

CARLOS SINGSON, PETITIONER, VS. COURT OF APPEALS AND CATHAY PACIFIC AIRWAYS, INC., RESPONDENTS.

G.R. No. 119995. November 18, 1997

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

A contract of air carriage is a peculiar one. Imbued with public interest, common carriers are required by law to carry passengers safely as far as human care and foresight can provide, using the utmost diligence of a very cautious person, with due regard for all the circumstances.[1] A contract to transport passengers is quite different in kind and degree from any other contractual relation. And this because its business is mainly with the traveling public. It invites people to avail of the comforts and advantages it offers. The contract of carriage, therefore, generates a relation attended with a public duty.[2] Failure of the carrier to observe this high degree of care and extraordinary diligence renders it liable for any damage that may be sustained by its passengers.

The instant case is an illustration of the exacting standard demanded by the law of common carriers: On 24 May 1988 CARLOS SINGSON and his cousin Crescentino Tionson bought from Cathay Pacific Airways, Ltd. (CATHAY), at its Metro Manila ticket outlet two (2) open-dated, identically routed, round trip plane tickets for the purpose of spending their vacation in the United States. Each ticket consisted of six (6) flight coupons corresponding to this itinerary: flight coupon no. 1 - Manila to Hongkong; flight coupon no. 2 - Hongkong to San Francisco; flight coupon no. 3 - San Francisco to Los Angeles; flight coupon no. 4 - Los Angeles back to San Francisco; flight coupon no. 5 - San Francisco to Hongkong; and, finally, flight coupon no. 6 - Hongkong to Manila. The procedure was that at the start of each leg of the trip a flight coupon corresponding to the particular sector of the travel would be removed from the ticket booklet so that at the end of the trip no more coupon would be left in the ticket booklet.

On 6 June 1988 CARLOS SINGSON and Crescentino Tionson left Manila on board CATHAY's Flight No. 902. They arrived safely in Los Angeles and after staying there for about three (3) weeks they decided to return to the Philippines. On 30 June 1988 they arranged for their return flight at CATHAY's Los Angeles Office and chose 1 July 1988, a Friday, for their departure. While Tionson easily got a booking for the flight, SINGSON was not as lucky. It was discovered that his ticket booklet did not have flight coupon no. 5 corresponding to the San Francisco-Hongkong leg of the trip. Instead, what was in his ticket was flight coupon no. 3 - San Francisco to Los Angeles - which was supposed to have been used and removed from the ticket booklet. It was not until 6 July 1988 that CATHAY was finally able to arrange for his return flight to Manila.

On 26 August 1988 SINGSON commenced an action for damages against CATHAY before the Regional Trial Court of Vigan, Ilocos Sur.[3] He claimed that he insisted on CATHAY's confirmation of his return flight reservation because of very important and urgent business engagements in the Philippines. But CATHAY allegedly shrugged off his protestations and arrogantly directed him to go to San Francisco himself and do some investigations on the matter or purchase a new ticket subject to refund if it turned out that the missing coupon was still unused or subsisting. He remonstrated that it was the airline's agent/representative who must have committed

the mistake of tearing off the wrong flight coupon; that he did not have enough money to buy new tickets; and, CATHAY could conclude the investigation in a matter of minutes because of its facilities. CATHAY, allegedly in scornful insolence, simply dismissed him like an impertinent "brown pest." Thus he and his cousin Tionson, who deferred his own flight to accompany him, were forced to leave for San Francisco on the night of 1 July 1988 to verify the missing ticket.

CATHAY denied these allegations and averred that since petitioner was holding an "open-dated" ticket, which meant that he was not booked on a specific flight on a particular date, there was no contract of carriage yet existing such that CATHAY's refusal to immediately book him could not be construed as breach of contract of carriage. Moreover, the coupon had been missing for almost a month hence CATHAY must first verify its status, i.e., whether the ticket was still valid and outstanding, before it could issue a replacement ticket to petitioner. For that purpose, it sent a request by telex on the same day, 1 July 1988, to its Hongkong Headquarters where such information could be retrieved.[4] However, due to the time difference between Los Angeles and Hongkong, no response from the Hongkong office was immediately received. Besides, since 2 and 3 July 1988 were a Saturday and a Sunday, respectively, and 4 July 1988 was an official holiday being U.S. Independence Day, the telex response of CATHAY Hongkong was not read until 5 July 1988. Lastly, CATHAY denied having required SINGSON to make a trip back to San Francisco; on the other hand, it was the latter who informed CATHAY that he was making a side trip to San Francisco. Hence, CATHAY advised him that the response of Hongkong would be copied in San Francisco so that he could conveniently verify thereat should he wish to.

The trial court rendered a decision in favor of petitioner herein holding that CATHAY was guilty of gross negligence amounting to malice and bad faith for which it was adjudged to pay petitioner P20,000.00 for actual damages with interest at the legal rate of twelve percent (12%) per annum from 26 August 1988 when the complaint was filed until fully paid, P500,000.00 for moral damages, P400,000.00 for exemplary damages, P100,000.00 for attorney's fees, and, to pay the costs.

On appeal by CATHAY, the Court of Appeals reversed the trial court's finding that there was gross negligence amounting to bad faith or fraud and, accordingly, modified its judgment by deleting the awards for moral and exemplary damages, and the attorney's fees as well. Reproduced hereunder are the pertinent portions of the decision of the appellate court[5] -

There is enough merit in this appeal to strike down the trial court's award of moral and exemplary damages and attorney's fees x x x x In this material respect, the appellant correctly underscores the fact that the appellee held an open dated ticket for his return flight from San Francisco to Manila via Hongkong and that, as a consequence, the latter was not actually confirmed on the July 1, 1988 flight or, for that matter, any of the appellant's flights x x x x The appellant certainly committed no breach of contract of carriage when it refused the appellee the booking he requested on the said July 1, 1988 flight. As a "chance passenger," the latter had no automatic right to fly on that flight and on that date.

Even assuming arguendo that a breach of contract of carriage may be attributed the appellant, the appellee's travails were directly traceable to the mistake in detaching the San Francisco-Hongkong flight coupon of his plane ticket which led to the appellant's refusal to honor his plane ticket. While that may constitute negligence on the part of the air carrier, the same cannot serve as basis for an award of moral damages. The rule is that moral damages are recoverable in a damage suit predicated upon a breach of contract of carriage only where (a) the mishap results in the death of a passenger and (b) it is proved that the carrier was guilty of fraud and bad faith even if death does not result x x x x In disallowing the trial court's award of moral damages, the Court takes appropriate note of the necessity for the appellant's verification of the status of the missing flight coupon as well as the justifiable delay thereto attendant x x x x Contrary to the appellee's allegation that he was peremptorily refused confirmation of his flight, and arrogantly told to verify the missing flight coupon on

his own, the record shows that the appellant adopted such measures as were reasonably required under the circumstances. Even the testimonies offered by the appellee and his witnesses collectively show no trace of fraud or bad faith as would justify the trial court's award of moral damages.

The basis for the award of moral damages discounted, there exists little or no reason to allow the exemplary damages and attorney's fees adjudicated in favor of the appellee.

Petitioner's subsequent motion for reconsideration having been denied for lack of merit and for being pro forma he came to us for review. He claims that the trial court found CATHAY guilty of gross negligence amounting to malice and bad faith in: (a) detaching the wrong coupon; (b) using that error to deny confirmation of his return flight; and, (c) directing petitioner to prematurely return to San Francisco to verify his missing coupon. He also underscores the scornful and demeaning posture of CATHAY's employees toward him. He argues that since findings of fact of the trial court are entitled to the highest degree of respect from the appellate courts, especially when they were supported by evidence, it was erroneous for the Court of Appeals to strike out the award of moral and exemplary damages as well as attorney's fees allegedly for lack of basis.

In its Comment, CATHAY firmly maintains that it did not breach its contract of carriage with petitioner. It argues that it is only when a passenger is confirmed on a particular flight and on a particular date specifically stated in his ticket that its refusal to board the passenger will result in a breach of contract. And even assuming that there was breach of contract, there was no fraud or bad faith on the part of CATHAY as to justify the award of moral and exemplary damages plus attorney's fees in favor of petitioner.

There are two (2) main issues that confront the Court: first, whether a breach of contract was committed by CATHAY when it failed to confirm the booking of petitioner for its 1 July 1988 flight; and, second, whether the carrier was liable not only for actual damages but also for moral and exemplary damages, and attorney's fees for failing to book petitioner on his return flight to the Philippines.

We find merit in the petition. CATHAY undoubtedly committed a breach of contract when it refused to confirm petitioner's flight reservation back to the Philippines on account of his missing flight coupon. Its contention that there was no contract of carriage that was breached because petitioner's ticket was open-dated is untenable. To begin with, the round trip ticket issued by the carrier to the passenger was in itself a complete written contract by and between the carrier and the passenger. It had all the elements of a complete written contract, to wit: (a) the consent of the contracting parties manifested by the fact that the passenger agreed to be transported by the carrier to and from Los Angeles via San Francisco and Hongkong back to the Philippines, and the carrier's acceptance to bring him to his destination and then back home; (b) cause or consideration, which was the fare paid by the passenger as stated in his ticket; and, (c) object, which was the transportation of the passenger from the place of departure to the place of destination and back, which are also stated in his ticket.[6] In fact, the contract of carriage in the instant case was already partially executed as the carrier complied with its obligation to transport the passenger to his destination, i.e., Los Angeles. Only the performance of the other half of the contract - which was to transport the passenger back to the Philippines - was left to be done. Moreover, Timothy Remedios, CATHAY's reservation and ticketing agent, unequivocally testified that petitioner indeed had reservations booked for travel -

Q: Were you able to grant what they wanted, if not, please state why?

A: I was able to obtain a record of Mr. Singson's computer profile from my flight reservations computer. I verified that Mr. Singson did indeed have reservations booked for travel: Los Angeles to San Francisco, San Francisco to Hongkong to Manila. I then proceeded to revalidate their tickets but was surprised to observe that Mr. Singson's ticket did not contain a flight coupon for San Francisco to Hongkong. His ticket did, however, contain a flight coupon for San Francisco to Los Angeles which was supposed to have been utilized already,

that is, supposed to have been removed by U.S. Air when he checked in San Francisco for his flight from San Francisco to Los Angeles[7] (underscoring supplied).

Clearly therefore petitioner was not a mere "chance passenger with no superior right to be boarded on a specific flight," as erroneously claimed by CATHAY and sustained by the appellate court.

Interestingly, it appears that CATHAY was responsible for the loss of the ticket. One of two (2) things may be surmised from the circumstances of this case: first, US Air (CATHAY's agent) had mistakenly detached the San Francisco-Hongkong flight coupon thinking that it was the San Francisco-Los Angeles portion; or, second, petitioner's booklet of tickets did not from issuance include a San Francisco-Hongkong flight coupon. In either case, the loss of the coupon was attributable to the negligence of CATHAY's agents and was the proximate cause of the non-confirmation of petitioner's return flight on 1 July 1988. It virtually prevented petitioner from demanding the fulfillment of the carrier's obligations under the contract. Had CATHAY's agents been diligent in double checking the coupons they were supposed to detach from the passengers' tickets, there would have been no reason for CATHAY not to confirm petitioner's booking as exemplified in the case of his cousin and flight companion Tiongson whose ticket booklet was found to be in order. Hence, to hold that no contractual breach was committed by CATHAY and totally absolve it from any liability would in effect put a premium on the negligence of its agents, contrary to the policy of the law requiring common carriers to exercise extraordinary diligence.

With regard to the second issue, we are of the firm view that the appellate court seriously erred in disallowing moral and exemplary damages. Although the rule is that moral damages predicated upon a breach of contract of carriage may only be recoverable in instances where the mishap results in the death of a passenger,[8] or where the carrier is guilty of fraud or bad faith,[9] there are situations where the negligence of the carrier is so gross and reckless as to virtually amount to bad faith, in which case, the passenger likewise becomes entitled to recover moral damages.[10]

In the instant case, the following circumstances attended the breach of contract by CATHAY, to wit: First, as heretofore discussed, the ticket coupon corresponding to the San Francisco-Hongkong flight was missing either due to the negligence of CATHAY's agents in improperly detaching petitioner's flight coupons or failing to issue the flight coupon for San Francisco-Hongkong in the ticket booklet; second, petitioner and his cousin presented their respective ticket booklets bearing identical itineraries to prove that there had been a mistake in removing the coupons of petitioner. Furthermore, CATHAY's Timothy Remedios testified that he was able to ascertain from his flight reservations computer that petitioner indeed had reservations booked for travel on their return flight, but CATHAY apparently ignored the clear evidential import of these facts and peremptorily refused to confirm petitioner's flight - while ready to confirm his traveling companion's identically routed plane ticket - on the lame and flimsy excuse that the existence and validity of the missing ticket must first be verified; third, petitioner was directed by CATHAY to go to its San Francisco office and make the necessary verification concerning the lost coupon himself. This, notwithstanding the fact that CATHAY was responsible for the loss of the ticket and had all the necessary equipment, e.g., computers, fax and telex machines and telephones which could facilitate the verification right there at its Los Angeles Office.

CATHAY's allegation that it never required petitioner to go to San Francisco is unpersuasive. Petitioner categorically testified that a lady employee of CATHAY in Los Angeles "insisted that we take the matter (up) with their office in San Francisco." [11] In fact, it even appeared from the evidence that it was the San Francisco office which arranged for his return flight to the Philippines and not the Los Angeles office.[12] Moreover, due deference must be accorded the trial court's finding that petitioner was indeed sent by CATHAY to its San Francisco office to verify. For good and sound reasons, this Court has consistently affirmed that review of the findings of fact of the trial court is not a function that appellate courts ordinarily undertake, such findings being as

a rule binding and conclusive.[13] It is true that certain exceptions have become familiar. However, nothing in the records warrants a review based on any of these well-recognized exceptions; and, fourth, private respondent endeavored to show that it undertook the verification of the lost coupon by sending a telex to its Hongkong Office. It likewise tried to justify the five (5) days delay in completing the verification process, claiming that it was due to the time difference between Hongkong and Los Angeles and the coinciding non-working days in the United States. The following dialogue between Consul Cortez and Cathay's reservation and ticketing agent Timothy Remedios can be enlightening -

Q: What official action did you in turn take?

A: While Mr. Singson was still in my office I sent a telex out at approximately 10:00 a.m. on 30 June 1988 to Hongkong Accounting Office and copied San Francisco ticket office since Mr. Singson advised he might not be able to return to my office but would be going to San Francisco. 10:00 a.m. on 30 June 1988 in Los Angeles is however 2:00 a.m. on 1 July 1988 in Hongkong and since office hours start at 9:00 a.m. in Hongkong, no reply was instantly sent back to me. The response was sent out from Hongkong on 2 July 1988 at approximately 12:00 noon (Hongkong time) and was received immediately by the Los Angeles telex machine. However, 12:00 noon 2 July 1988 Hongkong time was 8:00 p.m. 1 July 1988 in Los Angeles where office hours close at 5:00 p.m. The Los Angeles office was closed on 2 and 3 July 1988 being Saturday and Sunday and also closed 4 July 1988 for a public holiday (Independence day) so the reply from Hongkong was not read until 5 July 1988, 8:30 Los Angeles time.[14]

But far from helping private respondent's cause, the foregoing testimony only betrayed another act of negligence committed by its employees in Hongkong. It will be observed that CATHAY's Hongkong Office received the telex from Los Angeles on 1 July 1988 at approximately 2:00 a.m. (Hongkong time) and sent out their response only on 2 July 1988 at 12:00 noon. In spite of the fact that they had access to all records and facilities that would enable them to verify in a matter of minutes, it strangely took them more than twenty-four (24) hours to complete the verification process and to send their reply to Los Angeles. The inevitable conclusion is that CATHAY's Hongkong personnel never acted promptly and timely on the request for verification.

Besides, to be stranded for five (5) days in a foreign land because of an air carrier's negligence is too exasperating an experience for a plane passenger. For sure, petitioner underwent profound distress and anxiety, not to mention the worries brought about by the thought that he did not have enough money to sustain himself, and the embarrassment of having been forced to seek the generosity of relatives and friends.

Anent the accusation that private respondent's personnel were rude and arrogant, petitioner failed to adduce sufficient evidence to substantiate his claim. Nonetheless, such fact will not in any manner affect the disposition of this case. Private respondent's mistake in removing the wrong coupon was compounded by several other independent acts of negligence above-enumerated. Taken together, they indubitably signify more than ordinary inadvertence or inattention and thus constitute a radical departure from the extraordinary standard of care required of common carriers. Put differently, these circumstances reflect the carrier's utter lack of care and sensitivity to the needs of its passengers, clearly constitutive of gross negligence, recklessness and wanton disregard of the rights of the latter, acts evidently indistinguishable or no different from fraud, malice and bad faith. As the rule now stands, where in breaching the contract of carriage the defendant airline is shown to have acted fraudulently, with malice or in bad faith, the award of moral and exemplary damages, in addition to actual damages, is proper.[15]

However, the P500,000.00 moral damages and P400,000.00 exemplary damages awarded by the trial court have to be reduced. The well-entrenched principle is that the grant of moral damages depends upon the discretion of the court based on the circumstances of each case.[16] This discretion is limited by the principle that the "amount

awarded should not be palpably and scandalously excessive" as to indicate that it was the result of prejudice or corruption on the part of the trial court.[17] Damages are not intended to enrich the complainant at the expense of the defendant. They are awarded only to alleviate the moral suffering that the injured party had undergone by reason of the defendant's culpable action.[18] 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 facts.

In the instant case, the injury suffered by petitioner is not so serious or extensive as to warrant an award amounting to P900,000.00. The assessment of P200,000.00 as moral damages and P50,000.00 as exemplary damages in his favor is, in our view, reasonable and realistic.

On the issue of actual damages, we agree with the Court of Appeals that the amount of P20,000.00 granted by the trial court to petitioner should not be disturbed. Petitioner categorically testified that he incurred the amount during the period of his delay in departing from the United States -

Q: Will you kindly tell the Court what expenses if any did you incur for these x x x days from July 1 until you were able to leave on July 6, 1988?

A: Well, it is true we stayed in the house of my nephew but still we had to spend for our food and I left him some around five hundred dollars for our stay for around five days.

Q: How about your meals?

A: For our meals, we have to eat outside.

Q: Will you tell, more or less, how much you spent for your meals?

A: For every meal we spend around thirty dollars each.

Q: And this is for how many days?

A: From July 1, up to the 6th in the morning, sir.

Q: So more or less how many in pesos did you spend for this period of waiting from July 1 to 6?

A: Twenty thousand pesos, sir [19]

In the absence of any countervailing evidence from private respondent, and in view of the negligence attributable to it, the foregoing testimony suffices as basis for actual damages as determined by the court a quo.

As regards attorney's fees, they may be awarded when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. It was therefore erroneous for the Court of Appeals to delete the award made by the trial court; consequently, petitioner should be awarded attorney's fees and the amount of P25,000.00, instead of P100,000.00 earlier awarded, may be considered rational, fair and reasonable.

WHEREFORE, the petition is GRANTED and the 14 July 1994 Decision of the Court of Appeals is REVERSED. Private respondent is ordered to pay petitioner P20,000.00 for actual damages as fixed by the trial court, plus P200,000.00 for moral damages, P50,000.00 for exemplary damages and P25,000.00 for attorney's fees. No costs. SO ORDERED.

Davide, Jr., (Chairman), Vitug, and Kapunan, JJ., concur.

[1] Art. 1755, New Civil Code.

[2] *Air France v. Carrascoso*, No. L-21438, 28 September 1966, 18 SCRA 155, 167-168.

[3] The case was raffled to the sala of Acting Presiding Judge Florencio A. Ruiz, Jr., RTC-Br. 20, Vigan, Ilocos

Sur.

[4] CATHAY centralizes all ticketing information at its Hongkong headquarters.

[5] Decision penned by Justice Nathanael P. De Pano, Jr., and concurred in by Justices Cezar D. Francisco and Buenaventura J. Guerrero, CA-G.R. CV No. 38124.

[6] See *Filipinas Peralta de Guerrero, et al. v. Madrigal Shipping Co., Inc.*, 106 Phil. 485 (1959).

[7] Deposition of Mr. Timothy Remedios. See Original Records, p. 150.

[8] Arts. 1764 and 2206, New Civil Code.

[9] Art. 2220, New Civil Code; *China Airlines, Ltd. v. Intermediate Appellate Court*, G.R. No. 73835, 17 January 1989, 169 SCRA 226.

[10] See *Fores v. Miranda*, 105 Phil. 266 (1959).

[11] TSN, 2 February 1989, pp. 11 and 17.

[12] *Id.*, p. 22.

[13] *Alitalia Airways v. Court of Appeals*, G.R. No. 77011, 24 July 1990, 187 SCRA 763, 769-770.

[14] TSN, 29 September 1989, p. 9.

[15] *Cathay Pacific Airways, Ltd. v. Court of Appeals*, G.R. No. 60501, 5 March 1993, 219 SCRA 520, 527.

[16] *Prudencio v. Alliance Transport System, Inc.*, No. L-33836, 16 March 1987, 148 SCRA 440.

[17] *Siguenza v. Court of Appeals*, No. L-44050, 16 July 1985, 137 SCRA 570.

[18] *R & B Surety and Insurance Co., Inc. v. Intermediate Appellate Court*, G.R. No. 64515, 22 June 1984, 129 SCRA 736.

[19] TSN, 2 February 1989, pp. 23-24.

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