondent Court of Appeals is MODIFIED accordingly. China Air Lines, Ltd. is hereby absolved from liability. Philippine Air Lines, Inc. and Roberto Espiritu are declared jointly and severally liable to pay the sum of P10,000.00 by way of nominal damages, without prejudice to the right of Philippine Air Lines, Inc. to recover from Roberto Espiritu reimbursement of the damages that it may pay respondent Jose Pagsibigan.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Penned by Justice Conrado M. Vasquez, with Justices Delfin FL. Batacan and Jose B. Jimenez concurring.

[2] Rollo, G.R. No. L-45985, 57.

[3] Ibid., id., 41-46.

[4] Ibid., 53-57.

[5] Ibid., id., 13-14.

[6] Ibid., G.R. No. L-46036, 29, 35.

[7] Joint Record on Appeal, 9, 12; Rollo, G.R. No. 45985, 62.

[8] Cangco vs. Manila Railroad Co., 38 Phil. 768 (1918); Sy vs. Malate Taxicab & Garage, Inc., 102 Phil. 482 (1957).

[9] Joint Record on Appeal, 105; Rollo, G.R. No. 45985, 62.

[10] Lianga Lumber Co., et al. vs. Lianga Timber Co., Inc., et al., 76 SCRA 197 (1977).

[11] G.R. No. 82318, May 18, 1989.

[12] Layugan vs. Intermediate Appellate Court, et al., 167 SCRA 363 (1988).

[13] Art. 2181, Civil Code; Malipol, etc. vs. Tan, et al., 55 SCRA 202 (1974); Lanuzo vs. Ping, et al., 100 SCRA 205 (1980).

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