

NORTHWEST AIRLINES, INC., PETITIONER, VS. NICOLAS L. CUENCA AND COURT OF APPEALS (SPECIAL SIXTH DIVISION), RESPONDENTS.*G.R. No. L-22425. August 31, 1965*

Ponente: CONCEPCION, J.

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This is an action for damages for alleged breach of contract. After appropriate proceedings the Court of First Instance of Manila, in which the case was originally filed, rendered judgment sentencing defendant Northwest Airlines, Inc.,—hereinafter referred to as petitioner—to pay to plaintiff Cuencar—hereinafter referred to as respondent—"the sum of P20,000 as moral damages, together with the sum of P5,000 as exemplary damages, with legal interest thereon from the date of the filing of the complaint"—December 12, 1959—"until fully paid, plus the further sum of P2,000 as attorney's fees and expenses of litigation". On appeal taken by petitioner, said decision was affirmed by the Court of Appeals, except as to the P5,000.00 exemplary damages, which was eliminated, and the P20,000 award for moral damages, which was converted into nominal damages. The case is now before us on petition for review by certiorari filed by petitioner, upon the ground that the lower court has erred: (1) in holding that the Warsaw Convention of October 12, 1929, relative to transportation by air is not in force in the Philippines; (2) in not holding that respondent has no cause of action; and (3) in awarding P20,000 as nominal damages.

We deem it unnecessary to pass upon the first assignment of error because the same is the basis of the second assignment of error, and the latter is devoid of merit, even if we assumed the former to be well taken. Indeed, the second assignment of error is predicated upon Articles 17, 18 and 19 of said Convention, reading:

"ART. 17. The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

"ART. 18. (1) The carrier shall be liable for damage sustained in the event of the destruction or loss of, or of damage to, any checked baggage, or any goods, if the occurrence which caused the damage so sustained took place during the transportation by air.

(2) The transportation by air within the meaning of the preceding paragraph shall comprise the period during which the baggage or goods are in charge of the carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever.

(3) The period of the transportation by air shall not extend to any transportation by land, by sea, or by river performed outside an airport. If, however, such transportation takes place in the performance of a contract for transportation by air, for the purpose of loading, delivery, or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the transportation by air.

"ART. 19. The carrier shall be liable for damage occasioned by delay in the transportation by air of passengers, baggage, or goods."

Petitioner argues that pursuant to these provisions, an air "carrier is liable only" in the event of death of a passenger or injury suffered by him, or of destruction or loss of, or damage to any checked baggage or any goods, or of delay in the transportation by air of passengers, baggage or goods. This pretense is not borne out by the language of said Articles. The same merely declare the carrier liable for damages in the enumerated cases, if the conditions therein specified are present. Neither said provisions nor others in the aforementioned Convention regulate or exclude liability for other breaches of contract by carrier. Under petitioner's theory, an air carrier would be exempt from any liability for damages in the event of its absolute refusal, in bad faith, to comply with, a contract of carriage, which is absurd.

The third assignment of error is based upon *Medina vs. Cresencia* (52 Off. Gaz. 4606), and *Quijano vs. Philippine Air Lines* (CA-G.R. No. 21804). Neither case is, however, in point, aside from the fact that the latter is not controlling upon us. In the first case, this Court eliminated a P10,000 award for nominal damages, because the aggrieved party had already been awarded P6,000 as compensatory damages, P30,000 as moral damages and P10,000 as exemplary damages, and "nominal damages cannot co-exist with compensatory damages". In the case at bar, the Court of Appeals has adjudicated no such compensatory, moral and exemplary damages to respondent herein.

Moreover, there are special reasons why the P20,000.00 award in favor of respondent herein is justified, even if said award were characterized as nominal damages. When his contract of carriage was violated by the petitioner, respondent held the office of Commissioner of Public Highways of the Republic of the Philippines. Having boarded petitioner's plane in Manila with a first class ticket to Tokyo, he was, upon arrival at Okinawa, transferred to the tourist class compartment. Although he revealed that he was travelling in his official capacity as official delegate of the Republic to a conference in Tokyo, an agent of petitioner rudely compelled him, in the presence of other passengers, to move, over his objection, to the tourist class, under threat of otherwise leaving him in Okinawa. In order to reach the conference on time, respondent had no choice but to obey.

It is true that said ticket was marked "W/L", but respondent's attention was not called thereto. Much less was he advised that "W/L" meant "wait listed". Upon the other hand, having paid the first class fare in full and having been given first class accommodation as he took petitioner's plane in Manila, respondent was entitled to believe that this was a confirmation of his first class reservation and that he would keep the same until his ultimate destination, Tokyo. Then, too, petitioner has not tried to explain or even alleged that the person to whom respondent's first class seat was given had a better right thereto. In other words, since the offense had been committed with full knowledge of the fact that respondent was an official representative of the Republic of the Philippines, the sum of P20,000 awarded as damages may well be considered as merely nominal. At any rate, considering that petitioner's agent had acted in a wanton, reckless and oppressive manner, said award may, also, be considered as one for exemplary damages.

Wherefore, the decision appealed from is hereby affirmed, with costs against the petitioner. It is so ordered.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Dizon, Regalado, Makalintal, and Zaldivar, JJ., concur.

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