

## **PRISCILLA L. TAN, PETITIONER, VS. NORTHWEST AIRLINES, INC., RESPONDENT.**

*G.R. No. 135802. March 03, 2000*

Ponente: PARDO, J.

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### **PARDO, J.:**

Petitioner Priscilla L. Tan appeals via certiorari from the decision of the Court of Appeals[1] affirming with modification[2] the decision of the trial court,[3] ordering respondent to pay petitioner the following amounts: (1) P15,000.00, as actual damages; (2) P100,000.00, as moral damages; (3) P50,000.00, as exemplary damages; (4) P30,000.00, as and for attorney's fees; and (6) costs.

The case before the Court traces its roots from an action for damages for breach of contract of air carriage for failure to deliver petitioner's baggages on the date of her arrival filed on June 29, 1994 with the Regional Trial Court, Makati, Branch 150 against respondent Northwest Airlines, Inc., a foreign corporation engaged in the business of air transportation.

The antecedent facts are as follows:

On May 31, 1994, Priscilla L. Tan and Connie Tan boarded Northwest Airlines Flight 29 in Chicago, U. S. A. bound for the Philippines, with a stop-over at Detroit, U. S. A. They arrived at the Ninoy Aquino International Airport (NAIA) on June 1, 1994 at about 10:40 in the evening.

Upon their arrival, petitioner and her companion Connie Tan found that their baggages were missing. They returned to the airport in the evening of the following day and they were informed that their baggages might still be in another plane in Tokyo, Japan.

On June 3, 1994, they recovered their baggages and discovered that some of its contents were destroyed and soiled.

Claiming that they "suffered mental anguish, sleepless nights and great damage" because of Northwest's failure to inform them in advance that their baggages would not be loaded on the same flight they boarded and because of their delayed arrival, they demanded from Northwest Airlines compensation for the damages they suffered. On June 15, 1994 and June 22, 1994, petitioner sent demand letter to Northwest Airlines, but the latter did not respond. Hence, the filing of the case with the regional trial court.

In its answer to the complaint, respondent Northwest Airlines did not deny that the baggages of petitioners were not loaded on Northwest Flight 29. Petitioner's baggages could not be carried on the same flight because of "weight and balance restrictions." However, the baggages were loaded in another Northwest Airlines flight, which arrived in the evening of June 2, 1994.

When petitioner received her baggages in damaged condition, Northwest offered to either (1) reimburse the cost or repair of the bags; or (2) reimburse the cost for the purchase of new bags, upon submission of receipts.

After due trial, on June 10, 1996, the trial court rendered decision finding respondent Northwest Airlines, Inc. liable for damages, as follows:

"WHEREFORE, judgement is hereby rendered ordering the defendant to pay the plaintiff the following amounts:

- P15,000.00, as actual damages;
- P100,000.00, as moral damages;
- P50,000.00, as exemplary damages;
- P30,000.00, as and for attorney's fees and
- Costs.

"SO ORDERED.

"Given this 10th day of June, 1996 at Makati City.

"ERNA FALLORAN ALIPOSA

"Judge"[4]

Respondent Northwest Airlines, Inc. appealed from the trial court's decision to the Court of Appeals contending that the court a quo erred in finding it guilty of breach of contract of carriage and of willful misconduct and awarded damages which had no basis in fact or were otherwise excessive.

On September 30, 1998, the Court of Appeals promulgated its decision partially granting the appeal by deleting the award of moral and exemplary damages and reducing the attorney's fees, specifically providing that:

"WHEREFORE, PREMISES CONSIDERED, the appeal is hereby GRANTED partially. The Decision of the lower court dated June 10, 1996 is AFFIRMED with the modification that the award of moral and exemplary damages is deleted and the amount of attorney's fees is reduced to ten thousand pesos (P10,000.00).

"No pronouncement as to costs.

"SO ORDERED."[5]

Hence, this appeal.[6]

The issue is whether respondent is liable for moral and exemplary damages for willful misconduct and breach of the contract of air carriage.

The petition is without merit.

We agree with the Court of Appeals that respondent was not guilty of willful misconduct. "For willful misconduct to exist there must be a showing that the acts complained of were impelled by an intention to violate the law, or were in persistent disregard of one's rights. It must be evidenced by a flagrantly or shamefully wrong or improper conduct."[7]

Contrary to petitioner's contention, there was nothing in the conduct of respondent which showed that they were motivated by malice or bad faith in loading her baggages on another plane. Due to weight and balance restrictions, as a safety measure, respondent airline had to transport the baggages on a different flight, but with the same expected date and time of arrival in the Philippines. As aptly explained by respondent:

"To ensure the safety of each flight, Northwest's personnel determine every flight's compliance with "weight

and balance restrictions." They check the factors like weight of the aircraft used for the flight gas input, passenger and crew load, baggage weight, all in relation to the wind factor anticipated on the flight. If there is an overload, i.e., a perceived safety risk, the aircraft's load will be reduced by off-loading cargo, which will then be placed on the next available flight." [8]

It is admitted that respondent failed to deliver petitioner's luggages on time. However, there was no showing of malice in such failure. By its concern for safety, respondent had to ship the baggages in another flight with same date of arrival.

Hence, the Court of Appeals correctly held that respondent did not act in bad faith. [9]

"Bad faith does not simply connote bad judgment or negligence, it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill-will that partakes of the nature of fraud." [10]

"Where in breaching the contract of carriage the defendant airline is not shown to have acted fraudulently or in bad faith, liability for damages is limited to the natural and probable consequences of the breach of obligation which the parties had foreseen or could have reasonably foreseen. In that case, such liability does not include moral and exemplary damages." [11]

Consequently, we have no reason to reverse the decision of the Court of Appeals.

WHEREFORE, the Court DENIES the petition for lack of merit. The Court AFFIRMS the decision of the Court of Appeals deleting, however, the award of attorney's fees.

No costs.

### **SO ORDERED.**

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

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[1] In CA-G. R. CV No. 54438, decision promulgated on September 30, 1998, Justice Martin Jr., ponente, and Justices Callejo, Sr. and Umali, concurring.

[2] The Court of Appeals deleted the award of moral and exemplary damages and reduced the attorney's fees to P10,000.00.

[3] In Civil Case No. 94-2042, Regional Trial Court, Branch 150, Makati City, Judge Erna Falloran Aliposa, presiding.

[4] Trial Court's Decision, Rollo, p. 41.

[5] Court of Appeal's Decision, Rollo, p. 34.

[6] Filed on October 21, 1996, Rollo, pp. 5-20.

[7] Luna vs. Court of Appeals, 216 SCRA 107, 113 [1992].

[8] Respondent's Comment, Rollo, pp. 60-78, at p. 64.

[9] Sarkies Tours Philippines, Inc. vs. Court of Appeals, 280 SCRA 58 [1997].

[10] Ford Philippines, Inc. vs. Court of Appeals, 267 SCRA 320 [1997]; Llorente, Jr. vs. Sandiganbayan, 287 SCRA 382 [1998].

[11] Cathay Pacific Airways, Ltd. vs. Court of Appeals, 219 SCRA 520, 526 [1993].

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