

PARMANAND SHEWARAM, PLAINTIFF-APPELLEE, VS. PHILIPPINE AIR LINES, INC., DEFENDANT-APPELLANT.*G. R. No. 20099. July 07, 1966*

Ponente: ZALDIVAR. J.

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Before the municipal court of Zamboanga City, plaintiff-appellee Pamanand Shewaram instituted an action to recover damages suffered by him due to the alleged failure of defendant-appellant Philippine Air Lines, Inc. to observe extraordinary diligence in the vigilance and carriage of his luggage. After trial the municipal court of Zamboanga City rendered judgment ordering the appellant to pay appellee P373.00 as actual damages, P100.00 as exemplary damages, P150.00 as attorney's fees, and the costs of the action.

Appellant Philippine Air Lines appealed to the Court of First Instance of Zamboanga City. After hearing the Court of First Instance of Zamboanga City modified the judgment of the inferior court by ordering the appellant to pay the appellee only the sum of P373.00 as actual damages, with legal interest from May 6, 1960, and the sum of P150.00 as attorney's fees, eliminating the award of exemplary damages.

From the decision of the Court of First Instance of Zamboanga City, appellant appeals to this Court on a question of law, assigning two errors allegedly committed by the lower court *a quo*, to wit:

- The lower court erred in not holding that plaintiff-appellee was bound by the provisions of the tariff regulations filed by defendant-appellant with the civil aeronautics board and the conditions of carriage printed at the back of the plane ticket stub.
- The lower court erred in not dismissing this case or Halting the liability of the defendant-appellant to P100. 00.

The facts of this case, as found by the trial court, quoted from the decision appealed from, are as follows:

"That Parmanand Shewaram, the plaintiff herein, was on November 23, 1959, a paying passenger with ticket No. 4-30976, on defendant's aircraft flight No. 976/910 from Zamboanga City bound for Manila; that defendant is a common carrier engaged in airline transportation in the Philippines, offering its services to the public to carry and transport passengers and cargoes from and to different points in the Philippines; that on the above-mentioned date of November 23, 1959, he checked in (3) pieces of baggages --- a suitcase and two (2) other pieces; that the suitcase was mislabeled by defendant's personnel in Zamboanga City, as I.G.N. (for Iligan) with claim check No. B-3883, instead of JML (for Manila). When plaintiff Parmanand Shewaram arrived in Manila on the date of November 23, 1959, his suitcase did not arrive with his flight because it was sent to Iligan. So, he made a claim with defendant's personnel in Manila airport and another suitcase similar to his own which was the only baggage left for that flight, the rest having been claimed and released to the other passengers of said flight, was given to the plaintiff for him to take delivery but he did not and refused to take delivery of the same on the ground that it was not his, alleging that all his clothes were white and the National transistor 7 and a Rollflex camera were not found inside the suitcase, and moreover, it contained a pistol which he did not have nor placed inside his suitcase;

that after inquiries made by defendant's personnel in Manila from different airports where the suitcase is question must have been sent, it was found to have reached Iligan and the station agent of the PAL in Iligan caused the same to be sent to Manila for delivery to Mr. Shewaram and which suitcase belonging to the plaintiff herein arrived in Manila airport on November 24, 1959; that it was also found out that the suitcase shown to and given to the plaintiff for delivery which he refused to take delivery belonged to a certain Del Rosario who was bound for Iligan in the same flight with Mr. Shewaram; that when the plaintiff's suitcase arrived in Manila as stated above on November 24, 1959, he was informed by Mr. Tomas Blanco, Jr., the acting station agent of the Manila airport of the arrival of his suitcase but of course minus his Transistor Radio 7 and the Rollflex Camera; that Shewaram made demand for these two (2) items or for the value thereof but the same was not complied with by defendant.

x x x x x x .

"It is admitted by defendant that there was mistake in tagging the suitcase of plaintiff as IGN. The tampering of the suitcase is more apparent when on November 24, 1959, when the suitcase arrived in Manila, defendant's personnel could open the same in spite of the fact that plaintiff had it under key when he delivered the suitcase to defendant's personnel in Zamboanga City. Moreover, it was established during the hearing that there was space in the suitcase where the two items in question could have been placed. It was also shown that as early as November 24, 1959, when plaintiff was notified by phone of the arrival of the suitcase, plaintiff asked that a check of the things inside his suitcase be made and defendant admitted that the two items could not be found inside the suitcase. There was no evidence on record sufficient to show that plaintiff's suitcase was never opened during the time it was placed in defendant's possession and prior to its recovery by the plaintiff. However, defendant had presented evidence that it had authority to open passengers' baggage to verify and find its ownership or identity. Exhibit "1" of the defendant would show that the baggage that was offered to plaintiff as his own was opened and the plaintiff denied ownership of the contents of the baggage. This proven fact that baggage may and could be opened without the necessary authorization and presence of its owner, applied too, to the suitcase of plaintiff which was mislabeled to Iligan City because of mistagging. The possibility of what happened in the baggage of Mr. del Bosario at the Manila Airport in his absence could have also happened to plaintiff's suitcase at Iligan City in the absence of plaintiff. Hence, the Court believes that these two items were really in plaintiff's suitcase and defendant should be held liable for the same by virtue of its contract of carriage.

"It is clear from the above-quoted portions of the decision of the trial court that said court had found that the suitcase of the appellee was tampered, and the transistor radio and the camera contained therein were lost, and that the loss of those articles was due to the negligence of the employees of the appellant. The evidence shows that the transistor radio cost P197.00 and the camera cost P176.00, so the total value of the two lost articles was P373.00.

There is no question that the appellant is a common carrier.[1] As such common carrier the appellant, from the nature of its business and for reasons of public policy, is bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by it according to the circumstances of each case.[2] It having been shown that the loss of the transistor radio and the camera of the appellee, costing P373.00, was due to the negligence of the employees of the appellant, it is clear that the appellant should be held liable for the payment of said loss.[1]

It is, however, contended by the appellant that its liability should be limited to the amount stated in the conditions of carriage printed at the back of the plane ticket stub which was issued to the appellee, which conditions are embodied in Domestic Tariff Regulations No. 2 which was filed with the Civil Aeronautics Board. One of those conditions, which is pertinent to the issue raised by the appellant in this case, provides as follows:

"The liability, if any, for loss or damage to checked baggage or for delay in the delivery thereof is limited to its value and, unless the passenger declares in advance a higher valuation and pay an additional charge therefor,

the value shall be conclusively deemed not to exceed P100.00 for each ticket."

The appellant maintains that in view of the failure of the appellee to declare a higher value for his luggage, and pay the freight on the basis of said declared value when he checked such luggage at the Zamboanga City airport, pursuant to the abovequoted condition, appellee can not demand payment from the appellant of an amount in excess of P100. 00. The law that may be invoked, in this connection, is Article 1750 of the New Civil Code which provides as follows:

"A contract fixing the sum that may be recovered by the owner or shipper for the loss, destruction, or deterioration of the goods is valid, if it is reasonable and just under the circumstances, and has been fairly and freely agreed upon."

In accordance with the above-quoted provision of Article 1750 of the New Civil Code, the pecuniary liability of a common carrier may, by contract, be limited to a fixed amount. It is required, however, that the contract must be "reasonable and just under the circumstances and has been fairly and freely agreed upon.

"The requirements provided in Article 1750 of the New Civil Code must be complied with before a common carrier can claim a limitation of its pecuniary liability in case of loss, destruction or deterioration of the goods it has undertaken to transport. In the case before us We believe that the requirements of said article have not been met. It can not be said that the appellee had actually entered into a contract with the appellant, embodying the conditions as printed at the back of the ticket stub that was issued by the appellant to the appellee. The fact that those conditions are printed at the back of the ticket stub in letter so small that they are hard to read would not warrant the presumption that the appellee was aware of those conditions such that he had "fairly and freely agreed" to those conditions. The trial court has categorically stated in its decision that the "Defendant admits that passengers do not sign the ticket, much less did plaintiff herein sign his ticket when he made the flight on November 23, 1959." We hold, therefore, that the appellee is not, and can not be, bound by the conditions of carriage found at the back of the ticket stub issued to him when he made the flight on appellant's plane on November 23, 1959.

The liability of the appellant in the present case should be governed by the provisions of Articles 1734 and 1735 of the New Civil Code, which We quote as follows:

"Art. 1734. Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:

- (1) Flood, storm, earthquake, or other natural disaster or calamity;
- (2) Act of the public enemy in war, whether international or civil;
- (3) Act or mission of the shipper or owner of the goods;
- (4) The character of the goods or defects in the packing or in the containers;
- (5) Order or act of competent public authority."

"Art. 1735. In all cases other than those mentioned in Nos. 1, 2, 3, 4, and 5 of the preceding article, if the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required in article 1733."

It having been clearly found by the trial court that the transistor radio and the camera of the appellee were lost as a result of the negligence of the appellant as a common carrier, the liability of the appellant is clear - it must pay the appellee the value of those two articles.

In the case of Tsmael and Co. vs. Barretto, 51 Phil. 90, cited by the trial court in support of its decision, this Court had laid down the rule that the carrier can not limit its liability for injury to or loss of goods shipped where such injury or loss was caused by its own negligence.

"Corpus Juris, volume 10, p. 154, says:

'Par. 194. Reasonableness of Limitations.- The validity of stipulations limiting the carrier's liability is to be determined by their reasonableness and their conformity to the sound public policy, in accordance with which the obligations of the carrier to the public are settled. It cannot lawfully stipulate for exemption from liability, unless such exemption is just and reasonable, and unless the contract is freely and fairly made. No contractual limitation is reasonable which is subversive of public policy.

'Par. 195. 7. What, Limitations of Liability Permissible.- a. Negligence - (1) Rule in America-(a) In absence of Organic or Statutory Provisions Regulating Subject- aa. Majority Rule - In the absence of statute, it is settled by the weight of authority in the United States, that whatever limitations against its common-law liability are permissible to a carrier, it cannot limit its liability for injury to or loss of goods shipped, where such injury or loss is caused by its own negligence. This is the common law doctrine and it makes no difference that there is no statutory prohibition against contracts of this character.

'Par. 196. bb. Considerations on which Rule Based.-The rule, it is said, rests on considerations of public policy. The undertaking is to carry the goods, and to relieve the shipper from all liability for loss or damage arising from negligence in performing its contract is to ignore the contract itself. The natural effect of a limitation of liability against negligence is to induce want of care on the part of the carrier in the performance of its duty. The shipper and the common carrier are not on equal terms; the shipper must send his freight by the common carrier, or not at all; he is therefore entirely at the mercy of the carrier unless protected by the higher power of the law against being forced into contracts limiting the carrier's liability. Such contracts are wanting in the element of voluntary assent.

'Par. 197. cc . Application and Extent of Rule.- (aa) Negligence of Servants.- The rule prohibiting limitation or liability for negligence is often stated as a prohibition of any contract relieving the carrier from loss or damage caused by its own negligence or misfeasance, or that of its servants; and it has been specifically decided in many cases that no contract limitation will relieve the carrier from responsibility for the negligence, unskillfulness, or carelessness of its employees."

(Cited in Tsmael and Co. vs. Barretto, 51 Phil. 90, 98, 99).

IN VIEW OF THE FOREGOING, the decision appealed from is affirmed, with costs against the appellant.

Concepcion, C.J., Reyes, Barrera, Dizon, Regala, Makalintal, Bengzon, and Sanchez, JJ., concur.

[1] Article 1732, New Civil Code.

[2] Articles 1733, 1734, 1735, and 1745, New Civil Code.

[3] Articles 1734, 1735, 1736, 1754, New Civil Code.

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