

PHILIPPINE AIRLINES, INC., PETITIONER, VS. COURT OF APPEALS AND GILDA C. MEJIA, RESPONDENTS.

G.R. No. 119706. March 14, 1996

Ponente: REGALADO, J.

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REGALADO, J.:

This is definitely not a case of first impression. The incident which eventuated in the present controversy is a drama of common contentious occurrence between passengers and carriers whenever loss is sustained by the former. Withal, the exposition of the factual ambience and the legal precepts in this adjudication may hopefully channel the assertiveness of passengers and the intransigence of carriers into the realization that at times a bad extrajudicial compromise could be better than a good judicial victory.

Assailed in this petition for review is the decision of respondent Court of Appeals in CA-G.R. CV No. 42744[1] which affirmed the decision of the lower court[2] finding petitioner Philippine Air Lines, Inc. (PAL) liable as follows:

"ACCORDINGLY, judgment is hereby rendered ordering defendant Philippine Air Lines, Inc., to pay plaintiff Gilda C. Mejia:

(1) P30,000.00 by way of actual damages of the microwave oven;

(2) P10,000.00 by way of moral damages;

(3) P20,000.00 by way of exemplary damages;

(4) P10,000.00 as attorney's fee;

all in addition to the costs of the suit.

Defendant's counterclaim is hereby dismissed for lack of merit."[3]

The facts as found by respondent Court of Appeals are as follows:

"On January 27, 1990, plaintiff Gilda C. Mejia shipped thru defendant, Philippine Airlines, one (1) unit microwave oven, with a gross weight of 33 kilograms from San Francisco, U.S.A. to Manila, Philippines. Upon arrival, however, of said article in Manila, Philippines, plaintiff discovered that its front glass door was broken and the damage rendered it unserviceable. Demands both oral and written were made by plaintiff against the defendant for the reimbursement of the value of the damaged microwave oven, and transportation charges paid by plaintiff to defendant company. But these demands fell on deaf ears.

"On September 25, 1990, plaintiff Gilda C. Mejia filed the instant action for damages against defendant in the lower court.

"In its answer, defendant Airlines alleged inter alia, by way of special and affirmative defenses, that the court has no jurisdiction over the case; that plaintiff has no valid cause of action against defendant since it acted only in good faith and in compliance with the requirements of the law, regulations, conventions and contractual

commitments; and that defendant had always exercised the required diligence in the selection, hiring and supervision of its employees."[4]

What had theretofore transpired at the trial in the court a quo is narrated as follows:

"Plaintiff Gilda Mejia testified that sometime on January 27, 1990, she took defendant's plane from San Francisco, U.S.A. for Manila, Philippines (Exh. 'F'). Amongst her baggages (sic) was a slightly used microwave oven with the brand name 'Sharp' under PAL Air Waybill No. 0-79-1013008-3 (Exh. 'A'). When shipped, defendant's office at San Francisco inspected it. It was in good condition with its front glass intact. She did not declare its value upon the advice of defendant's personnel at San Francisco.

"When she arrived in Manila, she gave her sister Concepcion C. Diño authority to claim her baggag(e) (Exh. 'G') and took a connecting flight for Bacolod City.

"When Concepcion C. Dino claimed the baggag(e) (Exh. 'B') with defendant, then with the Bureau of Customs, the front glass of the microwave oven was already broken and cannot be repaired because of the danger of radiation. They demanded from defendant thru Atty. Paco P30,000.00 for the damages although a brand new one costs P40,000.00, but defendant refused to pay.

"Hence, plaintiff engaged the services of counsel. Despite demand (Exh. 'E') by counsel, defendant still refused to pay.

"The damaged oven is still with defendant. Plaintiff is engaged in (the) catering and restaurant business. Hence, the necessity of the oven. Plaintiff suffered sleepless nights when defendant refused to pay her (for) the broken oven and claims P 10,000.00 moral damages, P20,000.00 exemplary damages, P10,000.00 attorney's fees plus P300.00 per court appearance and P15,000.00 monthly loss of income in her business beginning February, 1990.

"Defendant Philippine Airlines thru its employees Rodolfo Pandes and Vicente Villaruz posited that plaintiff's claim was not investigated until after the filing of the formal claim on August 13, 1990 (Exh. '6' also Exh. 'E'). During the investigations, plaintiff failed to submit positive proof of the value of the cargo. Hence her claim was denied.

"Also plaintiff's claim was filed out of time under paragraph 12, a(1) of the Air Waybill (Exh. 'A', also Exh. '1') which provides: '(a) the person entitled to delivery must make a complaint to the carrier in writing in case: (1) of visible damage to the goods, immediately after discovery of the damage and at the latest within 14 days from the receipt of the goods.'"[5]

As stated at the outset, respondent Court of Appeals similarly ruled in favor of private respondent by affirming in full the trial court's judgment in Civil Case No. 6210, with costs against petitioner.[6] Consequently, petitioner now impugns respondent appellate court's ruling insofar as it agrees with (1) the conclusions of the trial court that since the air waybill is a contract of adhesion, its provisions should be strictly construed against herein petitioner; (2) the finding of the trial court that herein petitioner's liability is not limited by the provisions of the air waybill; and (3) the award by the trial court to private respondent of moral and exemplary damages, attorney's fees and litigation expenses.

The trial court relied on the ruling in the case of *Fieldmen's Insurance Co., Inc. vs. Vda. De Songco, et al.*[7] in finding that the provisions of the air waybill should be strictly construed against petitioner. More particularly, the court below stated its findings thus:

"In this case, it is seriously doubted whether plaintiff had read the printed conditions at the back of the Air Waybill (Exh. '1'), or even if she had, if she was given a chance to negotiate on the conditions for loading her microwave oven. Instead she was advised by defendant's employee at San Francisco, U.S.A., that there is no

need to declare the value of her oven since it is not brand new. Further, plaintiff testified that she immediately submitted a formal claim for P30,000.00 with defendant. But their claim was referred from one employee to another th(e)n told to come back the next day, and the next day, until she was referred to a certain Atty. Paco. When they got tired and frustrated of coming without a settlement of their claim in sight, they consulted a lawyer who demanded from defendant on August 13, 1990 (Exh. 'E', an[d] Exh. '6').

"The conclusion that inescapably emerges from the above findings of fact is to concede it with credence. x x x." [8]

Respondent appellate court approved said findings of the trial court in this manner:

"We cannot agree with defendant-appellant's above contention. Under our jurisprudence, the Air Waybill is a contract of adhesion considering that all the provisions thereof are prepared and drafted only by the carrier (Sweet Lines v. Teves, 83 SCRA 361). The only participation left of the other party is to affix his signature thereto (BPI Credit Corporation vs. Court of Appeals, 204 SCRA 601; Saludo, Jr. vs. C.A., 207 SCRA 498; Maersk vs. Court of Appeals, 222 SCRA 108, among the recent cases). In the earlier case of Angeles v. Calasanz, 135 SCRA 323, the Supreme Court ruled that 'the terms of a contract (of adhesion) must be interpreted against the party who drafted the same.' x x x." [9]

Petitioner airlines argues that the legal principle enunciated in Fieldmen's Insurance does not apply to the present case because the provisions of the contract involved here are neither ambiguous nor obscure. The front portion of the air waybill contains a simple warning that the shipment is subject to the conditions of the contract on the dorsal portion thereof regarding the limited liability of the carrier unless a higher valuation is declared, as well as the reglementary period within which to submit a written claim to the carrier in case of damage or loss to the cargo. Granting that the air waybill is a contract of adhesion, it has been ruled by the Court that such contracts are not entirely prohibited and are in fact binding regardless of whether or not respondent herein read the provisions thereof. Having contracted the services of petitioner carrier instead of other airlines, private respondent in effect negotiated the terms of the contract and thus became bound thereby. [10]

Counsel for private respondent refutes these arguments by saying that due to her eagerness to ship the microwave oven to Manila, private respondent assented to the terms and conditions of the contract without any opportunity to question or change its terms which are practically on a "take-it-or-leave-it" basis, her only participation therein being the affixation of her signature. Further, reliance on the Fieldmen's Insurance case is misplaced since it is not the ambiguity or obscurity of the stipulation that renders necessary the strict interpretation of a contract of adhesion against the drafter, but the peculiarity of the transaction wherein one party, normally a corporation, drafts all the provisions of the contract without any participation whatsoever on the part of the other party other than affixment of signature. [11]

A review of jurisprudence on the matter reveals the consistent holding of the Court that contracts of adhesion are not invalid per se and that it has on numerous occasions upheld the binding effect thereof. [12] As explained in Ong Yiu vs. Court of Appeals, et al., supra:

"x x x. Such provisions have been held to be a part of the contract of carriage, and valid and binding upon the passenger regardless of the latter's lack of knowledge or assent to the regulation. It is what is known as a contract of 'adhesion,' in regards which it has been said that contracts of adhesion wherein one party imposes a ready-made form of contract on the other, as the plane ticket in the case at bar, are contracts not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his consent. x x x, a contract limiting liability upon an agreed valuation does not offend against the policy of the law forbidding one from contracting against his own negligence."

As rationalized in Saludo, Jr. vs. Court of Appeals, et al., supra:

"x x x, it should be borne in mind that a contract of adhesion may be struck down as void and unenforceable, for being subversive of public policy, only when the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to bargain on equal footing. x x x."

but subject to the caveat that --

"x x x. Just because we have said that Condition No. 5 of the airway bill is binding upon the parties to and fully operative in this transaction, it does not mean, and let this serve as fair warning to respondent carriers, that they can at all times whimsically seek refuge from liability in the exculpatory sanctuary of said Condition No. 5 x x x."

The peculiar nature of such contracts behooves the Court to closely scrutinize the factual milieu to which the provisions are intended to apply. Thus, just as consistently and unhesitatingly, but without categorically invalidating such contracts, the Court has construed obscurities and ambiguities in the restrictive provisions of contracts of adhesion strictly albeit not unreasonably against the drafter thereof when justified in light of the operative facts and surrounding circumstances.[13]

We find nothing objectionable about the lower court's reliance upon the Fieldmen's Insurance case, the principles wherein squarely apply to the present petition. The parallelism between the aforementioned case and this one is readily apparent for, just as in the instant case, it is the binding effect of the provisions in a contract of adhesion (an insurance policy in Fieldmen's Insurance) that is put to test.

A judicious reading of the case reveals that what was pivotal in the judgment of liability against petitioner insurance company therein, and necessarily interpreting the provisions of the insurance policy as ineffective, was the finding that the representations made by the agent of the insurance company rendered it impossible to comply with the conditions of the contract in question, rather than the mere ambiguity of its terms. The extended pronouncements regarding strict construction of ambiguous provisions in an adhesion contract against its drafter, which although made by the Court as an aside but has perforce evolved into a judicial tenet over time, was actually an incidental statement intended to emphasize the duty of the court to protect the weaker, as against the more dominant, party to a contract, as well as to prevent the iniquitous situation wherein the will of one party is imposed upon the other in the course of negotiation.

Thus, there can be no further question as to the validity of the terms of the air waybill, even if the same constitutes a contract of adhesion. Whether or not the provisions thereof particularly on the limited liability of the carrier are binding on private respondent in this instance must be determined from the facts and circumstances involved vis-a-vis the nature of the provisions sought to be enforced, taking care that equity and fair play should characterize the transaction under review.

On petitioner's insistence that its liability for the damage to private respondent's microwave oven, if any, should be limited by the provisions of the air waybill, the lower court had this to say:

"By and large, defendant's evidence is anchored principally on plaintiff's alleged failure to comply with paragraph 12, a(1) (Exh. '1-C-2') of the Air waybill (Exh. 'A,' also Exh. '1'), by filing a formal claim immediately after discovery of the damage. Plaintiff filed her formal claim only on August 13, 1990 (Exh. '6', also Exh. 'E'). And, failed to present positive proof on the value of the damaged microwave oven. Hence, the denial of her claim.

"This Court has misgivings about these pretensions of defendant.

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"Finally, the Court finds no merit to defendant's contention that under the Warsaw Convention, its liability if

any, cannot exceed U.S. \$20.00 based on weight as plaintiff did not declare the contents of her baggage nor pay additional charges before the flight."[14]

The appellate court declared correct the non-application by the trial court of the limited liability of therein defendant-appellant under the "Conditions of the Contract" contained in the air waybill, based on the ruling in *Cathay Pacific Airways, Ltd. vs. Court of Appeals, et al.*, [15] which substantially enunciates the rule that while the Warsaw Convention has the force and effect of law in the Philippines, being a treaty commitment by the government and as a signatory thereto, the same does not operate as an exclusive enumeration of the instances when a carrier shall be liable for breach of contract or as an absolute limit of the extent of liability, nor does it preclude the operation of the Civil Code or other pertinent laws.

Petitioner insists that both respondent court and the trial court erred in finding that petitioner's liability, if any, is not limited by the provisions of the air waybill, for, as evidence of the contract of carriage between petitioner and private respondent, it substantially states that the shipper certifies to the correctness of the entries contained therein and accepts that the carrier's liability is limited to US\$20 per kilogram of goods lost, damaged or destroyed unless a value is declared and a supplementary charge paid. Inasmuch as no such declaration was made by private respondent, as she admitted during cross-examination, the liability of petitioner, if any, should be limited to 28 kilograms multiplied by US\$20, or \$560. Moreover, the validity of these conditions has been upheld in the leading case of *Ong Yiu vs. Court of Appeals, et al.*, supra, and subsequent cases, for being a mere reiteration of the limitation of liability under the Warsaw Convention, which treaty has the force and effect of law.[16]

It is additionally averred that since private respondent was merely advised, not ordered, that she need not declare a higher value for her cargo, the final decision of refraining from making such a declaration fell on private respondent and should not put the petitioner in estoppel from invoking its limited liability.[17]

In refutation, private respondent explains that the reason for the absence of a declaration of a higher value was precisely because petitioner's personnel in San Francisco, U.S.A. advised her not to declare the value of her cargo, which testimony has not at all been rebutted by petitioner. This being so, petitioner is estopped from faulting private respondent for her failure to declare the value of the microwave oven.[18]

The validity of provisions limiting the liability of carriers contained in bills of lading have been consistently upheld for the following reason:

"x x x. The stipulation in the bill of lading limiting the common carrier's liability to the value of goods appearing in the bill, unless the shipper or owner declares a greater value, is valid and binding. The limitation of the carrier's liability is sanctioned by the freedom of the contracting parties to establish such stipulations, clauses, terms, or conditions as they may deem convenient, provided they are not contrary to law, morals, good customs and public policy. x x x." [19]

However, the Court has likewise cautioned against blind reliance on adhesion contracts where the facts and circumstances warrant that they should be disregarded.[20]

In the case at bar, it will be noted that private respondent signified an intention to declare the value of the microwave oven prior to shipment, but was explicitly advised against doing so by PAL's personnel in San Francisco, U.S.A., as borne out by her testimony in court:

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"Q

Did you declare the value of the shipment?

A

No. I was advised not to.

Q

Who advised you?

A

At the PAL Air Cargo."[21]

It cannot be denied that the attention of PAL through its personnel in San Francisco was sufficiently called to the fact that private respondent's cargo was highly susceptible to breakage as would necessitate the declaration of its actual value. Petitioner had all the opportunity to check the condition and manner of packing prior to acceptance for shipment,[22] as well as during the preparation of the air waybill by PAL's Acceptance Personnel based on information supplied by the shipper,[23] and to reject the cargo if the contents or the packing did not meet the company's required specifications. Certainly, PAL could not have been otherwise prevailed upon to merely accept the cargo.

While Vicente Villaruz, officer-in-charge of the PAL Import Section at the time of incident, posited that there may have been inadequate and improper packing of the cargo,[24] which by itself could be a ground for refusing carriage of the goods presented for shipment, he nonetheless admitted on cross-examination that private respondent's cargo was accepted by PAL in its San Francisco office:

"ATTY. VINCO

So that, be that as it may, my particular concern is that, it is the PAL personnel that accepts the baggage?

WITNESS

Yes, sir.

ATTY. VINCO

Also, if he comes from abroad like in this particular case, it is the PAL personnel who accepts the baggage?

WITNESS

Yes, sir.

ATTY. VINCO

And the PAL personnel may or may not accept the baggage?

WITNESS

Yes, sir.

ATTY. VINCO

According to what is stated as in the acceptance of the cargo, it is to the best interest of the airlines, that is, he want(s) also that the airlines would be free from any liability. Could that be one of the grounds for not admitting a baggage?

WITNESS

Safety is number one (I)

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ATTY. VINCO

So, this baggage was accepted and admitted in San Francisco?

WITNESS

Yes, sir.

ATTY. VINCO

And you could not show any document to the Court that would suggest that this baggage was denied admittance by your office at San Francisco?

WITNESS

No, I cannot show.

ATTY. VINCO

Now, can you show any document that would suggest that there was insufficient pac(k)aging on this particular baggage from abroad?

WITNESS

No, sir."[25]

In response to the trial court's questions during the trial, he also stated that while the passenger's declaration regarding the general or fragile character of the cargo is to a certain extent determinative of its classification, PAL nevertheless has and exercises discretion as to the manner of handling required by the nature of the cargo it accepts for carriage. He further opined that the microwave oven was only a general, not a fragile, cargo which did not require any special handling.[26]

There is no absolute obligation on the part of a carrier to accept a cargo. Where a common carrier accepts a cargo for shipment for valuable consideration, it takes the risk of delivering it in good condition as when it was loaded. And if the fact of improper packing is known to the carrier or its personnel, or apparent upon observation but it accepts the goods notwithstanding such condition, it is not relieved of liability for loss or injury resulting therefrom.[27]

The acceptance in due course by PAL of private respondent's cargo as packed and its advice against the need for declaration of its actual value operated as an assurance to private respondent that in fact there was no need for such a declaration. Petitioner can hardly be faulted for relying on the representations of PAL's own personnel.

In other words, private respondent Mejia could and would have complied with the conditions stated in the air waybill, i.e., declaration of a higher value and payment of supplemental transportation charges, entitling her to recovery of damages beyond the stipulated limit of US\$20 per kilogram of cargo in the event of loss or damage, had she not been effectively prevented from doing so upon the advice of PAL's personnel for reasons best known to themselves.

As pointed out by private respondent, the aforestated facts were not denied by PAL in any of its pleadings nor rebutted by way of evidence presented in the course of the trial, and thus in effect it judicially admitted that such an advice was given by its personnel in San Francisco, U.S.A. Petitioner, therefore, is estopped from blaming private respondent for not declaring the value of the cargo shipped and which would have otherwise entitled her to recover a higher amount of damages. The Court's bidding in the Fieldmen's Insurance case once again rings true:

"x x x. As estoppel is primarily based on the doctrine of good faith and the avoidance of harm that will befall an innocent party due to its injurious reliance, the failure to apply it in this case would result in gross travesty of justice."

We likewise uphold the lower court's finding that private respondent complied with the requirement for the immediate filing of a formal claim for damages as required in the air waybill or, at least, we find that there was substantial compliance therewith.

Private respondent testified that she authorized her sister, Concepcion Diño, to claim her cargo consisting of a microwave oven since the former had to take a connecting flight to Bacolod City on the very same afternoon of the day of her arrival.[28] As instructed, Concepcion Diño promptly proceeded to PAL's Import Section the next day to claim the oven. Upon discovering that the glass door was broken, she immediately filed a claim by way of the baggage freight claim[29] on which was duly annotated the damage sustained by the oven.[30]

Her testimony relates what took place thereafter:

"ATTY. VINCO

So, after that inspection, what did you do?

WITNESS

After that annotation placed by Mr. Villaruz, I went home and I followed it up the next day with the Clerk of PAL cargo office.

ATTY. VINCO

What did the clerk tell you?

WITNESS

She told me that the claim was being processed and I made several phone calls after that. I started my follow-ups February up to June 1990.

ATTY. VINCO

And what results did those follow-ups produce?

WITNESS

All they said (was) that the document was being processed, that they were waiting for Atty. Paco to report to the office and they could refer the matter to Atty. Paco.

ATTY. VINCO

Who is this Atty. Paco?

WITNESS

He was the one in-charge of approving our claim.

ATTY. VINCO

Were you able to see Atty. Paco?

WITNESS

Yes, sir. I personally visited Atty. Paco together with my auntie who was a former PAL employee.

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ATTY. VINCO

So, what did you do, did you make a report or did you tell Atty. Paco of your scouting around for a possible replacement?

WITNESS

I did call him back at his office. I made a telephone call.

ATTY. VINCO

And what answer did Atty. Paco make after you have reported back to him?

WITNESS

They told me that they were going to process the claim based on the price that I gave them but there was no definite result.

ATTY. VINCO

How many times did you go and see Atty. Paco regarding the claim of your sister?

WITNESS

I made one personal visit and several follow-up calls. With Atty. Paco, I made one phone call but I made several phone calls with his secretary or the clerk at PAL cargo office and I was trying to locate him but unfortunately, he was always out of his office."[31]

PAL claims processor, Rodolfo Pandes,[*] confirmed having received the baggage freight claim on January 30, 1990[32] and the referral to and extended pendency of the private respondent's claim with the office of Atty. Paco, to wit:

"ATTY. VINCO:

Q-And you did instruct the claimant to see the Claim Officer of the company, right?

WITNESS:

A-Yes, sir.

ATTY. VINCO:

Q-And the Claim Officer happened to be Atty. Paco?

WITNESS:

A-Yes, sir.

ATTY. VINCO:

Q-And you know that the plaintiff thru her authorized representative Concepcion Diño, who is her sister had many times gone to Atty. Paco, in connection with this claim of her sister?

WITNESS:

A-Yes, sir.

ATTY. VINCO:

Q-As a matter of fact even when the complaint was already filed here in Court the claimant had continued to call about the settlement of her claim with Atty. Paco, is that correct?

xxx

WITNESS:

A-Yes, sir.

ATTY. VINCO:

Q-You know this fact because a personnel saw you in one of the pre-trial here when this case was heard before the sala of Judge Moscardon, is that correct?

WITNESS:

A-Yes.

ATTY. VINCO:

Q-In other words, the plaintiff rather had never stop(ped) in her desire for your company to settle this claim, right?

WITNESS:

A-Yes, sir."[33]

Considering the abovementioned incidents and private respondent Mejia's own zealous efforts in following up the claim,[34] it was clearly not her fault that the letter of demand for damages could only be filed, after months of exasperating follow-up of the claim, on August 13, 1990.[35] If there was any failure at all to file the formal claim within the prescriptive period contemplated in the air waybill, this was largely because of PAL's own doing, the consequences of which cannot, in all fairness, be attributed to private respondent.

Even if the claim for damages was conditioned on the timely filing of a formal claim, under Article 1186 of the Civil Code that condition was deemed fulfilled, considering that the collective action of PAL's personnel in tossing around the claim and leaving it unresolved for an indefinite period of time was tantamount to "voluntarily preventing its fulfillment." On grounds of equity, the filing of the baggage freight claim, which sufficiently informed PAL of the damage sustained by private respondent's cargo, constituted substantial compliance with the requirement in the contract for the filing of a formal claim.

All told, therefore, respondent appellate court did not err in ruling that the provision on limited liability is not applicable in this case. We, however, note in passing that while the facts and circumstances of this case do not call for the direct application of the provisions of the Warsaw Convention, it should be stressed that, indeed, recognition of the Warsaw Convention does not preclude the operation of the Civil Code and other pertinent laws in the determination of the extent of liability of the common carrier.[36]

The Warsaw Convention, being a treaty to which the Philippines is a signatory, is as much a part of Philippine law as the Civil Code, Code of Commerce and other municipal special laws.[37] The provisions therein contained, specifically on the limitation of carrier's liability, are operative in the Philippines but only in appropriate situations.

Petitioner ascribes ultimate error in the award of moral exemplary damages and attorney's fees in favor of private respondent in that other than the statement of the trial court that petitioner acted in bad faith in denying private respondent's claim, which was affirmed by the Court of Appeals, there is no evidence on record that the same is

true. The denial of private respondent's claim was supposedly in the honest belief that the same had prescribed, there being no timely formal claim filed; and despite having been given an opportunity to submit positive proof of the value of the damaged microwave oven, no such proof was submitted. Petitioner insists that its failure to deliver the oven in the condition in which it was shipped could hardly be considered as amounting to bad faith.[38]

Private respondent counters that petitioner's failure to deliver the microwave oven in the condition in which it was received can be describe as gross negligence amounting to bad faith, on the further consideration that it failed to prove that it exercised the extraordinary diligence required by law, and that no explanation whatsoever was given as to why the front glass of the oven was broken.[39]

The trial court justified its award of actual, moral and exemplary damages, and attorney's fees in favor of private respondent in this wise:

"Since the plaintiff's baggage destination was the Philippines, Philippine law governs the liability of the defendant for damages for the microwave oven.

"The provisions of the New Civil Code on common carriers are Article(s) 1733, 1735 and 1753 x x x.

xxx

"In this case, defendant failed to overcome, not only the presumption but more importantly, plaintiff's evidence that defendant's negligence was the proximate cause of the damages of the microwave oven. Further, plaintiff has established that defendant acted in bad faith when it denied the former's claim on the ground that the formal claim was filed beyond the period as provided in paragraph 12 (a-1) (Exh. '1-C-2') of the Air Waybill (Exh. '1', also Exh 'A'), when actually, Concepcion Diño, sister of plaintiff has immediately filed the formal claim upon discovery of the damage." [40]

Respondent appellate court was in full agreement with the trial court's finding of bad faith on the part of petitioner as a basis for the award of the aforestated damages, declaring that:

"As to the last assigned error, a perusal of the facts and law of the case reveals that the lower court's award of moral and exemplary damages, attorney's fees and costs of suit to plaintiff-appellee is in accordance with current laws and jurisprudence on the matter. Indeed, aside from the fact that defendant-appellant acted in bad faith in breaching the contract and in denying plaintiff's valid claim for damages, plaintiff-appellee underwent profound distress, sleepless nights, and anxiety upon knowledge of her damaged microwave oven in possession of defendant-appellant, entitling her to the award of moral and exemplary damages (Cathay Pacific Airways, Ltd. vs. C.A., supra; Arts. 2219 & 2221, New Civil Code), and certainly plaintiff-appellant's unjust refusal to comply with her valid demand for payment, thereby also entitling her to reasonable attorney's fees [Art. 2208 (2) and (11), id.]." [41]

It will be noted that petitioner never denied that the damage to the microwave oven was sustained while the same was in its custody. The possibility that said damage was due to causes beyond the control of PAL has effectively been ruled out since the entire process in handling of the cargo--from the unloading thereof from the plane, the towing and transfer to the PAL warehouse, the transfer to the Customs examination area, and its release thereafter to the shipper - was done almost exclusively by, and with the intervention or, at the very least, under the direct supervision of a responsible PAL personnel.[42]

The very admissions of PAL, through Vicente Villaruz of its Import Section, as follows:

"ATTY. VINCO

So that, you now claim, Mr. Witness, that from the time the cargo was unloaded from the plane until the time it

reaches the Customs counter where it was inspected, all the way, it was the PAL personnel who did all these things?

WITNESS

Yes, however, there is also what we call the Customs storekeeper and the Customs guard along with the cargo.

ATTY. VINCO

You made mention about a locator?

WITNESS

Yes, sir.

ATTY. VINCO

This locator, is he an employee of the PAL or the Customs?

WITNESS

He is a PAL employee."^[43]

lead to the inevitable conclusion that whatever damage may have been sustained by the cargo is due to causes attributable to PAL's personnel or, at all events, under their responsibility.

Moreover, the trial court underscored the fact that petitioner was not able to overcome the statutory presumption of negligence in Article 1735 which, as a common carrier, it was laboring under in case of loss, destruction or deterioration of goods, through proper showing of the exercise of extraordinary diligence. Neither did it prove that the damage to the microwave oven was because of any of the excepting causes under Article 1734, all of the same Code. Inasmuch as the subject item was received in apparent good condition, no contrary notation or exception having been made on the air waybill upon its acceptance for shipment, the fact that it was delivered with a broken glass door raises the presumption that PAL's personnel were negligent in the carriage and handling of the cargo.^[44]

Furthermore, there was glaringly no attempt what so ever on the part of petitioner to explain the cause of the damage to the oven. The unexplained cause of damage to private respondent's cargo constitutes gross carelessness or negligence which by itself justifies the present award of damages.^[45] The equally unexplained and inordinate delay in acting on the claim upon referral thereof to the claims officer, Atty. Paco, and the noncommittal responses to private respondent's entreaties for settlement of her claim for damages belies petitioner's pretension that there was no bad faith on its part. This unprofessional indifference of PAL's personnel despite full and actual knowledge of the damage to private respondent's cargo, just to be exculpated from liability on pure technicality and bureaucratic subterfuge, smacks of willful misconduct and insensitivity to a passenger's plight tantamount to bad faith^[46] and renders unquestionable petitioner's liability for damages. In sum, there is no reason to disturb the findings of the trial court in this case, especially with its full affirmance by respondent Court of Appeals.

On this note, the case at bar goes into the annals of our jurisprudence after six years and recedes into the memories of our legal experience as just another inexplicable inevitability. We will never know exactly how many man-hours went into the preparation, litigation and adjudication of this simple dispute over an oven, which the parties will no doubt insist they contested as a matter of principle. One thing, however, is certain. As long as the first letter in "principle" is somehow outplaced by the peso sign, the courts will always have to resolve similar controversies although mutual goodwill could have dispensed with judicial recourse.

IN VIEW OF ALL OF THE FOREGOING, the assailed judgment of respondent Court of Appeals is AFFIRMED in toto.

SO ORDERED.

Romero, Puno, and Mendoza, JJ., concur.

[1] Per Justice Lourdes K. Tayao-Jaguros, ponente, with Justices Jesus M. Elbinias and B.A. Adefuin-De la Cruz, concurring; Rollo, 38-45.

[2] Original Record, 132-137; penned by Judge Ramon B. Posadas, Regional Trial Court, Branch 51, Bacolod City.

[3] Ibid., 137.

[4] Ibid., 39.

[5] Ibid., 47-48.

[6] Ibid 45.

[7] L-24834. September 23, 1968, 25 SCRA 70.

[8] Original Record, 135.

[9] Rollo, 42.

[10] Ibid., 23-25; 78-79.

[11] Ibid., 2-64.

[12] Ong Yiu vs. Court of Appeals, et al., L-40597, June 29, 1979, 91 SCRA 223; Servando, et al vs. Philippine Steam Navigation L-34681-2, October 23, 1982, 117 SCRA 832; Sea Land Services, Inc. vs. Intermediate Appellate Court, et al., G.R. No. 75118, August 31 1987, 153 SCRA 552; Pan American World Airways, Inc. vs. Intermediate Appellate Court et al., G.R. No. 70462, August 11, 1988. 164 SCRA 28; Citadel Lines, Inc. vs. Court of Appeals, et al., G.R. No. 88092, April 25, 1990, 184 SCRA 544; Magellan Manufacturing Marketing Corporation vs. Court of Appeals, et al., G.R. No 95529, August 22, 1991, 201 SCRA 102; Saludo, Jr. vs. Court of Appeals, et al., G.R. No. 95536, March 23, 1992, 207 SCRA 498; Pan American World Airways, Inc. vs. Rapadas, et al., G.R. No. 60673, May 19 1992, 209 SCRA 67.

[13] See Shewaram vs. Philippine Airlines, Inc., L-20099, July 7, 1966, 17 SCRA 606; Qua Chee Gan vs. Law Union and Rock Insurance Co., Ltd., etc., 98 Phil. 85 (1955); Fieldmen's Insurance Co., Inc. vs. Court of Appeals, et al., supra; Sweet Lines, Inc. vs. Teves etc., et al., L-37750. May 19, 1978, 83 SCRA 361; Angeles vs. Calasanz, L-42283, March 18, 1985, 135 SCRA 323; BPI Credit Corporation vs. Court of Appeals, et al., G.R. No. 96755, December 1, 1991, 204 SCRA 601; Maersk Line vs. Court of Appeals, et al., G.R. No. 94761, May 17 1993, 222 SCRA 108.

[14] Original Record, 134, 136.

[15] G.R. No. 60501, March 5, 1993, 219 SCRA 521.

[16] Rollo, 26-31.

[17] Ibid., 80-81.

[18] Ibid., 64-65.

[19] St. Paul Fire & Marine Insurance Co. vs. Macondray & Co., L-27796, March 25, 1976, 70 SCRA 122, 126. See also Land Services, Inc. vs. Intermediate Appellate Court, et al., supra; Pan American World Airways, Inc. vs. Intermediate Appellate Court, et al., supra; Citadel Lines, Inc. vs. Court of Appeals, et al., supra.

[20] Sweet Lines, Inc. vs. Teves, supra; Pan American World Airways, Inc. vs. Rapadas, et al., supra

[21] TSN, February 13, 1992, 40.

[22] Ibid., id., 17.

[23] Ibid., August 14, 1992, 34-36.

[24] Ibid., August 13, 1992, 11-14.

[25] Ibid., August 14, 1992, 30-33.

[26] Ibid., id., 37-41.

[27] Agbayani, A.F., Commentaries and Jurisprudence on the Commercial Laws of the Philippines, Vol. IV, 1993 ed., 31-32.

[28] Ibid., February 13, 1992, 18-20.

[29] Exhibit B; Original Record, 73.

[30] Ibid., March 17, 1992, 10-19; August 14, 1992, 23-27.

[31] Ibid., March 17, 1992, 21-23, 26-28.

[*] His surname is spelled "Pandas" in some parts of the records.

[32] Ibid., July 2, 1992, 26-27.

[33] Ibid., July 2, 1992, 30-32.

[34] TSN, February 13, 1992, 20-22, 25.

[35] Exhibit "E"; Original Record, 76.

[36] Cathay Pacific Airways, Inc. vs. Court of Appeals, et al., supra; Luna, et al. vs. Court of Appeals, et al., G.R. No. 100374-75, November 27, 1992, 216 SCRA 107.

[37] Santos III vs. Northwest Airlines, et al., G.R. No. 101538, June 23, 1992, 210 SCRA 256.

[38] Rollo, 33, 81-82.

[39] Ibid., 65-66.

[40] Original Record, 136-137.

[41] Rollo, 44-45.

[42] TSN, August 14, 1992, 4-18.

[43] Ibid., id., 22-23.

[44] See National Development Corporation vs. Court of Appeals, et al., L-49407, August 19, 1988, 164 SCRA

593.

[45] See *Maersk Line vs. Court of Appeals, et al.*, *supra*.

[46] *Trans World Airlines vs. Court of Appeals, et al.*, G.R. No. 78656, August 30, 1988, 165 SCRA 143; *Cathay Pacific Airways, Ltd. vs. Court of Appeals, et al.*, G.R. No. 60501, March 5, 1993, 219 SCRA 520.

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