

PHILIPPINE AIRLINES, INCORPORATED, PETITIONER, VS. COURT OF APPEALS AND SPOUSES MANUEL S. BUNCIO AND AURORA R. BUNCIO, MINORS DEANNA R. BUNCIO AND NIKOLAI R. BUNCIO, ASSISTED BY...

G.R. No. 123238. September 22, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review[1] on Certiorari under Rule 45 of the Rules of Court seeking to set aside the Decision,[2] dated 20 December 1995, of the Court of Appeals in CA-G.R. CV No. 26921 which affirmed in toto the Decision,[3] dated 2 April 1990, of the Quezon City Regional Trial Court (RTC), Branch 90, in Civil Case No. Q-33893.

The undisputed facts are as follows:

Sometime before 2 May 1980, private respondents spouses Manuel S. Buncio and Aurora R. Buncio purchased from petitioner Philippine Airlines, Incorporated, two plane tickets[4] for their two minor children, Deanna R. Buncio (Deanna), then 9 years of age, and Nikolai R. Buncio (Nikolai), then 8 years old. Since Deanna and Nikolai will travel as unaccompanied minors, petitioner required private respondents to accomplish, sign and submit to it an indemnity bond.[5] Private respondents complied with this requirement. For the purchase of the said two plane tickets, petitioner agreed to transport Deanna and Nikolai on 2 May 1980 from Manila to San Francisco, California, United States of America (USA), through one of its planes, Flight 106. Petitioner also agreed that upon the arrival of Deanna and Nikolai in San Francisco Airport on 3 May 1980, it would again transport the two on that same day through a connecting flight from San Francisco, California, USA, to Los Angeles, California, USA, via another airline, United Airways 996. Deanna and Nikolai then will be met by their grandmother, Mrs. Josefa Regalado (Mrs. Regalado), at the Los Angeles Airport on their scheduled arrival on 3 May 1980.

On 2 May 1980, Deanna and Nikolai boarded Flight 106 in Manila.

On 3 May 1980, Deanna and Nikolai arrived at the San Francisco Airport. However, the staff of United Airways 996 refused to take aboard Deanna and Nikolai for their connecting flight to Los Angeles because petitioner's personnel in San Francisco could not produce the indemnity bond accomplished and submitted by private respondents. The said indemnity bond was lost by petitioner's personnel during the previous stop-over of Flight 106 in Honolulu, Hawaii. Deanna and Nikolai were then left stranded at the San Francisco Airport. Subsequently, Mr. Edwin Strigl (Strigl), then the Lead Traffic Agent of petitioner in San Francisco, California, USA, took Deanna and Nikolai to his residence in San Francisco where they stayed overnight.

Meanwhile, Mrs. Regalado and several relatives waited for the arrival of Deanna and Nikolai at the Los Angeles Airport. When United Airways 996 landed at the Los Angeles Airport and its passengers disembarked, Mrs.

Regalado sought Deanna and Nikolai but she failed to find them. Mrs. Regalado asked a stewardess of the United Airways 996 if Deanna and Nikolai were on board but the stewardess told her that they had no minor passengers. Mrs. Regalado called private respondents and informed them that Deanna and Nikolai did not arrive at the Los Angeles Airport. Private respondents inquired about the location of Deanna and Nikolai from petitioner's personnel, but the latter replied that they were still verifying their whereabouts.

On the morning of 4 May 1980, Strigl took Deanna and Nikolai to San Francisco Airport where the two boarded a Western Airlines plane bound for Los Angeles. Later that day, Deanna and Nikolai arrived at the Los Angeles Airport where they were met by Mrs. Regalado. Petitioner's personnel had previously informed Mrs. Regalado of the late arrival of Deanna and Nikolai on 4 May 1980.

On 17 July 1980, private respondents, through their lawyer, sent a letter[6] to petitioner demanding payment of 1 million pesos as damages for the gross negligence and inefficiency of its employees in transporting Deanna and Nikolai. Petitioner did not heed the demand.

On 20 November 1981, private respondents filed a complaint[7] for damages against petitioner before the RTC. Private respondents impleaded Deanna, Nikolai and Mrs. Regalado as their co-plaintiffs. Private respondents alleged that Deanna and Nikolai were not able to take their connecting flight from San Francisco to Los Angeles as scheduled because the required indemnity bond was lost on account of the gross negligence and malevolent conduct of petitioner's personnel. As a consequence thereof, Deanna and Nikolai were stranded in San Francisco overnight, thereby exposing them to grave danger. This dilemma caused Deanna, Nikolai, Mrs. Regalado and private respondents to suffer serious anxiety, mental anguish, wounded feelings, and sleepless nights. Private respondents prayed the RTC to render judgment ordering petitioner: (1) to pay Deanna and Nikolai P100,000.00 each, or a total of P200,000.00, as moral damages; (2) to pay private respondents P500,000.00 each, or a total of P1,000,000.00, as moral damages; (3) to pay Mrs. Regalado P100,000.00 as moral damages; (4) to pay Deanna, Nikolai, Mrs. Regalado and private respondents P50,000.00 each, or a total of P250,000.00 as exemplary damages; and (5) to pay attorney's fees equivalent to 25% of the total amount of damages mentioned plus costs of suit.

In its answer[8] to the complaint, petitioner admitted that Deanna and Nikolai were not allowed to take their connecting flight to Los Angeles and that they were stranded in San Francisco. Petitioner, however, denied that the loss of the indemnity bond was caused by the gross negligence and malevolent conduct of its personnel. Petitioner averred that it always exercised the diligence of a good father of the family in the selection, supervision and control of its employees. In addition, Deanna and Nikolai were personally escorted by Strigl, and the latter exerted efforts to make the connecting flight of Deanna and Nikolai to Los Angeles possible. Further, Deanna and Nikolai were not left unattended from the time they were stranded in San Francisco until they boarded Western Airlines for a connecting flight to Los Angeles. Petitioner asked the RTC to dismiss the complaint based on the foregoing averments.

After trial, the RTC rendered a Decision on 2 April 1990 holding petitioner liable for damages for breach of contract of carriage. It ruled that petitioner should pay moral damages for its inattention and lack of care for the welfare of Deanna and Nikolai which, in effect, amounted to bad faith, and for the agony brought by the incident to private respondents and Mrs. Regalado. It also held that petitioner should pay exemplary damages by way of example or correction for the public good under Article 2229 and 2232 of the Civil Code, plus attorney's fees and costs of suit. In sum, the RTC ordered petitioner: (1) to pay Deanna and Nikolai P50,000.00 each as moral damages and P25,000.00 each as exemplary damages; (2) to pay private respondent Aurora R. Buncio, as mother of Deanna and Nikolai, P75,000.00 as moral damages; (3) to pay Mrs. Regalado, as grandmother of Deanna and Nikolai, P30,000.00 as moral damages; and (4) to pay an amount of P38,250.00 as attorney's fees and the costs of

suit. Private respondent Manuel S. Buncio was not awarded damages because his court testimony was disregarded, as he failed to appear during his scheduled cross-examination. The dispositive portion of the RTC Decision reads:

ACCORDINGLY, judgment is hereby rendered:

- Ordering defendant Philippines Airlines, Inc. to pay Deanna R. Buncio and Nikolai R. Buncio the amount of P50,000.00 each as moral damages; and the amount of P25,000.00 each as exemplary damages;
- Ordering said defendant to pay the amount of P75,000.00 to Aurora R. Buncio, mother of Deanna and Nikolai, as moral damages; and the amount of P30,000.00 to Josefa Regalado, grandmother of Deanna and Nikolai, as moral damages; and
- Ordering said defendant to pay P38,250.00 as attorney's fees and also the costs of the suit.[9]

Petitioner appealed to the Court of Appeals. On 20 December 1995, the appellate court promulgated its Decision affirming in toto the RTC Decision, thus:

WHEREFORE, the decision appealed is hereby AFFIRMED in toto and the instant appeal DISMISSED.[10]

Petitioner filed the instant petition before us assigning the following errors[11]:

I.

THE COURT OF APPEALS ERRED IN SUSTAINING THE RTC AWARD OF MORAL DAMAGES.

II.

THE COURT OF APPEALS ERRED IN SUSTAINING THE RTC AWARD OF EXEMPLARY DAMAGES.

III.

THE COURT OF APPEALS ERRED IN SUSTAINING THE RTC AWARD OF ATTORNEY'S FEES AND ORDER FOR PAYMENT OF COSTS.

Anent the first assigned error, petitioner maintains that moral damages may be awarded in a breach of contract of air carriage only if the mishap results in death of a passenger or if the carrier acted fraudulently or in bad faith, that is, by breach of a known duty through some motive of interest or ill will, some dishonest purpose or conscious doing of wrong; if there was no finding of fraud or bad faith on its part; if, although it lost the indemnity bond, there was no finding that such loss was attended by ill will, or some motive of interest, or any dishonest purpose; and if there was no finding that the loss was deliberate, intentional or consciously done.[12]

Petitioner also claims that it cannot be entirely blamed for the loss of the indemnity bond; that during the stop-over of Flight 106 in Honolulu, Hawaii, USA, it gave the indemnity bond to the immigration office therein as a matter of procedure; that the indemnity bond was in the custody of the said immigration office when Flight 106 left Honolulu, Hawaii, USA; that the said immigration office failed to return the indemnity bond to petitioner's personnel before Flight 106 left Honolulu, Hawaii, USA; and that even though it was negligent in overlooking the indemnity bond, there was still no liability on its part because mere carelessness of the carrier does not per se constitute or justify an inference of malice or bad faith.[13]

When an airline issues a ticket to a passenger, confirmed for a particular flight on a certain date, a contract of carriage arises. The passenger has every right to expect that he be transported on that flight and on that date, and it becomes the airline's obligation to carry him and his luggage safely to the agreed destination without delay. If the passenger is not so transported or if in the process of transporting, he dies or is injured, the carrier may be held

liable for a breach of contract of carriage.[14]

Private respondents and petitioner entered into a contract of air carriage when the former purchased two plane tickets from the latter. Under this contract, petitioner obliged itself (1) to transport Deanna and Nikolai, as unaccompanied minors, on 2 May 1980 from Manila to San Francisco through one of its planes, Flight 106; and (2) upon the arrival of Deanna and Nikolai in San Francisco Airport on 3 May 1980, to transport them on that same day from San Francisco to Los Angeles via a connecting flight on United Airways 996. As it was, petitioner failed to transport Deanna and Nikolai from San Francisco to Los Angeles on the day of their arrival at San Francisco. The staff of United Airways 996 refused to take aboard Deanna and Nikolai for their connecting flight to Los Angeles because petitioner's personnel in San Francisco could not produce the indemnity bond accomplished and submitted by private respondents. Thus, Deanna and Nikolai were stranded in San Francisco and were forced to stay there overnight. It was only on the following day that Deanna and Nikolai were able to leave San Francisco and arrive at Los Angeles via another airline, Western Airlines. Clearly then, petitioner breached its contract of carriage with private respondents.

In breach of contract of air carriage, moral damages may be recovered where (1) the mishap results in the death of a passenger; or (2) where the carrier is guilty of fraud or bad faith; or (3) where the negligence of the carrier is so gross and reckless as to virtually amount to bad faith.[15]

Gross negligence implies a want or absence of or failure to exercise even slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[16]

In *Singson v. Court of Appeals*,^[17] we ruled that a carrier's utter lack of care for and sensitivity to the needs of its passengers constitutes gross negligence and is no different from fraud, malice or bad faith. Likewise, in *Philippine Airlines, Inc. v. Court of Appeals*,^[18] we held that a carrier's inattention to, and lack of care for, the interest of its passengers who are entitled to its utmost consideration, particularly as to their convenience, amount to bad faith and entitles the passenger to an award of moral damages.

It was established in the instant case that since Deanna and Nikolai would travel as unaccompanied minors, petitioner required private respondents to accomplish, sign and submit to it an indemnity bond. Private respondents complied with this requirement. Petitioner gave a copy of the indemnity bond to one of its personnel on Flight 106, since it was required for the San Francisco-Los Angeles connecting flight of Deanna and Nikolai. Petitioner's personnel lost the indemnity bond during the stop-over of Flight 106 in Honolulu, Hawaii. Thus, Deanna and Nikolai were not allowed to take their connecting flight.

Evidently, petitioner was fully aware that Deanna and Nikolai would travel as unaccompanied minors and, therefore, should be specially taken care of considering their tender age and delicate situation. Petitioner also knew well that the indemnity bond was required for Deanna and Nikolai to make a connecting flight from San Francisco to Los Angeles, and that it was its duty to produce the indemnity bond to the staff of United Airways 996 so that Deanna and Nikolai could board the connecting flight. Yet, despite knowledge of the foregoing, it did not exercise utmost care in handling the indemnity bond resulting in its loss in Honolulu, Hawaii. This was the proximate cause why Deanna and Nikolai were not allowed to take the connecting flight and were thus stranded overnight in San Francisco. Further, petitioner discovered that the indemnity bond was lost only when Flight 106 had already landed in San Francisco Airport and when the staff of United Airways 996 demanded the indemnity bond. This only manifests that petitioner did not check or verify if the indemnity bond was in its custody before leaving Honolulu, Hawaii for San Francisco.

The foregoing circumstances reflect petitioner's utter lack of care for and inattention to the welfare of Deanna and Nikolai as unaccompanied minor passengers. They also indicate petitioner's failure to exercise even slight care

and diligence in handling the indemnity bond. Clearly, the negligence of petitioner was so gross and reckless that it amounted to bad faith.

It is worth emphasizing that petitioner, as a common carrier, is bound by law to exercise extraordinary diligence and utmost care in ensuring for the safety and welfare of its passengers with due regard for all the circumstances.[19] The negligent acts of petitioner signified more than inadvertence or inattention and thus constituted a radical departure from the extraordinary standard of care required of common carriers.

Petitioner's claim that it cannot be entirely blamed for the loss of the indemnity bond because it gave the indemnity bond to the immigration office of Honolulu, Hawaii, as a matter of procedure during the stop-over, and the said immigration office failed to return the indemnity bond to petitioner's personnel before Flight 106 left Honolulu, Hawaii, deserves scant consideration. It was petitioner's obligation to ensure that it had the indemnity bond in its custody before leaving Honolulu, Hawaii for San Francisco. Petitioner should have asked for the indemnity bond from the immigration office during the stop-over instead of partly blaming the said office later on for the loss of the indemnity bond. Petitioner's insensitivity on this matter indicates that it fell short of the extraordinary care that the law requires of common carriers.

Petitioner, nonetheless, insists that the following circumstances negate gross negligence on its part: (1) Strigl requested the staff of United Airways 996 to allow Deanna and Nikolai to board the plane even without the indemnity bond; (2) Strigl took care of the two and brought them to his house upon refusal of the staff of the United Airways 996 to board Deanna and Nikolai; (3) private respondent Aurora R. Buncio and Mrs. Regalado were duly informed of Deanna and Nikolai's predicament; and (4) Deanna and Nikolai were able to make a connecting flight via an alternative airline, Western Airlines.[20] We do not agree. It was petitioner's duty to provide assistance to Deanna and Nikolai for the inconveniences of delay in their transportation. These actions are deemed part of their obligation as a common carrier, and are hardly anything to rave about.[21]

Apropos the second and third assigned error, petitioner argues that it was not liable for exemplary damages because there was no wanton, fraudulent, reckless, oppressive, or malevolent manner on its part. Further, exemplary damages may be awarded only if it is proven that the plaintiff is entitled to moral damages. Petitioner contends that since there was no proof that private respondents were entitled to moral damages, then they are also not entitled to exemplary damages.[22]

Petitioner also contends that no premium should be placed on the right to litigate; that an award of attorney's fees and order of payment of costs must be justified in the text of the decision; that such award cannot be imposed by mere conclusion without supporting explanation; and that the RTC decision does not provide any justification for the award of attorney's fees and order of payment of costs.[23]

Article 2232 of the Civil Code provides that exemplary damages may be awarded in a breach of contract if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. In addition, Article 2234 thereof states that the plaintiff must show that he is entitled to moral damages before he can be awarded exemplary damages.

As we have earlier found, petitioner breached its contract of carriage with private respondents, and it acted recklessly and malevolently in transporting Deanna and Nikolai as unaccompanied minors and in handling their indemnity bond. We have also ascertained that private respondents are entitled to moral damages because they have sufficiently established petitioner's gross negligence which amounted to bad faith. This being the case, the award of exemplary damages is warranted.

Current jurisprudence[24] instructs that in awarding attorney's fees, the trial court must state the factual, legal, or

equitable justification for awarding the same, bearing in mind that the award of attorney's fees is the exception, not the general rule, and it is not sound public policy to place a penalty on the right to litigate; nor should attorney's fees be awarded every time a party wins a lawsuit. The matter of attorney's fees cannot be dealt with only in the dispositive portion of the decision. The text of the decision must state the reason behind the award of attorney's fees. Otherwise, its award is totally unjustified.[25]

In the instant case, the award of attorney's fees was merely cited in the dispositive portion of the RTC decision without the RTC stating any legal or factual basis for said award. Hence, the Court of Appeals erred in sustaining the RTC's award of attorney's fees.

Since we have already resolved that the RTC and Court of Appeals were correct in awarding moral and exemplary damages, we shall now determine whether their corresponding amounts were proper.

The purpose of awarding moral damages is to enable the injured party to obtain means, diversion or amusement that will serve to alleviate the moral suffering he has undergone by reason of defendant's culpable action.[26] On the other hand, the aim of awarding exemplary damages is to deter serious wrongdoings.[27]

Article 2216 of the Civil Code provides that assessment of damages is left to the discretion of the court according to the circumstances of each case. This discretion is limited by the principle that the amount awarded should not be palpably excessive as to indicate that it was the result of prejudice or corruption on the part of the trial court.[28] Simply put, the amount of damages must be fair, reasonable and proportionate to the injury suffered.

The RTC and the Court of Appeals ordered petitioner to pay Deanna and Nikolai P50,000.00 each as moral damages. This amount is reasonable considering the harrowing experience they underwent at their tender age and the danger they were exposed to when they were stranded in San Francisco. Both of them testified that they were afraid and were not able to eat and sleep during the time they were stranded in San Francisco.[29] Likewise, the award of P25,000.00 each to Deanna and Nikolai as exemplary damages is fair so as to deter petitioner and other common carriers from committing similar or other serious wrongdoings.

Both courts also directed petitioner to pay private respondent Aurora R. Buncio P75,000.00 as moral damages. This is equitable and proportionate considering the serious anxiety and mental anguish she experienced as a mother when Deanna and Nikolai were not allowed to take the connecting flight as scheduled and the fact that they were stranded in a foreign country and in the company of strangers. Private respondent Aurora R. Buncio testified that she was very fearful for the lives of Deanna and Nikolai when they were stranded in San Francisco, and that by reason thereof she suffered emotional stress and experienced upset stomach.[30] Also, the award of P30,000.00 as moral damages to Mrs. Regalado is appropriate because of the serious anxiety and wounded feelings she felt as a grandmother when Deanna and Nikolai, whom she was to meet for the first time, did not arrive at the Los Angeles Airport. Mrs. Regalado testified that she was seriously worried when Deanna and Nikolai did not arrive in Los Angeles on 3 May 1980, and she was hurt when she saw the two crying upon arriving in Los Angeles on 4 May 1980.[31] The omission of award of damages to private respondent Manuel S. Buncio was proper for lack of basis. His court testimony was rightly disregarded by the RTC because he failed to appear in his scheduled cross-examination.[32]

On another point, we held in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[33] that when an obligation, not constituting a loan or forbearance of money is breached, an interest on the amount of damages awarded may be imposed at the rate of 6% per annum. We further declared that when the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether it is a loan/forbearance of money or not, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be then equivalent to a forbearance of credit.

In the instant case, petitioner's obligation arose from a contract of carriage and not from a loan or forbearance of money. Thus, an interest of 6% per annum should be imposed on the damages awarded, to be computed from the time of the extra-judicial demand on 17 July 1980 up to the finality of this Decision. In addition, the interest shall become 12% per annum from the finality of this Decision up to its satisfaction.

Finally, the records[34] show that Mrs. Regalado died on 1 March 1995 at the age of 74, while Deanna passed away on 8 December 2003 at the age of 32. This being the case, the foregoing award of damages plus interests in their favor should be given to their respective heirs.

WHEREFORE, the Petition is PARTLY GRANTED. The Decision of the Court of Appeals, dated 20 December 1995, in CA-G.R. CV No. 26921, is hereby AFFIRMED with the following MODIFICATIONS: (1) the award of attorney's fees is deleted; (2) an interest of 6% per annum is imposed on the damages awarded, to be computed from 17 July 1980 up to the finality of this Decision; and (3) an interest of 12% per annum is also imposed from the finality of this Decision up to its satisfaction. The damages and interests granted in favor of deceased Mrs. Regalado and deceased Deanna are hereby awarded to their respective heirs. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Rollo, pp. 24-31.

[2] Penned by Associate Justice Cancio C. Garcia (now a retired Associate Justice of this Court) with Associate Justices Eugenio S. Labitoria and Portia Alino-Hormachuelos, concurring; rollo, pp. 7-19.

[3] Penned by Presiding Judge Abraham P. Vera; Records, pp. 332-337.

[4] Exhibit A, records p. 311.

[5] This is a document wherein private respondents stated (1) that they made prior arrangements to have Deanna and Nikolai accompanied at the airport of departure which was Manila International Airport; (2) that upon the arrival of Deanna and Nikolai at the airport of destination which was Los Angeles Airport (California, USA), they would be met by their grandmother, Mrs. Josefa C. Regalado; and (3) that they would indemnify petitioner for losses it might sustain for the welfare of Deanna and Nikolai. (Exhibit B, records p. 325.)

[6] Records, pp. 326-327.

[7] Id. at 10-17.

[8] Id. at 25-30.

[9] Records, p. 337.

[10] Id. at 19.

[11] Rollo, p. 168.

[12] Records, pp. 169-170.

[13] Id. at 170-171.

[14] *Japan Airlines v. Asuncion*, G.R. No. 161730, 28 January 2005, 449 SCRA 544, 548.

[15] *Singson v. Court of Appeals*, 346 Phil. 831, 838-839 (1997); *China Airlines v. Chiok*, 455 Phil. 169, 193

(2003); Villanueva v. Salvador, G.R. No. 139436, 25 January 2006, 480 SCRA 39, 49.

[16] BPI Investment Corporation v. D.G. Carreon Commercial Corporation, 422 Phil. 367, 379 (2001).

[17] Supra note 15 at 163.

[18] 326 Phil. 823 (1996).

[19] Articles 1733 and 1755 of the New Civil Code.

[20] Records, pp. 171-175.

[21] Philippine Airlines, Inc. v. Court of Appeals, supra note 18 at 837.

[22] Rollo, pp. 175-176.

[23] Id. at 176-177.

[24] Serrano v. Gutierrez, G.R. No. 162366, 10 November 2006, 506 SCRA 712, 724; Buñing v. Santos, G.R. No. 152544, 19 September 2006, 502 SCRA 315, 321-323; Ballesteros v. Abion, G.R. No. 143361, 9 February 2006, 482 SCRA 23, 39-40; Villanueva v. Salvador, supra note 15 at 51-52.

[25] Ballesteros v. Abion, id. at 40.

[26] Zenith Insurance Corporation v. Court of Appeals, G.R. No. 85296, 14 May 1990, 185 SCRA 398, 402-403.

[27] People v. Catubig, 416 Phil. 102, 118 (2001).

[28] Singson v. Court of Appeals, supra note 15 at 163.

[29] TSN, 12 December 1982, pp. 2-5.

[30] TSN, 26 April 1985, p. 19.

[31] TSN, 23 May 1985, pp. 22-23.

[32] Records, pp. 55 & 131.

[33] G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95-97.

[34] Rollo, pp. 163 & 331.

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