

**AIR FRANCE, PETITIONER, VS. BONIFACIO H. GILLEGO,
SUBSTITUTED BY HIS SURVIVING HEIRS REPRESENTED BY DOLORES
P. GILLEGO, RESPONDENT.**

G.R. No. 165266. December 15, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

For review is the Decision[1] dated June 30, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 56587 which affirmed the Decision[2] dated January 3, 1996 of the Regional Trial Court (RTC) of Makati City, Branch 137 in Civil Case No. 93-2328.

The facts follow:

Sometime in April 1993, respondent Bonifacio H. Gillego,[3] then incumbent Congressman of the Second District of Sorsogon and Chairman of the House of Representatives Committee on Civil, Political and Human Rights, was invited to participate as one of the keynote speakers at the 89th Inter-Parliamentary Conference Symposium on Parliament Guardian of Human Rights to be held in Budapest, Hungary and Tokyo, Japan from May 19 to 22, 1993. The Philippines is a member of the Inter-Parliamentary Union which organized the event.[4]

On May 16, 1993, respondent left Manila on board petitioner Air France's aircraft bound for Paris, France. He arrived in Paris early morning of May 17, 1993 (5:00 a.m.). While waiting at the De' Gaulle International Airport for his connecting flight to Budapest scheduled at 3:15 p.m. that same day, respondent learned that petitioner had another aircraft bound for Budapest with an earlier departure time (10:00 a.m.) than his scheduled flight. He then went to petitioner's counter at the airport and made arrangements for the change in his booking. He was given a corresponding ticket and boarding pass for Flight No. 2024 and also a new baggage claim stub for his checked-in luggage.[5]

However, upon arriving in Budapest, respondent was unable to locate his luggage at the claiming section. He sought assistance from petitioner's counter at the airport where petitioner's representative verified from their computer that he had indeed a checked-in luggage. He was advised to just wait for his luggage at his hotel and that petitioner's representatives would take charge of delivering the same to him that same day. But said luggage was never delivered by petitioner's representatives despite follow-up inquiries by respondent.

Upon his return to the Philippines, respondent's lawyer immediately wrote petitioner's Station Manager complaining about the lost luggage and the resulting damages he suffered while in Budapest. Respondent claimed that his single luggage contained his personal effects such as clothes, toiletries, medicines for his hypertension, and the speeches he had prepared, including the notes and reference materials he needed for the conference. He was thus left with only his travel documents, pocket money and the clothes he was wearing. Because petitioner's representatives in Budapest failed to deliver his luggage despite their assurances and his repeated follow-ups, respondent was forced to shop for personal items including new clothes and his medicines. Aside from these unnecessary expenditures of about \$1,000, respondent had to prepare another speech, in which he had difficulty

due to lack of data and information. Respondent thus demanded the sum of P1,000,000.00 from the petitioner as compensation for his loss, inconvenience and moral damages.[6] Petitioner, however, continued to ignore respondent's repeated follow-ups regarding his lost luggage.

On July 13, 1993, respondent filed a complaint[7] for damages against the petitioner alleging that by reason of its negligence and breach of obligation to transport and deliver his luggage, respondent suffered inconvenience, serious anxiety, physical suffering and sleepless nights. It was further alleged that due to the physical, mental and emotional strain resulting from the loss of his luggage, aggravated by the fact that he failed to take his regular medication, respondent had to be taken to a medical clinic in Tokyo, Japan for emergency treatment. Respondent asserted that as a common carrier which advertises and offers its services to the public, petitioner is under obligation to observe extraordinary diligence in the vigilance over checked-in luggage and to see to it that respondent's luggage entrusted to petitioner's custody would accompany him on his flight and/or could be claimed by him upon arrival at his point of destination or delivered to him without delay. Petitioner should therefore be held liable for actual damages (\$2,000.00 or P40,000.00), moral damages (P1,000,000.00), exemplary damages (P500,000.00), attorney's fees (P50,000.00) and costs of suit.

Petitioner filed its answer[8] admitting that respondent was issued tickets for the flights mentioned, his subsequent request to be transferred to another flight while at the Paris airport and the loss of his checked-in luggage upon arrival at Budapest, which luggage has not been retrieved to date and the respondent's repeated follow-ups ignored. However, as to the rest of respondent's allegations, petitioner said it has no knowledge and information sufficient to form a belief as to their truth. As special and affirmative defense, petitioner contended that its liability for lost checked-in baggage is governed by the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage. Under the said treaty, petitioner's liability for lost or delayed registered baggage of respondent is limited to 250 francs per kilogram or US\$20.00, which constitutes liquidated damages and hence respondent is not entitled to any further damage.

Petitioner averred that it has taken all necessary measures to avoid loss of respondent's baggage, the contents of which respondent did not declare, and that it has no intent to cause such loss, much less knew that such loss could occur. The loss of respondent's luggage is due to or occasioned by force majeure or fortuitous event or other causes beyond the carrier's control. Diligent, sincere and timely efforts were exerted by petitioner to locate respondent's missing luggage and attended to his problem with utmost courtesy, concern and dispatch. Petitioner further asserted that it exercised due diligence in the selection and supervision of its employees and acted in good faith in denying respondent's demand for damages. The claims for actual, moral and exemplary damages and attorney's fees therefore have no basis in fact and in law, and are, moreover speculative and unconscionable.

In his Reply,[9] respondent maintained that the loss of his luggage cannot be attributed to anything other than petitioner's simple negligence and its failure to perform the diligence required of a common carrier.

On January 3, 1996, the trial court rendered its decision in favor of respondent and against the petitioner, as follows:

WHEREFORE, premises considered, judgment is rendered ordering defendant to pay plaintiff:

- The sum of P1,000,000.00 as moral damages;
- The sum of P500,000.00 as exemplary damages;
- The sum of P50,000.00 as attorney's fees; and
- The costs.

SO ORDERED.[10]

The trial court found there was gross negligence on the part of petitioner which failed to retrieve respondent's checked-in luggage up to the time of the filing of the complaint and as admitted in its answer, ignored respondent's repeated follow-ups. It likewise found petitioner guilty of willful misconduct as it persistently disregarded the rights of respondent who was no ordinary individual but a high government official. As to the applicability of the limited liability for lost baggage under the Warsaw Convention, the trial court rejected the argument of petitioner citing the case of *Alitalia v. Intermediate Appellate Court*.^[11]

Petitioner appealed to the CA, which affirmed the trial court's decision. The CA noted that in the memorandum submitted by petitioner before the trial court it was mentioned that respondent's luggage was eventually found and delivered to him, which was not denied by respondent and thus resulted in the withdrawal of the claim for actual damages. As to the trial court's finding of gross negligence, bad faith and willful misconduct which justified the award of moral and exemplary damages, the CA sustained the same, stating thus:

It bears stressing that defendant-appellant committed a breach of contract by its failure to deliver the luggage of plaintiff-appellee on time despite demand from plaintiff-appellee. The unreasonable delay in the delivery of the luggage has not been satisfactorily explained by defendant-appellant, either in its memorandum or in its appellant's brief. Instead of justifying the delay, defendant-appellant took refuge under the provisions of the Warsaw Convention to escape liability. Neither was there any showing of apology on the part of defendant-appellant as to the delay. Furthermore, the unapologetic defendant-appellant even faulted plaintiff-appellee for not leaving a local address in Budapest in order for the defendant-appellant to contact him (plaintiff-appellee) in the event the luggage is found. This actuation of defendant-appellant is a clear showing of willful misconduct and a deliberate design to avoid liability. It amounts to bad faith. As elucidated by Chief Justice Hilario Davide, Jr., "[b]ad 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 a known duty through some motive or interest or ill will that partakes of the nature of fraud."^[12] (Emphasis supplied.)

Its motion for reconsideration having been denied, petitioner filed the present Rule 45 petition raising the following grounds:

I.

THE AMOUNTS AWARDED TO RESPONDENT AS MORAL AND EXEMPLARY DAMAGES ARE EXCESSIVE, UNCONSCIONABLE AND UNREASONABLE.

II.

THERE IS NO LEGAL AND FACTUAL BASIS TO THE FINDINGS OF THE TRIAL COURT AND THE COURT OF APPEALS THAT PETITIONER'S ACTIONS WERE ATTENDED BY GROSS NEGLIGENCE, BAD FAITH AND WILLFUL MISCONDUCT AND THAT IT ACTED IN A WANTON, FRAUDULENT, RECKLESS, OPPRESSIVE OR MALEVOLENT MANNER, TO JUSTIFY THE AWARD OF MORAL AND EXEMPLARY DAMAGES.^[13]

Petitioner assails the trial and appellate courts for awarding extravagant sums to respondent that already tend to punish the petitioner and enrich the respondent, which is not the function at all of moral damages. Upon the facts established, the damages awarded are definitely not proportionate or commensurate to the wrong or injury supposedly inflicted. Without belittling the problems respondent experienced in Budapest after losing his luggage, petitioner points out that despite the unfortunate incident, respondent was able to reconstruct the speeches, notes and study guides he had earlier prepared for the conference in Budapest and Tokyo, and to attend, speak and participate therein as scheduled. Since he prepared the research and wrote his speech, considering his acknowledged and long-standing expertise in the field of human rights in the Philippines, respondent should have

had no difficulty delivering his speech even without his notes. In addition, there is no evidence that members of the Inter-Parliamentary Union made derogatory statements or even knew that he was unprepared for the conference. Bearing in mind that the actual damages sought by respondent was only \$2,000.00, then clearly the trial court went way beyond that amount in determining the appropriate damages, inspite of the fact that the respondent eventually got back his baggage.[14]

Comparing the situation in this case to other cases awarding similar damages to the aggrieved passenger as a result of breaches of contract by international carriers, petitioner argues that even assuming that respondent was entitled to moral and exemplary damages, the sums adjudged should be modified or reduced. It is stressed that petitioner or its agents were never rude or discourteous toward respondent; he was not subjected to humiliating treatment or comments as in the case of *Lopez, et al. v. Pan American World Airways*,[15] *Ortigas, Jr. v. Lufthansa German Airlines*[16] and *Zulueta v. Pan American World Airways, Inc.*[17]. The mere fact that respondent was a Congressman should not result in an automatic increase in the moral and exemplary damages recoverable. As held in *Kierulf v. Court of Appeals*[18] the social and financial standing of a claimant may be considered only if he or she was subjected to contemptuous conduct despite the offender's knowledge of his or her social and financial standing.[19]

In any event, petitioner invokes the application of the exception to the rule that only questions of law may be entertained by this Court in a petition for review under Rule 45 as to allow a factual review of the case. First, petitioner contends that it has always maintained that the "admission" in its answer was only made out of inadvertence, considering that it was inconsistent with the special and affirmative defenses set forth in the same pleading. The trial court incorrectly concluded that petitioner had not prepared a Property Irregularity Report (PIR) but fabricated one only as an afterthought. A PIR can only be initiated upon the instance of a passenger whose baggage had been lost, and in this case it was prepared by the station where the loss was reported. The PIR in this case was automatically and chronologically recorded in petitioner's computerized system. Respondent himself admitted in his testimony that he gave his Philippine address and telephone number to the lady in charge of petitioner's complaint desk in Budapest. It was not necessary to furnish a passenger with a copy of the PIR since its purpose is for the airline to trace a lost baggage. What respondent ought to have done was to make a xerox copy thereof for himself.[20]

Petitioner reiterates that there was no bad faith or negligence on its part and the burden is on the respondent to prove by clear and convincing evidence that it acted in bad faith. Respondent in his testimony miserably failed to prove that bad faith, fraud or ill will motivated or caused the delay of his baggage. This Court will surely agree that mere failure of a carrier to deliver a passenger's baggage at the agreed place and time did not ipso facto amount to willful misconduct as to make it liable for moral and exemplary damages. Petitioner adduced evidence showing that it exerted diligent, sincere and timely efforts to locate the missing baggage, eventually leading to its recovery. It attended to respondent's problem with utmost courtesy, concern and dispatch. Respondent, moreover, never alleged that petitioner's employees were at anytime rude, mistreated him or in anyway showed improper behavior.[21]

The petition is partly meritorious.

A business intended to serve the travelling public primarily, a contract of carriage is imbued with public interest.[22] The law governing common carriers consequently imposes an exacting standard. Article 1735 of the Civil Code provides that in case of lost or damaged goods, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required by Article 1733. Thus, in an action based on a breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent. All that he has to prove is the existence of the contract and the

fact of its non-performance by the carrier.[23]

That respondent's checked-in luggage was not found upon arrival at his destination and was not returned to him until about two years later[24] is not disputed. The action filed by the respondent is founded on such breach of the contract of carriage with petitioner who offered no satisfactory explanation for the unreasonable delay in the delivery of respondent's baggage. The presumption of negligence was not overcome by the petitioner and hence its liability for the delay was sufficiently established. However, upon receipt of the said luggage during the pendency of the case in the trial court, respondent did not anymore press on his claim for actual or compensatory damages and neither did he adduce evidence of the actual amount of loss and damage incurred by such delayed delivery of his luggage. Consequently, the trial court proceeded to determine only the propriety of his claim for moral and exemplary damages, and attorney's fees.

In awarding moral damages for breach of contract of carriage, the breach must be wanton and deliberately injurious or the one responsible acted fraudulently or with malice or bad faith.[25] Not every case of mental anguish, fright or serious anxiety calls for the award of moral damages.[26] Where in breaching the contract of carriage the 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 the obligation which the parties had foreseen or could have reasonably foreseen. In such a case the liability does not include moral and exemplary damages.[27]

Bad faith should be established by clear and convincing evidence. The settled rule is that the law always presumes good faith such that any person who seeks to be awarded damages due to the acts of another has the burden of proving that the latter acted in bad faith or with ill motive.[28]

In the case of *Tan v. Northwest Airlines, Inc.*,[29] we sustained the CA's deletion of moral and exemplary damages awarded to a passenger whose baggage were loaded to another plane with the same expected date and time of arrival but nevertheless not delivered to her on time. We found that respondent carrier was not motivated by malice or bad faith in doing so due to weight and balance restrictions as a safety measure. In another case involving the off-loading of private respondents' baggage to another destination, taken together with petitioner airline's neglect in providing the necessary accommodations and assistance to its stranded passengers, aggravated by the discourteous acts of its employees, we upheld the CA in sustaining the trial court's decision awarding moral and exemplary damages and attorney's fees. We pointed out that it is PAL's duty to provide assistance to private respondents and to any other passenger similarly inconvenienced due to delay in the completion of the transport and the receipt of their baggage.[30]

After a careful review, we find that petitioner is liable for moral damages.

Petitioner's station manager, Ma. Lourdes Reyes, testified that upon receiving the letter-complaint of respondent's counsel, she immediately began working on the PIR from their computerized data. Based on her testimony, a PIR is issued at the airline station upon complaint by a passenger concerning missing baggage. From the information obtained in the computer-printout, it appears that a PIR[31] was initiated at petitioner's Budapest counter. A search telex for the missing luggage was sent out on the following dates: May 17, May 21 and May 23, 1993. As shown in the PIR printout, the information respondent supposedly furnished to petitioner was only his Philippine address and telephone number, and not the address and contact number of the hotel where he was billeted at Budapest. According to the witness, PIR usually is printed in two originals, one is kept by the station manager and the other copy given to the passenger. The witness further claimed that there was no record or entry in the PIR of any follow-up call made by the respondent while in Budapest.[32] Respondent, on the other hand, claimed that he was not given a copy of this PIR and that his repeated telephone calls to inquire about his lost luggage were ignored.

We hold that the trial and appellate courts did not err in finding that petitioner acted in bad faith in repeatedly ignoring respondent's follow-up calls. The alleged entries in the PIR deserve scant consideration, as these have not been properly identified or authenticated by the airline station representative in Budapest who initiated and inputted the said entries. Furthermore, this Court cannot accept the convenient excuse given by petitioner that respondent should be faulted in allegedly not giving his hotel address and telephone number. It is difficult to believe that respondent, who had just lost his single luggage containing all his necessities for his stay in a foreign land and his reference materials for a speaking engagement, would not give an information so vital such as his hotel address and contact number to the airline counter where he had promptly and frantically filed his complaint. And even assuming arguendo that his Philippine address and contact number were the only details respondent had provided for the PIR, still there was no explanation as to why petitioner never communicated with respondents concerning his lost baggage long after respondent had already returned to the Philippines. While the missing luggage was eventually recovered, it was returned to respondent only after the trial of this case.

Furthermore, the alleged copy of the PIR confirmed that the only action taken by the petitioner to locate respondent's luggage were telex searches allegedly made on May 17, 21 and 23, 1993. There was not even any attempt to explain the reason for the loss of respondent's luggage. Clearly, petitioner did not give the attention and care due to its passenger whose baggage was not transported and delivered to him at his travel destination and scheduled time. 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 which entitles the passenger to an award of moral damages.[33] What the law considers as bad faith which may furnish the ground for an award of moral damages would be bad faith in securing the contract and in the execution thereof, as well as in the enforcement of its terms, or any other kind of deceit.[34]

While respondent failed to cite any act of discourtesy, discrimination or rudeness by petitioner's employees, this did not make his loss and moral suffering insignificant and less deserving of compensation. In repeatedly ignoring respondent's inquiries, petitioner's employees exhibited an indifferent attitude without due regard for the inconvenience and anxiety he experienced after realizing that his luggage was missing. Petitioner was thus guilty of bad faith in breaching its contract of carriage with the respondent, which entitles the latter to the award of moral damages.

However, we agree with petitioner that the sum of P1,000,000.00 awarded by the trial court is excessive and not proportionate to the loss or suffering inflicted on the passenger under the circumstances. As in *Trans World Airlines v. Court of Appeals*[35] where this Court after considering the social standing of the aggrieved passenger who is a lawyer and director of several companies, the amount of P500,000.00 awarded by the trial court as moral damages was still reduced to P300,000.00, the moral damages granted to herein respondent should likewise be adjusted.

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. On the other hand, the aim of awarding exemplary damages is to deter serious wrongdoings.[36] 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. Simply put, the amount of damages must be fair, reasonable and proportionate to the injury suffered.[37]

Where as in this case the air carrier failed to act timely on the passenger's predicament caused by its employees' mistake and more than ordinary inadvertence or inattention, and the passenger failed to show any act of arrogance, discourtesy or rudeness committed by the air carrier's employees, the amounts of P200,000.00,

P50,000.00 and P30,000.00 as moral damages, exemplary damages and attorney's fees would be sufficient and justified.[38]

WHEREFORE, the petition is DENIED. The Decision dated June 30, 2004 of the Court of Appeals in CA-G.R. CV No. 56587 is hereby AFFIRMED with MODIFICATION in that the award of moral damages, exemplary damages and attorney's fees are hereby reduced to P200,000.00, P50,000.00 and P30,000.00, respectively.

With costs against the petitioner.

SO ORDERED.

Carpio Morales, (Chairperson), Bersamin, Mendoza,[*] and Sereno, JJ., concur.

[*] Designated additional member per Special Order No. 921 dated December 13, 2010.

[1] CA rollo, pp. 129-136. Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Elvi John S. Asuncion and Mariano C. Del Castillo (now a Member of this Court).

[2] Records, pp. 318-326. Penned by Judge Jaime D. Discaya.

[3] Died during the pendency of the appeal and duly substituted by his surviving spouse and children. CA rollo, pp. 122-124.

[4] Records, pp. 76-159.

[5] Id. at 160-162.

[6] Id. at 163-164.

[7] Id. at 1-6.

[8] Id. at 17-25.

[9] Id. at 26.

[10] Id. at 326.

[11] G.R. No. 71929, December 4, 1990, 192 SCRA 9.

[12] CA rollo, pp. 134-135.

[13] Rollo, p. 9.

[14] Id. at 10-12.

[15] No. L-22415, March 30, 1966, 16 SCRA 431.

[16] No. L-28773, June 30, 1975, 64 SCRA 610.

[17] No. L-28589, February 29, 1972, 43 SCRA 397.

[18] G.R. Nos. 99301 & 99343, March 13, 1997, 269 SCRA 433, 446.

[19] Rollo, pp. 13-16.

[20] Id. at 17-21.

[21] *Id.* at 23-25.

[22] *British Airways v. Court of Appeals*, G.R. No. 121824, January 29, 1998, 285 SCRA 450, 457-458.

[23] *China Air Lines, Ltd. v. Court of Appeals*, G.R. Nos. 45985 & 46036, May 18, 1990, 185 SCRA 449, 457.

[24] *Records*, p. 231.

[25] *Cervantes v. Court of Appeals*, G.R. No. 125138, March 2, 1999, 304 SCRA 25, 32, citing *Perez v. Court of Appeals*, No. L-20238, January 30, 1965, 13 SCRA 137, 142.

[26] *China Air Lines, Ltd. v. Court of Appeals*, G.R. No. 129988, July 14, 2003, 406 SCRA 113, 133.

[27] *Cathay Pacific Airways Ltd. v. Vasquez*, G.R. No. 150843, March 14, 2003, 399 SCRA 207, 222-223, citing *Tan v. Northwest Airlines, Inc.*, G.R. No. 135802, March 3, 2000, 327 SCRA 263, 268 and *Morris v. Court of Appeals*, G.R. No. 127957, February 21, 2001, 352 SCRA 428, 436.

[28] *Ford Philippines, Inc. v. Court of Appeals*, G.R. No. 99039, February 3, 1997, 267 SCRA 320, 328-329, citing *Philippine Air Lines v. Miano*, G.R. No. 106664, March 8, 1995, 242 SCRA 235, 240 and *Chua v. Court of Appeals*, G.R. No. 112660, March 14, 1995, 242 SCRA 341, 345.

[29] G.R. No. 135802, March 3, 2000, 327 SCRA 263.

[30] *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 119641, May 17, 1996, 257 SCRA 33, 45.

[31] *Records*, p. 212.

[32] TSN, February 6, 1995, pp. 5-27; *records*, pp. 288-310.

[33] See *Trans World Airlines v. Court of Appeals*, No. L-78656, August 30, 1988, 165 SCRA 143, 147 and *Alitalia Airways v. Court of Appeals*, G.R. No. 77011, July 24, 1990, 187 SCRA 763, 771.

[34] *Japan Airlines v. Simangan*, G.R. No. 170141, April 22, 2008, 552 SCRA 341, 362, citing *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 119641, May 17, 1996, 257 SCRA 33, 43.

[35] No. L-78656, August 30, 1988, 165 SCRA 143, 147-148.

[36] *Philippine Airlines, Incorporated v. Court of Appeals*, G.R. No. 123238, September 22, 2008, 566 SCRA 124, 138.

[37] *Id.*, citing *Singson v. Court of Appeals*, G.R. No. 119995, November 18, 1997, 282 SCRA 149, 163-164.

[38] See *Singson v. Court of Appeals*, G.R. No. 119995, November 18, 1997, 282 SCRA 149.

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