

LOURDES CYNTHIA MAKABALI AND GEORGINA MAKABALI, PETITIONERS, VS. COURT OF APPEALS AND BARON TRAVEL CORPORATION, RESPONDENTS.

G.R. No. L-46877. January 22, 1988

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FERNAN, J.:

The sole issue in this petition for review is whether or not petitioners are entitled to more than the P5,000.00 moral and exemplary damages, P1,000.00 attorney's fees and costs awarded to them by the Court of Appeals in the light of the circumstances of the case.

Petitioner Georgina Makabali had just graduated from the College of Medicine, University of the Philippines, and as a graduation gift from her father, was given a trip to Hongkong. Since she had never been abroad, her parents insisted that she be accompanied by her sister and co-petitioner Lourdes Cynthia Makabali, a schoolteacher at the Colegio de San Agustin, Dasmarinas Village.

An advertisement of private respondent Baron Travel Corporation in the March 30, 1969 issue of the newspaper "The Sunday Times" offering a package tour to Hongkong caught the attention of petitioner Georgina Makabali. In response to her inquiry, private respondent sent her the literature pertaining to its Hongkong package tour together with the time schedule, description of the tour, tour conditions and brochure.

At private respondent's office, petitioners were assured that they would be going with a group of thirteen [13] other travelers to be led by a tour guide, a certain Mr. Arsenio Rosal, and that a representative of private respondent would see them off at the Manila International Airport to give them final instructions. Petitioners were also assured that they would be lodged at the President Hotel in Hongkong. These promises and representations convinced the petitioners to purchase the Hongkong package tour offered by private respondent.

On the departure date, May 10, 1969, petitioners searched for the tour group they were supposed to meet at the Manila International Airport. They likewise searched for private respondent's representative who would give them final instructions on their trip to Hongkong. They met neither private respondent's tour group nor its representative.

When they were paged through the public address system to board their plane for Hongkong, they had no choice but to do so without receiving any instructions from private respondent's representative.

Inside the plane, petitioners did not meet anyone from the Baron Tour Group. They looked for and found a certain Mr. Arsenio Rosal who, to their embarrassment, protested that he was not a tour guide but a business executive working with International Harvester Macleod, Inc. and who was going to Hongkong as a paying passenger. In fact, he knew no one from private respondent Baron Travel Corporation and had nothing to do with it.

In Hongkong, nobody met petitioners at the airport. Mr. Rosal who was a member of the Abaya Tour Group, requested their tour leader to accommodate petitioners provided they pay for all their expenses in Hongkong.

Thereafter, petitioners called up the President Hotel in Hongkong where private respondent promised to book them but it had no accommodations for them. Petitioners lost no time in sending a cable to private respondent informing it that they had no hotel accommodations.

Left with no alternative, petitioners tagged along with the Abaya Tour Group. Petitioners claimed public humiliation due to the fact that they had to pay for their lunch while the rest of the group had prepaid meals. They could not go shopping with the Abaya group for fear that their limited funds would not be sufficient to pay for their hotel bills. There were times when breakfast consisted of hot dogs bought along the sidewalk while lunch and supper consisted of apples and oranges.

On the third night, they tried to place a long-distance call to their home but could not get through. The next morning, petitioners sent a cable to their parents.

According to petitioners, they had to scrimp on their limited budget for fear that their meager pocket money would not be enough to pay for their hotel bills. All these caused them sleepless nights because of great worry, mental anguish and public humiliation.

It was only at 9:00 in the morning of May 13, 1969 or on the fourth day of the supposed five-day tour that petitioners were notified that private respondent had finally made arrangements for the payment of their bills. By that time, the supposed tour was practically over.

Upon their return, petitioners complained to private respondent who according to petitioners did not even bother to apologize but simply ignored their complaint and gave them the run around.

An action for moral and exemplary damages, attorney's fees and costs was filed by the petitioners in the then Court of First Instance of Manila, Branch XVI and docketed as Civil Case No. 76912. Petitioners in their complaint prayed for an award of P100 as actual and compensatory damages, P30,000.00 as moral damages, P5,000.00 as exemplary damages plus attorney's fees and costs. The Court rendered judgment in petitioner's favor but awarded them only P500.00 as moral and exemplary damages, P100.00 as attorney's fees and costs, stating the following as its justification for the award:

"Plaintiffs claim P35,000 for damages aside from attorney's fees. These are too much and too high. Travel agents are only paid 10% commissions for the trips they sell. Besides, Baron rectified on time its oversight and made it possible for the plaintiffs to enjoy the rest of their trip." [1]

Unsatisfied, petitioners appealed to the Court of Appeals. Private respondent likewise appealed. The Court of Appeals made the following findings and ruling:

"It is a fact that the plaintiffs had to shift for themselves upon arriving in Hongkong and that defendant arranged for the hotel bills of plaintiffs only after said plaintiffs had cabled it for confirmation. There is no doubt that the plaintiffs suffered humiliation and anxiety during the first days of their stay in Hongkong. The defendant was remiss in the performance of its obligation to the plaintiffs. It acted in wanton disregard of the rights of the plaintiffs.

"The trial Court correctly stated that the amount of damages claimed by the plaintiffs are too high. However, the amounts awarded as damages and attorney's fees by the trial court are inadequate. Under the established facts and equity of the case, the plaintiffs are entitled to the sum of P5,000.00 as moral and exemplary damages and the amount of P1,000.00 as attorney's fees.

"WHEREFORE, the decision appealed from is hereby modified in that the defendant is ordered to pay the plaintiffs the sum of P5,000.00 as moral and exemplary damages and the sum of P1,000.00 as attorney's fees and the costs.

“SO ORDERED.”[2]

Still unsatisfied, petitioners elevated this case to Us on a petition for review on a lone assignment of error, to wit:

THE COURT OF APPEALS ERRED IN AWARDING PETITIONERS THE PITIFUL SUMS OF P5,000.00 AS MORAL AND EXEMPLARY DAMAGES AND P1,000.00 AS ATTORNEY’S FEES IN THE LIGHT OF THE SOCIAL STANDING OF PETITIONER GEORGINA MAKABALI, WHO IS A DOCTOR OF MEDICINE, AND OF PETITIONER LOURDES CYNTHIA MAKABALI, WHO IS A TEACHER; IN THE LIGHT OF THE SLEEPLESS NIGHTS AND PUBLIC HUMILIATION THEY SUFFERED FOR THREE DAYS AND THREE NIGHTS; IN THE LIGHT OF THE CALLOUS FAILURE OF PRIVATE RESPONDENT TO HAVE ANYONE ATTEND TO PETITIONERS IN SPITE OF THE FACT THAT IT RAKES IN MORE THAN HALF A MILLION PESOS A MONTH FROM AIR FREIGHT ALONE.[3]

To begin with, there is no hard and fast rule in the determination of what would be a fair amount of moral damages, since each case must be governed by its own peculiar circumstances.[4]

Article 2217 of the Civil Code recognizes that moral damages which include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury, are incapable of pecuniary estimation.

As to exemplary damages, Article 2229 of the Civil Code provides that such damages may be imposed by way of example or correction for the public good. While exemplary damages cannot be recovered as a matter of right,[5] they need not be proved, although plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded.[6]

A review of related jurisprudence shows that We had awarded moral damages in more or less similar cases ranging from P20,000.00 [Northwest Airlines, Inc. v. Cuenca],[7] P25,000.00 [Yutukv. Manila Electric Company, Air France v. Carrascoso][8] P50,000.00 [KLM Royal Dutch Airlines v. Court of Appeals],[9] P150,000.00 [Ortigas v. Lufthansa German Airlines],[10] and P200,000.00 [Lopez v. Pan American World Airways][11] to P500,000.00 [Zulueta v. Pan American World Airways][12] As to exemplary damages, We awarded in Yutuk and Air France £10,000.00, in Lopez P75,000.00, in Ortigas P100,000.00 and in Zulueta P200,000.00.

It will thus be noted that We have awarded moral and exemplary damages depending upon the facts attendant to each case. It will also be noted that We gave separate awards for moral and exemplary damages. This is as it should be because the nature and purposes of said damages are different. While moral damages have to do with injury personal to the awardee, such as physical suffering and the like, exemplary damages are imposed by way of example or correction for the public good.

It is essential however, in the award of damages that the claimant must have satisfactorily proven during the trial the existence of the factual basis of the damages and its causal connection to defendant's acts. This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer,[13] and are allowable only when specifically prayed for in the complaint.[14]

As reflected in the records of the case, the Court of Appeals was in agreement with the findings of the trial court that petitioners suffered anguish, embarrassment and mental sufferings due to failure of private respondent to perform its obligation to the petitioners. According to the Court of Appeals, private respondent acted in wanton disregard of the rights of petitioners. These pronouncements lay the basis and justification for this Court to award petitioners moral and exemplary damages.

In the light of the circumstances obtaining in the case at bar, especially the social standing of petitioners and the embarrassment and humiliation suffered by them, the anxiety they must have felt in their first journey to a foreign land under uncertain circumstances and with meager funds which could run out any time, We are inclined to award damages to the petitioner more than what was awarded by the Court of Appeals.

It must be emphasized that moral damages are not intended to enrich the complainant at the expense of a defendant. They are awarded only to enable the injured parties to obtain means, diversions or amusements that will serve to alleviate the moral sufferings the injured parties have undergone by reason of defendant's culpable action. In other words, the award of moral damages is aimed at a restoration within the limits of the possible, of the spiritual status quo ante; and therefore it must be proportionate to the suffering inflicted.[15] The amount of P5,000.00 is minimal compared to the sufferings and embarrassment of petitioners who left Manila with high spirits and excitement hoping to enjoy their first trip to a foreign land only to be met with uncertainties and humiliations.

We note however that petitioners limited their claim for moral and exemplary damages in their complaint filed with the Court of First Instance to a total of P35,000.00 plus attorney's fees and costs. We feel that Our award should not exceed the said amount.

WHEREFORE, the decision of the Court of Appeals subject of the petition for review is hereby modified, increasing the award to petitioners of moral and exemplary damages to P35,000.00 and attorney's fees to P5,000.00 with costs. This decision is immediately executory.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Rollo, p. 25, Annex "A" of Petition, p. 22.

[2] Rollo, pp. 34 & 35, Annex "C", pp. 7 & 8.

[3] Petition, Rollo, p. 16.

[4] Sanchez & Sanchez v. Cebu Auto Bus Company, 52 OG 6250.

[5] Article 2233, Civil Code.

[6] Article 2234. Id.

[7] 14 SCRA 1063 [1965].

[8] 2 SCRA 337 [1951]; 18 SCRA 155 [1966],

[9] 65 SCRA 237 [1975].

[10] 64 SCRA 610 [1972].

[11] 16 SCRA 431 [1966].

[12] 43 SCRA 397 [1972].

[13] *Enervida v. De la Torre*, 55 SCRA 340 [1974].

[14] *San Miguel Brewery, Inc. v. Magno*, 21 SCRA 292 [1968].

[15] C. Sangco, *Philippine Law on Torts & Damages*, 539 [Revised Edition, 1978].

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