

**PHILIPPINE AIRLINES, INC., PETITIONER, VS. COURT OF APPEALS,
JUDY AMOR, JANE GAMIL, MINORS GIAN CARLO AMOR
REPRESENTED BY ATTY. OWEN AMOR, AND CARLO BENITEZ
REPRESENTED BY JOSEP...**

G.R. No. 127473. December 08, 2003

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court seeking the reversal of the decision[1] dated August 12, 1996, in CA-G.R. CV No. 38327[2] and the Resolution dated November 15, 1996 denying the motion for reconsideration of Philippine Airlines, Inc. (petitioner for brevity).

Private respondents Judy Amor, Jane Gamil, minor Gian Carlo Amor, represented by his father, Atty. Owen Amor, and, minor Carlo Benitez, represented by his mother, Josephine Benitez, filed with the Regional Trial Court (Branch 53), Sorsogon, Sorsogon, a complaint[3] for damages against petitioner due to the latter's failure to honor their confirmed tickets.

In support of their claim, private respondents presented evidence establishing the following facts:

Private respondent Judy Amor purchased three confirmed plane tickets for her and her infant son, Gian Carlo Amor as well as her sister Jane Gamil for the May 8, 1988, 7:10 a.m. flight, PR 178, bound for Manila from defendant's branch office in Legaspi City. Judy Amor, a dentist and a member of the Board of Directors of the Sorsogon Dental Association, was scheduled to attend the National Convention of the Philippine Dental Association from May 8 to 14, 1988 at the Philippine International Convention Center. [4]

On May 8, 1988, Judy with Gian, Jane and minor Carlo Benitez, nephew of Judy and Jane, arrived at the Legaspi Airport at 6:20 a.m. for PR 178. Carlo Benitez was supposed to use the confirmed ticket of a certain Dra. Emily Chua.[5] They were accompanied by Atty. Owen Amor and the latter's cousin, Salvador Gonzales who fell in line at the check-in counter with four persons ahead of him and three persons behind him[6] while plaintiff Judy went to the office of the station manager to request that minor plaintiff Carlo Benitez be allowed to use the ticket of Dra. Chua.[7] While waiting for his turn, Gonzales was asked by Lloyd Fojas, the check-in clerk on duty, to approach the counter. Fojas wrote something on the tickets which Gonzales later read as "late check-in 7:05". When Gonzales' turn came, Fojas gave him the tickets of private respondents Judy, Jane and Gian and told him to proceed to the cashier to make arrangements.[8]

Salvador then went to Atty. Amor and told him about the situation. Atty. Amor pleaded with Fojas, pointing out that it is only 6:45 a.m., but the latter did not even look at him or utter any word. Atty. Amor then tried to plead with Delfin Canonizado and George Carranza, employees of petitioner, but still to no avail. Private respondents were not able to board said flight. The plane left at 7:30 a.m., twenty minutes behind the original schedule.[9]

Private respondents went to the bus terminals hoping to catch a ride for Manila. Finding none, they went back to

the airport and tried to catch an afternoon flight.[10] Unfortunately, the 2:30 p.m. flight, PR 278, was cancelled due to "aircraft situation".[11] Private respondents were told to wait for the 5:30 p.m. flight, PR 180. They checked-in their bags and were told to hand in their tickets. Later, a PAL employee at the check-in counter called out the name of private respondent minor Carlo Benitez. Plaintiff Judy approached the counter and was told by the PAL personnel that they cannot be accommodated. Fojas who was also at the counter then removed the boarding passes inserted in private respondents' tickets as well as the tags from their luggages.[12]

Manuel Baltazar, a former Acting Manager of petitioner in Legaspi City in May 1988, testified that based on his investigation, the private respondents, although confirmed passengers, were not able to board PR 178 in the morning of May 8, 1988 because there were "go-show" or "waitlisted" and non-revenue passengers who were accommodated in said flight. He also noted that there was overbooking for PR 178.[13]

On the other hand, petitioner contends that private respondents are not entitled to their claim for damages because they were late in checking-in for PR 178; and that they were only chance or waitlisted passengers for PR 180 and were not accommodated because all confirmed passengers of the flight had checked-in. In support thereof, petitioner presented Lloyd Fojas, who testified, as follows:

In the morning of May 8, 1988, he was on duty at the check-in counter of the Legaspi Airport. He was the one who attended to the tickets of private respondents which were tendered by Salvador Gonzales at 7:05 a.m. when the counter was already closed. The clock at the check-in counter showed that it was already 7:05 and so he told Gonzales that they are already late and wrote "late check-in, 7:05" on private respondents' tickets. The flight was scheduled to leave at 7:10 a.m. and checking-in is allowed only until 30 minutes before departure time. At the time private respondents went to the check-in counter, passengers were already leaving the pre-departure area and going towards the plane and there were no more passengers in the check-in area, not even waitlisted passengers. The baggages of the passengers have been loaded in the aircraft. Gonzales left and later came back with Atty. Amor who pleaded that plaintiffs be accommodated in the flight. He told Atty. Amor to go to his supervisor to re-book the tickets because there were no more boarding passes and it was already time for boarding the plane. Atty. Amor then left the counter. [14]

On cross-examination, Fojas testified that he did not know how many waitlisted or non-revenue passengers were accommodated or issued boarding passes in the 7:00 a. m. and in the afternoon flight of May 8, 1988.[15]

After trial, the RTC rendered judgment upholding the evidence presented by private respondents, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

(a)

ordering the defendant to reimburse the plaintiffs the amount of P1,171.60 representing the purchase price of the four (4) plane tickets;

(b)

condemning the defendant to pay plaintiffs Judy Amor and Jane Gamil the amount of P250,000.00 each as moral damages, P200,000.00 as exemplary damages, plus P100,000.00 as actual damages;

(c)

for the defendant to pay plaintiffs the amount of P30,000.00 as attorney's fees, plus P500.00 for every appearance, or a total of P10,500.00 for 21 actual appearance (sic) in court, P2,000.00 as incidental litigation expenses, and to pay the cost of the suit.

SO ORDERED.[16]

Aggrieved, petitioner appealed to the Court of Appeals (CA for brevity) which affirmed the judgment of the trial court in toto and denied petitioner's motion for reconsideration.

Hence, the present petition of PAL, raising the following issues:

I

WHETHER PRIVATE RESPONDENTS WERE LATE CHECKED-IN PASSENGERS AND WHETHER THE FAILURE OF AN AIRLINE TO ACCOMMODATE A PASSENGER WHO CHECKED IN LATE IS ACTIONABLE SO AS TO ENTITLE THEM TO DAMAGES.

II

ASSUMING ARGUENDO THAT PETITIONER IS LIABLE, WHETHER THE AMOUNT OF DAMAGES AWARDED TO PRIVATE RESPONDENTS IS EXCESSIVE, UNCONSCIONABLE AND UNREASONABLE.[17]

In support of the first issue, petitioner argues:

(1) While ordinarily, the findings of the CA are accepted as conclusive by this Court, there are instances when the Court may make its own findings such as when the appellate court based its findings on speculation, surmises or conjectures. The appellate court erroneously gave too much reliance on the testimony of Baltazar who is a disgruntled former employee and relative of private respondent Amor. He was not present at the time of the incident. Baltazar merely interpreted the flight manifest and made a lot of speculations which is undeserving of attention and merit.

(2) Its employees are adequately trained and service oriented that they would not dare violate company rules and regulations. They are aware of the drastic consequences that may befall them as what happened to Baltazar.

(3) As to PR 180, private respondents were merely waitlisted in said flight hence it was known to them that their accommodation in said flight was dependent upon the failure of any confirmed passenger to check-in within the regulation check-in time. Unfortunately for them, all the confirmed passengers on PR 180 checked-in on time.

In support of the second issue, petitioner contends:

(1) The award of actual, moral and exemplary damages to private respondents have no factual nor legal basis at all. Its failure to accommodate private respondents on Flights PR 178, 278 and 180 was not motivated by bad faith or malice but due to a situation which private respondents brought upon themselves. It had exerted utmost and sincere effort to lessen the "agony and predicament" of private respondents. They immediately made protective bookings for private respondents on the 2:30 p.m. flight, PR 278, which unfortunately was cancelled due to "aircraft situation". Upon cancellation of PR 278, they made special arrangements to enable private respondents to have first priority in PR 180 in case of a "no show" confirmed passenger.

(2) To award damages to a passenger who checked-in late would place a premium or reward for breach of contract that would encourage passengers to intentionally check-in late with the expectation of an award of damages.

(3) Moral and exemplary damages as well as attorney's fees are not recoverable in damage suits predicated on

breach of contract of carriage unless there is evidence of fraud, malice or bad faith on the part of the carrier. Even assuming *arguendo* that petitioner is liable for damages, the amounts awarded in favor of private respondents are excessive, unreasonable and unconscionable. The primary object of an award of damages in a civil action is compensation or indemnity or to repair the wrong that has been done. Damages awarded should be equal to, and commensurate with, the injury sustained.

(4) It was erroneous to award damages in favor of Jane Gamil when she never appeared before the trial court to prove her claim for damages.

In their Comment, private respondents stress that the fact they were not late in checking-in for PR 178 has been substantially established in the hearing before the trial court and affirmed by the CA. They maintain that, contrary to the assertion of petitioner, they have established their case not only by a preponderance of evidence but by proof that is more than what is required by law justifying the factual findings of the trial court and the CA.

Private respondents point out that since the issues raised by this petition are factual and do not fall under exceptional circumstances, there is nothing left to be reviewed or examined by the Supreme Court.

As to the damages awarded, private respondents contend that the amounts awarded are not excessive, unconscionable or unreasonable because of the high-handed, malicious, dictatorial and savage act of petitioner's employee which caused them untold mental anguish, excruciating pain, public contempt and ridicule, sleepless nights and other forms of moral suffering.

In its Reply, petitioner reiterates its earlier points and questions once more the credibility of private respondents' witnesses, particularly Atty. Owen Amor, Salvador Gonzales and Manuel Baltazar who are related to the respondents by blood or affinity.

In their Rejoinder, private respondents aver that the findings of facts of the courts *a quo* were based not only on the testimonies of their witnesses but also on petitioner's own employee, Lloyd Fojas, who testified that there were non-revenue, go-show and waitlisted passengers who were accommodated in PR 178. They reiterate their position that where there is a question regarding the credibility of witnesses, the findings of trial courts are generally not disturbed by appellate courts. Finally, as to the damages awarded, private respondents claim that there was substantial basis in awarding such amounts.

Evidently, in resolving the two issues raised in the present petition, it is inevitable and most crucial that we first determine the question whether or not the CA erred in upholding the RTC ruling that private respondents were late in checking-in. Both issues call for a review of the factual findings of the lower courts.

In petitions for review on certiorari under Rule 45 of the Rules of Court, the general rule is that only questions of law may be raised by the parties and passed upon by this Court.[18] Factual findings of the appellate court are generally binding on us especially when in complete accord with the findings of the trial court.[19] This is because it is not our function to analyze or weigh the evidence all over again.[20] However, this general rule admits of exceptions, to wit:

- (a) where there is grave abuse of discretion; (b) when the finding is grounded entirely on speculations, surmises or conjectures; (c) when the inference made is manifestly mistaken, absurd or impossible; (d) when the judgment of the Court of Appeals was based on a misapprehension of facts; (e) when the factual findings are conflicting; (f) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee; (g) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and, (h) where the findings of fact of the Court of Appeals are contrary to those of the trial court, or are mere conclusions without citation of specific evidence, or where the facts set

forth by the petitioner are not disputed by the respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[21]

Petitioner invokes exception (b).

As to the first issue: Whether or not private respondents checked-in on time for PR 178. The determination of this issue is necessary because it is expressly stipulated in the airline tickets issued to private respondents that PAL will consider the reserved seat cancelled if the passenger fails to check-in at least thirty minutes before the published departure time.[22]

After a careful review of the records, we find no reason to disturb the affirmance by the CA of the findings of the trial court that the private respondents have checked-in on time; that they reached the airport at 6:20 a.m., based on the testimonies of private respondent Judy Amor, and witnesses Salvador Gonzales and Atty. Owen Amor who were consistent in their declarations on the witness stand and corroborated one another's statements; and that the testimony of petitioner's lone witness, Lloyd Fojas is not sufficient to overcome private respondents' evidence.

We have repeatedly held that the truth is established not by the number of witnesses but by the quality of their testimonies.[23] In the present case, it cannot be said that the quality of the testimony of petitioner's lone witness is greater than those of the private respondents. Fojas testified that when respondents went to the check-in counter, there were no more persons in that area since all the passengers already boarded the plane.[24] However, the testimonies of Manuel Baltazar and Judy Amor together with the manifest, Exhibits "E", "E-1" and "E-2", point to the fact that many passengers were not able to board said flight, including confirmed passengers, because of overbooking.[25]

It is a well-entrenched principle that absent any showing of grave abuse of discretion or any palpable error in its findings, this Court will not question the probative weight accorded by the lower courts to the various evidence presented by the parties. As we explained in *Superlines Transportation Co. Inc., vs. ICC Leasing & Financing Corporation*: [26]

The Court is not tasked to calibrate and assess the probative weight of evidence adduced by the parties during trial all over again...So long as the findings of facts of the Court of Appeals are consistent with or are not palpably contrary to the evidence on record, this Court shall decline to embark on a review on the probative weight of the evidence of the parties.[27] (Emphasis supplied)

It is also well established that findings of trial courts on the credibility of witnesses is entitled to great respect and will not be disturbed on appeal except on very strong and cogent grounds.[28] Petitioner failed to demonstrate that the trial court committed any error in upholding the testimonies of private respondents' witnesses. We find that the CA committed no reversible error in sustaining the findings of facts of the trial court.

Private respondents who had confirmed tickets for PR 178 were bumped-off in favor of non-revenue passengers. Witness Manuel Baltazar, a former Acting Manager of petitioner, evaluated the manifest for PR 178 and found that there were non-revenue passengers allowed to go on board. He specifically identified the family of Labanda, a certain Mr. Luz, petitioner's former branch manager, and, a certain Mr. Moyo. [29] Although petitioner had every opportunity to refute such testimony, it failed to present any countervailing evidence. Instead, petitioner merely focused on assailing the credibility of Baltazar on the ground that he was a disgruntled employee and a relative of private respondents. Apart from the bare allegations in petitioner's pleadings, no evidence was ever presented in court to substantiate its claim that Baltazar was a disgruntled employee that impelled him to testify against petitioner.

As to his relationship with private respondents, this Court has repeatedly held that a witness' relationship to the

victim does not automatically affect the veracity of his or her testimony.[30] While this principle is often applied in criminal cases, we deem that the same principle may apply in this case, albeit civil in nature. If a witness' relationship with a party does not ipso facto render him a biased witness in criminal cases where the quantum of evidence required is proof beyond reasonable doubt, there is no reason why the same principle should not apply in civil cases where the quantum of evidence is only preponderance of evidence.

As aptly observed by the CA which we hereby adopt:

Ironically for the defendant, aside from appellant's assumption that Baltazar could be a disgruntled former employee of their company and could be biased (which same reason could be attributed to Lloyd Fojas) due to a distant relationship with the plaintiff, it offered no proof or evidence to rebut, demean and contradict the substance of the testimony of Baltazar on the crucial point that plaintiffs-appellees were bumped off to accommodate non-revenue, waitlisted or go-show passengers. On this fact alone, defendant's position weakens while credibly establishing that indeed plaintiffs arrived at the airport on time to check-in for Flight PR 178. Further emphasis must be made that Lloyd Fojas even affirmed in court that he can not recall how many PR 178 boarding passes he had at the check-in counter because management has authority to accommodate in any flight and correspondingly issue boarding passes to non-revenue passengers (pages 15-16, TSN, January 24, 1990).[31]

Indeed, petitioner, through its lone witness Fojas, could only answer during his examination on the witness stand that he is unable to recall the circumstances recommending the issuances of boarding passes to waitlisted and that it is the management which has the authority to issue boarding passes to non-revenue passengers.[32] Even in the afternoon flight, PR 180, Fojas could not squarely deny that confirmed paying passengers were bumped-off in favor of non-revenue ones.[33]

The CA likewise correctly concluded that there was overbooking in the morning flight on the basis of the testimony of private respondents' witness Manuel Baltazar, to wit: lauren

ATTY. CALICA:

Q-

There was a memorandum order of the PAL prohibiting overbooking. Are you aware of CAB Regulation No. 7 on boarding passengers?

WITNESS:

A-

Yes.

ATTY. CALICA:

Q-

You will agree with me that this regulation allows only overbooking by 10%?

WITNESS:

A-

Yes, that is a government regulation and the company regulation is different.

COURT:

Q-

But in the morning flight of May 8, 1988, granting that the government regulation allows only 10% overbooking, can you tell the Court from the manifest itself whether it exceeded the 10% overbooking allowed by the regulation reckoning from the 109 passenger seater?

WITNESS:

A-

With the capacity of 109, 10% of it will be 10 or 11, so if we add this it will not exceed 120 passengers.

COURT:

Q-

In that flight how many were confirmed?

WITNESS:

Q-

In that flight those passengers that were confirmed have a total of 126.

COURT:

Q-

Even if when allowed the government regulation of overbooking, you will still exceed the allowable overbooking number?

WITNESS:

A-

Yes.[34] (Emphasis supplied)

This fact of overbooking, again, was not adequately refuted by petitioner's evidence.

The appellate court aptly sustained the trial court in giving probative weight to the testimony of private respondent Judy Amor that there were other passengers who were not accommodated in flight PR 178, to wit:

Q:

And how about you, what did you do when you arrived at the Legaspi Airport at 6:20 while Salvador Gonzales

was at the check-in counter to pay the tickets?

A:

I went to the Office of the OIC Manager at the right side of the Legaspi Terminal.

...

Q:

Who was that Manager?

A:

I was able to know his name as Delfin Canonizado.

Q:

There were also people there near the table of Mr. Canonizado, do you know what were they doing?

A:

They were making complaints also because they were also scheduled for flight on that day. They were not accommodated.[35] (Emphasis supplied)

We have noted an inconsistency in the testimony of private respondents' witness, Salvador Gonzales in the direct and cross-examinations. In his direct testimony, Gonzales stated that while he was waiting in line at the check-in counter, with four persons still ahead of him, Lloyd Fojas asked him to approach the counter, took private respondents' tickets and wrote something on them. It was only later on when his turn came, that he found out that what Fojas wrote on the tickets was "late check-n 7:05". On cross-examination, Gonzales testified that it was only after the four persons ahead of him were accommodated that Fojas wrote on the tickets "late check-in 7:05". However, upon clarificatory questions propounded by the trial court, Gonzales was able to clarify that Fojas had written the time on the ticket before the four persons ahead of him were entertained at the counter.[36] Understandably, the lower courts found no cogent reason to discredit the testimony of witness Gonzales.

We have held in an earlier case that a witness may contradict himself on the circumstances of an act or different acts due to a long series of questions on cross-examination during which the mind becomes tired to such a degree that the witness does not understand what he is testifying about, especially if the questions, in their majority are leading and tend to make him ratify a former contrary declaration.[37]

In fine, the findings of fact of the trial court, as sustained by the CA, have to be respected. As we have consistently held, trial courts enjoy the unique advantage of observing at close range the demeanor, deportment and conduct of witnesses as they give their testimonies. Thus, assignment to declarations on the witness stand is best done by them who, unlike appellate magistrates, can weigh firsthand the testimony of a witness.[38]

Anent the second issue as to whether or not the damages awarded are excessive, we rule in the affirmative. The Court of Appeals committed an error in sustaining the ruling of the trial court requiring petitioner to reimburse private respondents the amount of four plane tickets, including the ticket for private respondent minor Carlo Benitez.

As admitted by private respondent Judy in her testimony, the only confirmed tickets for the morning flight (PR 178) are the tickets for herself, her infant son, Gian Carlo and her sister Jane Gamil. They had another ticket which Judy bought for a certain Dra. Emily Chua who backed out and whose ticket they had intended to be transferred to Carlo Benitez.[39] Although it is clearly stated in the ticket that the same is non-transferrable,[40] Judy testified that a PAL employee issued another ticket in the name of Carlo Benitez in lieu of the ticket issued for Dra. Chua. However, an examination of the ticket issued, Exhibit "C", discloses that it does not state therein the flight number or time of departure. Consequently, in the absence of competent evidence, private respondent Carlo Benitez' complaint should be dismissed.

We find no justifiable reason that warrants the award of P100,000.00 as actual damages in favor of all private respondents. Article 2199 of the Civil Code, provides that actual or compensatory damages may only be given for such pecuniary loss suffered by him as he has duly proved. We explained in *Chan vs. Maceda*[41] that:

...A court cannot rely on speculations, conjectures or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have been suffered by the injured party and on the best obtainable evidence of the actual amount thereof. It must point out specific facts which could afford a basis for measuring whatever compensatory or actual damages are borne.[42]

All that was proved by herein private respondents was the amount of the purchase price of the plane tickets of private respondents Judy, Jane and Gian Carlo. Only said amounts should therefore be considered in awarding actual damages. As borne by the records, private respondent Judy Amor paid P466.00 each for her ticket and that of Jane; while she paid P46.60 for her infant Gian Carlo.[43] The amount of actual damages should therefore be reduced to P978.60, payable to private respondent Judy Amor.

As to moral damages.

It should be stressed that moral damages are not intended to enrich a plaintiff at the expense of the defendant but are awarded only to allow the former to obtain means, diversion or amusements that will serve to alleviate the moral suffering he has undergone due to the defendant's culpable action.[44] We emphasized in *Philippine National Bank vs. Court of Appeals* that moral damages are not punitive in nature but are designed to somehow alleviate the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury unjustly caused to a person. We have held that even though moral damages are incapable of pecuniary computation, it should nevertheless be proportional to and in approximation of the suffering inflicted. And, to be recoverable, such damage must be the proximate result of a wrongful act or omission the factual basis for which is satisfactorily established by the aggrieved party. [45]

In the case at bar, private respondent Judy Amor testified that she felt "ashamed" when the plane took off and they were left at the airport since there were many people there who saw them including dentists like her. She also related that she missed the Philippine Dental Convention scheduled on the 8th of May, 1988 where she was supposed to attend as a dentist and officer of the Sorsogon Dental Association. They tried to look for buses bound for Manila but missed those scheduled in the morning. They went back to the airport but still failed to take an afternoon flight. Hence, she was forced to take a bus that evening for Manila which did not allow her to sleep that night.[46] Private respondent Judy however did not miss the whole convention as she was able to leave on the night of the first day of the week-long convention.

While there is no hard and fast rule for determining what would be a fair amount of moral damages, generally, the amount awarded should be commensurate with the actual loss or injury suffered.[47]

The CA erred in upholding the trial court's award of moral damages based on Judy Amor's claim that there was a denigration of her social and financial standing. Private respondent Judy failed to show that she was treated rudely

or disrespectfully by petitioner's employees despite her stature as a dentist. As we held in *Kierulf vs. Court of Appeals*[48]

The social and financial standing of Lucila cannot be considered in awarding moral damages. The factual circumstances prior to the accident show that no "rude and rough" reception, no "menacing attitude," no "supercilious manner," no "abusive language and highly scornful reference" was given her. The social and financial standing of a claimant of moral damages may be considered in awarding moral damages only if he or she was subjected to contemptuous conduct despite the offender's knowledge of his or her social and financial standing.[49] (Emphasis supplied)

Nevertheless, we hold that private respondent Judy Amor is entitled to moral damages. In a number of cases, we have pronounced that air carriage is a business possessed with special qualities. In *Singson vs. Court of Appeals*,[50] we explained that:

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. 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. 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.[51]

As the lower courts have found, evidence positively show that petitioner has accommodated waitlisted and non-revenue passengers and had overbooked more than what is allowed by law, to the prejudice of private respondents who had confirmed tickets. Overbooking amounts to bad faith[52] and therefore petitioner is liable to pay moral damages to respondent Judy Amor.

Considering all the foregoing, we deem that the award of P250,000.00 as moral damages in favor of private respondent Judy Amor is exorbitant. Where the damages awarded are far too excessive compared to the actual losses sustained by the aggrieved party, the same should be reduced to a more reasonable amount.[53] We find the amount of P100,000.00 to be sufficient, just and reasonable.

We consider the award of actual damages in favor of private respondent Jane Gamil to be inappropriate considering the testimony of Judy Amor that she was the one who paid for the tickets.[54] Likewise, the appellate court erred in sustaining the award of moral damages in favor of Jane Gamil as she never testified in court. It has been held that where the plaintiff fails to take the witness stand and testify as to his social humiliation, wounded feelings and anxiety, moral damages cannot be recovered".[55]

As to the award of exemplary damages, Article 2234 of the Civil Code provides that the claimant must show that he would be entitled to moral, temperate or compensatory damages before the court may consider the question whether or not exemplary damages should be awarded.

Consequently, private respondent Jane Gamil, not being entitled to actual and moral damages, is not entitled to exemplary damages.

The award of exemplary damages in favor of private respondent Judy Amor is warranted in this case.[56] Waitlisted and non-revenue passengers were accommodated while private respondent Judy Amor who had fully paid her fare and was a confirmed passenger was unduly deprived of enplaning. Petitioner was guilty of overbooking its flight to the prejudice of its confirmed passengers. This practice cannot be countenanced especially considering that the business of air carriage is imbued with public character. We have ruled that where in breaching the contract of carriage, the airline is shown to have acted in bad faith, as in this case,[57] the award

of exemplary damages in addition to moral and actual damages is proper.[58] However, as in the matter of the moral damages awarded by the trial court, we consider the amount of P200,000.00 as exemplary damages to be far too excessive. The amount of P25,000.00 is just and proper.

We find the award of attorney's fees in this case to be in order since it is well settled that the same 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.[59]

WHEREFORE, we affirm the decision of the Court of Appeals with the following MODIFICATIONS:

- Petitioner is ordered to pay private respondent Judy Amor the amount of P978.60 as and for actual damages; P100,000.00 as moral damages; P25,000.00 as exemplary damages; and attorney's fees in the amount of P30,000.00 plus P500.00 for every appearance of private respondent's lawyer, or a total of P10,500.00 for 21 actual appearances in court; P2,000.00 as incidental litigation expenses; and costs of suit.
- The claim for damages of private respondent Jane Gamil is DENIED for lack of evidence.
- The complaint of private respondent Carlo Benitez is DISMISSED for lack of cause of action.

No pronouncement as to costs.

SO ORDERED.

Puno, (Chairman), Quisumbing, Callejo, Sr., and Tinga, JJ., concur.

[1] Penned by Justice Conrado Vasquez, Jr. and concurred in by Justices Arturo B. Buena and Jose C. Dela Rama.

[2] Entitled, "Judy Amor, et al., Plaintiffs-Appellees, vs. Philippine Airlines, Inc., Defendant-Appellant".

[3] Docketed as Civil Case No. 5390.

[4] TSN, Judy Amor, October 4, 1989, pp. 6, 10-11.

[5] Id., pp. 3-4, 6, 23-24.

[6] Id., pp. 4-6; TSN, Salvador Gonzales, September 27, 1979, pp. 6-8.

[7] TSN, Judy Amor, October 4, 1989, pp. 5-6.

[8] TSN, Salvador Gonzales, September 27, 1989, pp. 6-10.

[9] TSN, Owen Amor, September 28, 1989, pp. 5-9.

[10] TSN, Judy Amor, October 4, 1989, pp. 12-13.

[11] TSN, Lloyd Fojas, November 29, 1989, p. 20.

[12] TSN, Judy Amor, October 4, 1980, pp. 49-50.

[13] TSN, October 25, 1980, pp. 30, 56-57.

[14] TSN, November 29, 1989, pp. 4-19.

[15] TSN, January 24, 1990, pp. 15-16.

[16] Records, p. 251.

- [17] Rollo, p. 23.
- [18] Vicente vs. Planters Development Bank, G.R. No. 136112, January 28, 2003; Almira vs. Court of Appeals, G.R. No. 115966, March 20, 2003.
- [19] Lantin vs. Court of Appeals, G.R. No. 127141, April 30, 2003; Sevilla vs. Sevilla, G.R. No. 150179, April 30, 2003.
- [20] Potenciano vs. Reynoso, G.R. No. 140707, April 22, 2003.
- [21] Twin Towers Condominium Corp. vs. Court of Appeals, G.R. No. 123552, February 27, 2003.
- [22] Exhibits "A" to "D".
- [23] People vs. Caloza, Jr., G.R. No. 138404-86, January 28, 2003.
- [24] TSN, November 29, 1989, pp. 13-16.
- [25] TSN, October 25, 1989, pp. 56-57; October 4, 1989, pp. 5-7; and September 28, 1989, pp. 32-33.
- [26] G.R. No. 150673, February 28, 2003.
- [27] Ibid.
- [28] Bayne Adjusters and Inc. vs. Court of Appeals, 323 SCRA 231, 236 (2000).
- [29] TSN, October 25, 1989, pp. 33, 35-36.
- [30] Roca vs. Court of Appeals, G.R. No. 114917, 350 SCRA 414, 421 (2001).
- [31] Rollo, p. 10.
- [32] TSN, January 24, 1990, pp. 15-16.
- [33] TSN, November 29, 1989, pp. 22-23.
- [34] TSN, October 25, 1989, pp. 56-57.
- [35] TSN, October 4, 1989, pp. 5-7.
- [36] TSN, September 27, 1989, pp.6-8, 24-25.
- [37] People vs. Limob. G.R. No. 24810, 49 Phil. 94, 99-100 (1926).
- [38] Tugade vs. Court of Appeals. G.R. No. 120874, July 31, 2003.
- [39] TSN, October 4, 1989, p. 23.
- [40] Exhibits "C", "3".
- [41] G.R. No. 142591, April 3, 2003.
- [42] Ibid.
- [43] Exhibits "A", "1"; "B", "2"; "D", "4".
- [44] Philippine Airlines vs. Court of Appeals, G.R. No. 120262, 275 SCRA 621, 630 (1997).
- [45] G.R. No. 12 6908, January 16, 2003.

[46] TSN, October 4, 1980, pp. 10-12, 16-17.

[47] Del Rosario vs. Court of Appeals, G.R. No. 118325, 267 SCRA 158, 173 (1997).

[48] G.R. No. 99301, 269 SCRA 433 (1997).

[49] Id., at p. 446.

[50] G.R. No. 119995, 282 SCRA 149 (1997).

[51] Id., at p. 153. See also Philippine Airlines vs. Court of Appeals, G.R. No. 120262, 275 SCRA 621, 626 (1997).

[52] Zalamea vs. Court of Appeals, 228 SCRA 23, 31 (1993).

[53] Radio Communications of the Phils., Inc. vs. Rodriguez, G.R. No. 83768, 182 SCRA 899, 907 (1990).

[54] TSN, October 4, 1989, pp. 10-11.

[55] Pan American World Airways vs. Intermediate Appellate Court, G.R. No. 68988, June 21, 1990, 186 SCRA 687, 690 (1990).

[56] Del Rosario vs. Court of Appeals, G.R. No. 118325, 267 SCRA 158, 173 (1997).

[57] See Note 52.

[58] Singson vs. Court of Appeals, G.R. No. 119995, 282 SCRA 149, 163 (1997).

[59] Id., p. 165.

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