

SABENA BELGIAN WORLD AIRLINES, PETITIONER, VS. HON. COURT OF APPEALS AND MA. PAULA SAN AGUSTIN, RESPONDENTS.

G.R. No. 104685. March 14, 1996

Ponente: VITUG, J.

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VITUG, J.:

The appeal before the Court involves the issue of an airline's liability for lost luggage. The petition for review assails the decision of the Court Appeals,[1] dated 27 February 1992, affirming an award of damages made by the trial court in a complaint filed by private respondent against petitioner.

The factual background of the case, narrated by the trial court and reproduced at length by the appellate court, is hereunder quoted:

"On August 21, 1987, plaintiff was a passenger on board Flight SN 284 of defendant airline originating from Casablanca to Brussels, Belgium on her way back to Manila. Plaintiff checked in her luggage which contained her valuables, namely: jewelries valued at \$2,350.00; clothes \$1,500.00; shoes/bag \$150; accessories \$75; luggage itself \$10.00; or a total of \$4,265.00, for which she was issued Tag No. 71423. She stayed overnight in Brussels and her luggage was left on board Flight SN 284.

"Plaintiff arrived at Manila International Airport on September 2, 1987 and immediately submitted her Tag No. 71423 to facilitate the release of her luggage but the luggage was missing. She was advised to accomplish and submit a property Irregularity Report which she submitted and filed on the same day.

"She followed up her claim on September 14, 1987 but the luggage remained to be missing.

"On September 15, 1987, she filed her formal complaint with the office of Ferge Massed, defendant's Local Manager, demanding immediate attention (Exh. 'A').

"On September 30, 1987, on the occasion of plaintiff's following up of her luggage claim, she was furnished copies of defendant's telexes with an information that the Brussel's Office of defendant found the luggage and that they have broken the locks for identification (Exhibit 'B'). Plaintiff was assured by the defendant that it has notified its Manila Office that the luggage will be shipped to Manila on October 27, 1987. But unfortunately plaintiff was informed that the luggage was lost for the second time (Exhibits 'C' and 'C-1').

"At the time of the filing of the complaint, the luggage with its content has not been found.

"Plaintiff demanded from the defendant the money value of the luggage and its contents amounting to \$4,265.00 or its exchange value, but defendant refused to settle the claim.

"Defendant asserts in its Answer and its evidence tend to show that while it admits that the plaintiff was a passenger on board Flight No. SN 284 with a piece of checked in luggage bearing Tag No. 71423, the loss of the luggage was due to plaintiff's sole if not contributory negligence; that she did not declare the valuable items in her checked-in luggage at the flight counter when she checked in for her flight from Casablanca to Brussels so that either the representative of the defendant at the counter would have advised her to secure an insurance on the alleged valuable items and required her to pay additional charges, or would have refused

acceptance of her baggage as required by the generally accepted practices of international carriers; that Section 9(a), Article IX of General Conditions of carriage requiring passengers to collect their checked baggage at the place of stopover, plaintiff neglected to claim her baggage at the Brussels Airport; that plaintiff should have retrieved her undeclared valuables from her baggage at the Brussels Airport since her flight from Brussels to Manila will still have to visit for confirmation inasmuch as only her flight from Casablanca to Brussels was confirmed; that defendant incorporated in all Sabena Plane Tickets, including Sabena Ticket No. 082422-72502241 issued to plaintiff in Manila on August 21, 1987, a warning that 'Items of value should be carried on your person' and that some carriers assume no liability for fragile, valuable or perishable articles and that further information may be obtained from the carrier for guidance'; that granting without conceding that defendant is liable, its liability is limited only to US \$20.00 per kilo due to plaintiff's failure to declare a higher value on the contents of her checked in luggage and pay additional charges thereon." [2]

The trial court rendered judgment ordering petitioner Sabena Belgian World Airlines to pay private respondent Ma. Paula San Agustin –

"(a) x x x US\$4,265.00 or its legal exchange in Philippine pesos;

"(b) x x x P30,000.00 as moral damages;

"(c) x x x P10,000.00 as exemplary damages;

"(d) x x x P10,000.00 attorney's fees; and

"(e) the costs of the suit." [3]

Sabena appealed the decision of the Regional Trial Court to the Court of Appeals. The appellate court, in its decision of 27 February 1992, affirmed in toto the trial court's judgment.

Petitioner airline company, in contending that the alleged negligence of private respondent should be considered the primary cause for the loss of her luggage, avers that, despite her awareness that the flight ticket had been confirmed only for Casablanca and Brussels, and that her flight from Brussels to Manila had yet to be confirmed, she did not retrieve the luggage upon arrival in Brussels. Petitioner insists that private respondent, being a seasoned international traveler, must have likewise been familiar with the standard provisions contained in her flight ticket that items of value are required to be hand-carried by the passenger and that the liability of the airline or loss, delay or damage to baggage would be limited, in any event, to only US\$20.00 per kilo unless a higher value is declared in advance and corresponding additional charges are paid thereon. At the Casablanca International Airport, private respondent, in checking in her luggage, evidently did not declare its contents or value. Petitioner cites Section 5(c), Article IX, of the General Conditions of Carriage, signed at Warsaw, Poland, on 02 October 1929, as amended by the Hague Protocol of 1955, generally observed by International carriers, stating, among other things, that:

"Passengers shall not include in his checked baggage, and the carrier may refuse to carry as checked baggage, fragile or perishable articles, money, jewelry, precious metals, negotiable papers, securities or other valuables." [4]

Fault or negligence consists in the omission of that diligence which is demanded by the nature of an obligation and corresponds with the circumstances of the person, of the time, and of the place. When the source of an obligation is derived from a contract, the mere breach or non-fulfillment of the prestation gives rise to the presumption of fault on the part of the obligor. This rule is not different in the case of common carriers in the carriage of goods which, indeed, are bound to observe not just the due diligence of a good father of a family but that of "extraordinary" care in the vigilance over the goods. The appellate court has aptly observed:

"x x x Art. 1733 of the [Civil] Code provides that from the very nature of their business and by reasons of public policy, common carriers are bound to observe extraordinary diligence in the vigilance over the goods transported by them. This extraordinary responsibility, according to Art. 1736, lasts from the time the goods are unconditionally placed in the possession of and received by the carrier until they are delivered actually or constructively to the consignee or person who has the right to receive them. Art. 1737 states that the common carrier's duty to observe extraordinary diligence in the vigilance over the goods transported by them 'remains in full force and effect even when they are temporarily unloaded or stored in transit.' And Art. 1735 establishes the presumption that if the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they had observed extraordinary diligence as required in Article 1733.

"The only exceptions to the foregoing extraordinary responsibility of the common carrier is when the loss, destruction, or deterioration of the goods is due to any of the following causes:

""(1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;

""(2) Act of the public enemy in war, whether international or civil;

""(3) Act or omission of the shipper or owner of the goods;

""(4) The character of the goods or defects in the packing or in the containers;

""(5) Order or act of competent public authority.'

"Not one of the above excepted causes obtains in this case."[5]

The above rules remain basically unchanged even when the contract is breached by tort[6] although noncontradictory principles on quasi-delict may then be assimilated as also forming part of the governing law. Petitioner is not thus entirely off track when it has likewise raised in its defense the tort doctrine of proximate cause. Unfortunately for petitioner, however, the doctrine cannot, in this particular instance, support its case. Proximate cause is that which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces injury and without which the result would not have occurred. The exemplification by the Court in one case[7] is simple and explicit; viz:

"(T)he proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and Continuous chain of events, each having a close causal Connection with its immediate predecessor, the final event in the chain immediately affecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinarily prudent, and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom."

It remained undisputed that private respondent's luggage was lost while it was in the custody of petitioner. It was supposed to arrive on the same flight that private respondent took in returning to Manila on 02 September 1987. When she discovered that the luggage was missing, she promptly accomplished and filed a Property Irregularity Report. She followed up her claim on 14 September 1987, and filed, on the following day, a formal letter-complaint with petitioner. She felt relieved when, on 23 October 1987, she was advised that her luggage had finally been found, with its contents intact when examined, and that she could expect it to arrive on 27 October 1987. She then waited anxiously only to be told later that her luggage had been lost for the second time. Thus, the appellate court, given all the facts before it, sustained the trial court in finding petitioner ultimately guilty of "gross negligence" in the handling of private respondent's luggage. The "loss of said baggage not only once by twice," said the appellate court, "underscores the wanton negligence and lack of care" on the part of the carrier.

The above findings, which certainly cannot be said to be without basis, foreclose whatever rights petitioner might

have had to the possible limitation of liabilities enjoyed by international air carriers under the Warsaw Convention (Convention for the Unification of Certain Rules Relating to International Carriage by Air, as amended by the Hague Protocol of 1955, the Montreal Agreement of 1966, the Guatemala Protocol of 1971 and the Montreal Protocols of 1975). In *Alitalia vs. Intermediate Appellate Court*,^[8] now Chief Justice Andres R. Narvasa, speaking for the Court, has explained it well; he said:

"The Warsaw Convention however denies to the carrier availment 'of the provisions which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court seized of the case, is considered to be equivalent to wilful misconduct,' or 'if the damage is (similarly) caused x x x by any agent of the carrier acting within the scope of his employment.' The Hague Protocol amended the Warsaw Convention by removing the provision that if the airline took all necessary steps to avoid the damage, it could exculpate itself completely, and declaring the stated limits of liability not applicable 'if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result.' The same deletion was effected by the Montreal Agreement of 1966, with the result that a passenger could recover unlimited damages upon proof of wilful misconduct.

"The Convention does not thus operate as an exclusive enumeration of the instances of an airline's liability, or as an absolute limit of the extent of that liability. Such a proposition is not borne out by the language of the Convention, as this Court has now, and at an earlier time, pointed out. Moreover, slight reflection readily leads to the conclusion that it should be deemed a limit of liability only in those cases where the cause of the death or injury to person, or destruction, loss or damage to property or delay in its transport is not attributable to or attended by any wilful misconduct, bad faith, recklessness or otherwise improper conduct on the part of any official or employee for which the carrier is responsible, and there is otherwise no special or extraordinary form of resulting injury. The Convention's provisions, in short, do not 'regulate or exclude liability for other breaches of contract by the carrier' or misconduct of its officers and employees, or for some particular or exceptional type of damage. Otherwise, '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.' Nor may it for a moment be supposed that if a member of the aircraft complement should inflict some physical injury on a passenger, or maliciously destroy or damage the latter's property, the Convention might successfully be pleaded as the sole gauge to determine the carrier's liability to the passenger. Neither may the Convention be invoked to justify the disregard of some extraordinary sort of damage resulting to a passenger and preclude recovery therefor beyond the limits set by said Convention. It is in this sense that the Convention has been applied, or ignored, depending on the peculiar facts presented by each case."

The Court thus sees no error in the preponderant application to the instant case by the appellate court, as well as by the trial court, of the usual rules on the extent of recoverable damages beyond the Warsaw limitations. Under domestic law and jurisprudence (the Philippines being the country of destination), the attendance of gross negligence (given the equivalent of fraud or bad faith) holds the common carrier liable for all damages which can be reasonably attributed, although unforeseen, to the non-performance of the obligation,^[9] including moral and exemplary damages.^[10]

WHEREFORE, the decision appealed from is AFFIRMED. Costs against petitioner.

SO ORDERED.

Padilla, Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Associate Justice Alicia V. Sempio Diy, ponente; concurred in by Associate Justices Oscar M. Herrera and Artemio D. Luna.

[2] Rollo, p. 37-39.

[3] Rollo, p.36.

[4] Rollo, p. 9.

[5] Rollo, pp. 42-44.

[6] See *Singson vs. Bank of P.I.*, 23 SCRA 1117; *Air France vs. Carrascoso*; 18 SCRA 155.

[7] *Vda. de Bataclan vs. Medina*, 102 Phil. 181,186.

[8] 192 SCRA 9, 16-18.

[9] Art. 2201, in relation to Art. 1764, Civil Code.

[10] See Art. 2220. Civil Code; See *Gatchalian vs. Delim*, 203 SCRA 126.

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