

PHILIPPINE AIR LINES, PETITIONER, VS. FLORANTE A. MIANO, RESPONDENT.

G.R. No. 106664. March 08, 1995

Ponente: PUNO, J.

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PUNO, J.:

The petitioner questions the Decision of the Regional Trial Court of Makati, Branch 148, dated July 29, 1992, [1] awarding private respondent moral and exemplary damages and attorney's fees for want of legal justification. We grant the petition.

The facts are uncontroverted.

On August 31, 1988, private respondent took petitioner's flight PR 722, Mabuhay Class, bound for Frankfurt, Germany. He had an immediate onward connecting flight via Lufthansa flight LH 1452 to Vienna, Austria. At the Ninoy Aquino International Airport, he checked-in one brown suitcase weighing twenty (20) kilograms [2] but did not declare a higher valuation. He claimed that his suitcase contained money, documents, one Nikkon camera with zoom lens, suits, sweaters, shirts, pants, shoes, and other accessories. [3]

Upon private respondent's arrival at Vienna via Lufthansa flight LH 1452, his checked-in baggage was missing. He reported the matter to the Lufthansa authorities. After three (3) hours of waiting in vain, he proceeded to Piestany, Czechoslovakia. Eleven (11) days after or on September 11, 1988, his suitcase was delivered to him in his hotel in Piestany, Czechoslovakia. He claimed that because of the delay in the delivery of his suitcase, he was forced to borrow money to buy some clothes, to pay \$200.00 for the transportation of his baggage from Vienna to Piestany, and lost his Nikkon camera. [4]

In November 1988, private respondent wrote to petitioner a letter demanding: (1) P10,000.00 cost of allegedly lost Nikkon camera; (2) \$200.00 for alleged cost of transporting luggage from Vienna to Piestany; and (3) P100,000.00 as damages. In its reply, petitioner informed private respondent that his letter was forwarded to its legal department for investigation.

Private respondent felt his demand letter was left unheeded. He instituted an action for Damages docketed as Civil Case No. 89-3496 before the Regional Trial Court of Makati.

Petitioner contested the complaint. It disclaimed any liability on the ground that there was neither a report of mishandled baggage on flight PR 722 nor a tracer telex received from its Vienna Station. It, however, contended that if at all liable its obligation is limited by the Warsaw Convention rate.

Petitioner filed a Third-Party Complaint against Lufthansa German Airlines imputing the mishandling of private respondent's baggage, but was dismissed for its failure to prosecute.

In its decision, the trial court observed that petitioner's actuation was not attended by bad faith. Nevertheless, it awarded private respondent damages and attorney's fees, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff (private respondent) and against the defendant (petitioner), thereby ordering the latter to pay the following:

- (a) U.S. \$200.00 as cost of transporting the suitcase from Vienna to Czechoslovakia;
- (b) P40,000.00 as moral damages;
- (c) P20,000.00 as exemplary damages; and
- (d) P15,000.00 as attorney's fees.

SO ORDERED." [5]

Hence, this petition for review.

In breach of contract of carriage by air, moral damages are awarded only if the defendant acted fraudulently or in bad faith. [6] Bad faith means a breach of a known duty through some motive of interest or ill will. [7]

The trial court erred in awarding moral damages to private respondent. The established facts evince that petitioner's late delivery of the baggage for eleven (11) days was not motivated by ill will or bad faith. In fact, it immediately coordinated with its Central Baggage Services to trace private respondent's suitcase and succeeded in finding it. At the hearing, petitioner's Manager for Administration of Airport Services Department Miguel Ebio testified that their records disclosed that Manila, the originating station, did not receive any tracer telex. [8] A tracer telex, an airline lingo, is an action of any station that the airlines operate from whom a passenger may complain or have not received his baggage upon his arrival. [9] It was reasonable to presume that the handling of the baggage was normal and regular. Upon inquiry from their Frankfurt Station, it was however discovered that the interline tag of private respondent's baggage was accidentally taken off. According to Mr. Ebio, it was customary for destination stations to hold a tagless baggage until properly identified. The tracer telex, which contained information on the baggage, is matched with the tagless luggage for identification. Without the tracer telex, the color and the type of baggage are used as basis for the matching. Thus, the delay.

Worthy to stress, the trial court made an unequivocal conclusion that petitioner did not act in bad faith or with malice, viz:

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"Absent a finding as to the bad intention of defendant (petitioner) PAL, this court finds it appropriate to apply the Warsaw Convention with respect to the liability of Air Carriers." [10]

x x x x x x x x

"The mere fact that defendant (petitioner) exerted effort to assist plaintiff (private respondent) in his predicament as shown in defendant's (petitioner's) letter to plaintiff (private respondent) (Exh. "E") and likewise the letter from Mr. Miguel Ebio, Manager-Airport Services Administration of defendant (petitioner) PAL to its Senior Counsel-Litigation, Atty. Marceliano Calica (Exh. "3") which reveals the fact that an investigation was conducted as to mishandled baggage, coupled with the fact that said information were then relayed to plaintiff (private respondent) as evidenced by a letter of defendant (petitioner) to plaintiff (private respondent) (Exh. "4") does not warrant a showing of malice on the part of defendant (petitioner)." [11]

x x x x x x x x

"Under the circumstances obtaining, considering that defendant's (petitioner's) actuation was not attendant with bad faith, the award of moral damages in the amount of P40,000.00 is but just and fair." [12]

Bad faith must be substantiated by evidence. In *LBC vs. Court of Appeals*, [13] we ruled:

"Bad faith under the law cannot be presumed; it must be established by clear and convincing evidence. Again, the unbroken jurisprudence is that in breach of contract cases where the defendant is not shown to have acted fraudulently or in bad faith, liability for damages is limited to the natural and probable consequences of the breach of the obligation which the parties had foreseen or could reasonably have foreseen. The damages, however, will not include liability for moral damages." (Citations omitted)

We can neither sustain the award of exemplary damages. The prerequisite for the award of exemplary damages in cases of contract or quasi-contract [14] is that the defendant acted in wanton, fraudulent, reckless, oppressive, or malevolent manner. [15] The undisputed facts do not so warrant the characterization of the action of petitioner.

The award of attorney's fees must also be disallowed for lack of legal leg to stand on. The fact that private respondent was compelled to litigate and incur expenses to protect and enforce his claim did not justify the award of attorney's fees. The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. [16] Petitioner is willing to pay the just claim of \$200.00 as a result of the delay in the transportation of the luggage in accord with the Warsaw Convention. Needless to say, the award of attorney's fees must be deleted where the award of moral and exemplary damages are eliminated.

IN VIEW WHEREOF, the assailed Decision of July 29, 1992 is MODIFIED deleting the award of moral and exemplary damages and attorney's fees. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Bidin, Regalado, and Mendoza, JJ., concur.

[1] Honorable Oscar B. Pimentel, Presiding Judge.

[2] RTC Decision, p. 3; Rollo , p. 23.

[3] Id., p. 21.

[4] Id.

[5] Id., p. 28.

[6] Civil Code, Article 2220.

[7] Lopez, et al. vs. Pan American World Airways, No. L-22415, March 30, 1966, 16 SCRA 431.

[8] Rollo , p. 23.

[9] Id.

[10] Id., p. 27.

[11] Id., p. 28.

[12] Id.

[13] G.R. No. 108670, September 21, 1994.

[14] Civil Code, Article 2232.

[15] Albenson Enterprises Corp. vs. Court of Appeals, G.R. No. 88694, January 11, 1993, 217 SCRA 16.

[16] Firestone Tire & Rubber Company of the Philippines vs. Ines Chaves, No. L-17106, October 19, 1966, 18 SCRA 356.

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