

FRANKLIN G. GACAL AND CORAZON M. GACAL, THE LATTER ASSISTED BY HER HUSBAND, FRANKLIN G. GACAL, PETITIONERS, VS. PHILIPPINE AIR LINES, INC., AND THE HONORABLE PEDRO SAMSON C. ANI...

G.R. NO. 55300. March 15, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the decision of the Court of First Instance of South Cotabato, Branch 1*, promulgated on August 26, 1980 dismissing three (3) consolidated cases for damages: Civil Case No. 1701, Civil Case No. 1773 and Civil Case No. 1797 (Rollo, p. 35).

The facts, as found by respondent court, are as follows:

"Plaintiffs Franklin G. Gacal and his wife, Corazon M. Gacal, Bonifacio S. Anislag and his wife, Mansueta L. Anislag, and the late Elma de Guzman, were then passengers boarding defendant's BAC 1-11 at Davao Airport for a flight to Manila, not knowing that on the same flight, Macalinog, Taurac Pendatum known as Commander Zapata, Nasser Omar, Liling Pusuan Radia, Dimantong Dimarosing and Mike Randa, all of Marawi City and members of the Moro National Liberation Front (MNLF), were their co-passengers, three (3) armed with grenades, two (2) with .45 caliber pistols, and one with a .22 caliber pistol. Ten (10) minutes after take off at about 2:30 in the afternoon, the hijackers brandishing their respective firearms announced the hijacking of the aircraft and directed its pilot to fly to Libya. With the pilot explaining to them especially to its leader, Commander Zapata, of the inherent fuel limitations of the plane and that they are not rated for international flights, the hijackers directed the pilot to fly to Sabah. With the same explanation, they relented and directed the aircraft to land at Zamboanga Airport, Zamboanga City for refueling. The aircraft landed at 3:00 o'clock in the afternoon of May 21, 1976 at Zamboanga Airport. When the plane began to taxi at the runway, it was met by two armored cars of the military with machine guns pointed at the plane, and it stopped there. The rebels thru its commander demanded that a DC-aircraft take them to Libya with the President of the defendant company as hostage and that they be given \$375,000 and six (6) armalites, otherwise they will blow up the plane if their demands will not be met by the government and Philippine Air Lines. Meanwhile, the passengers were not served any food nor water and it was only on May 23, a Sunday, at about 1:00 o'clock in the afternoon that they were served 1/4 slice of a sandwich and 1/10 cup of PAL water. After that, relatives of the hijackers were allowed to board the plane but immediately after they alighted therefrom, an armored car bumped the stairs. That commenced the battle between the military and the hijackers which led ultimately to the liberation of the surviving crew and the passengers, with the final score of ten (10) passengers and three (3) hijackers dead on the spot and three (3) hijackers captured.

"City Fiscal Franklin G. Gacal was unhurt. Mrs. Corazon M. Gacal suffered injuries in the course of her jumping out of the plane when it was peppered with bullets by the army and after two (2) hand grenades exploded inside the plane. She was hospitalized at General Santos Doctors Hospital, General Santos City, for two (2) days, spending P245.60 for hospital and medical expenses, Assistant City Fiscal Bonifacio S. Anislag also escaped unhurt but Mrs. Anislag suffered a fracture at the radial bone of her left elbow for which she was

hospitalized and operated on at the San Pedro Hospital, Davao City, and therefore, at Davao Regional Hospital, Davao City, spending P4,500.00. Elma de Guzman died because of that battle. Hence, the action of damages instituted by the plaintiffs demanding the following damages, to wit:

Civil Case No. 1701 -

City Fiscal Franklin G. Gacal and Mrs. Corazon M. Gacal - actual damages: P245.60 for hospital and medical expenses of Mrs. Gacal; P8,995.00 for their personal belongings which were lost and not recovered; P50,000.00 each for moral damages; and P5,000.00 for attorney's fees, apart from the prayer for an award of exemplary damages (Record, pp. 4-6, Civil Case No. 1701).

Civil Case No. 1773 -

xxx xxx xxx

Civil Case No. 1797 -

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The trial court, on August 26, 1980, dismissed the complaints finding that all the damages sustained in the premises were attributed to force majeure.

On September 12, 1980 the spouses Franklin G. Gacal and Corazon M. Gacal, plaintiffs in Civil Case No. 1701, filed a notice of appeal with the lower court on pure questions of law (Rollo, p. 55) and the petition for review on certiorari was filed with this Court on October 20, 1980 (Rollo, p. 30).

The Court gave due course to the petition (Rollo, p. 147) and both parties filed their respective briefs but petitioner failed to file reply brief which was noted by the Court in the resolution dated May 3, 1982 (Rollo, p. 183).

Petitioners alleged that the main cause of the unfortunate incident is the gross, wanton and inexcusable negligence of respondent Airline personnel in their failure to frisk the passengers adequately in order to discover hidden weapons in the bodies of the six (6) hijackers. They claimed that despite the prevalence of skyjacking, PAL did not use a metal detector which is the most effective means of discovering potential skyjackers among the passengers (Rollo, pp. 6-7).

Respondent Airline averred that in the performance of its obligation to safely transport passengers as far as human care and foresight can provide, it has exercised the utmost diligence of a very cautious person with due regard to all circumstances, but the security checks and measures and surveillance precautions in all flights, including the inspection of baggages and cargo and frisking of passengers at the Davao Airport were performed and rendered solely by military personnel who under appropriate authority had assumed exclusive jurisdiction over the same in all airports in the Philippines.

Similarly, the negotiations with the hijackers were a purely government matter and a military operation, handled by and subject to the absolute and exclusive jurisdiction of the military authorities. Hence, it concluded that the accident that befell RP-C1161 was caused by fortuitous event, force majeure and other causes beyond the control of the respondent Airline.

The determinative issue in this case is whether or not hijacking or air piracy during martial law and under the circumstances obtaining herein, is a caso fortuito or force majeure which would exempt an aircraft from payment of damages to its passengers whose lives were put in jeopardy and whose personal belongings were lost during the incident.

Under the Civil Code, common carriers are required to exercise extraordinary diligence in their vigilance over the goods and for the safety of passengers transported by them, according to all the circumstances of each case (Article 1733). They are presumed at fault or to have acted negligently whenever a passenger dies or is injured (Philippine Airlines, Inc. v. National Labor Relations Commission, 124 SCRA 583 [1983]) or for the loss, destruction or deterioration of goods in cases other than those enumerated in Article 1734 of the Civil Code (Eastern Shipping Lines, Inc. v. Intermediate Appellate Court, 150 SCRA 463 [1987]).

The source of a common carrier's legal liability is the contract of carriage, and by entering into said contract, it binds itself to carry the passengers safely as far as human care and foresight can provide. There is breach of this obligations if it fails to exert extraordinary diligence according to all the circumstances of the case in exercise of the utmost diligence of a very cautious person (Isaac v. Ammen Transportation Co., 101 Phil. 1046 [1957]; Juntilla v. Fontanar, 136 SCRA 624 [1985]).

It is the duty of a common carrier to overcome the presumption of negligence (Philippine National Railways v. Court of Appeals, 139 SCRA 87 [1985]) and it must be shown that the carrier had observed the required extraordinary diligence of a very cautious person as far as human care and foresight can provide or that the accident was caused by a fortuitous event (Estrada v. Consolacion, 71 SCRA 523 [1976]). Thus, as ruled by this Court, no person shall be responsible for those "events which could not be foreseen or which though foreseen were inevitable." (Article 1174, Civil Code). The term is synonymous with *caso fortuito* (Lasam v. Smith, 45 Phil. 657 [1924]) which is of the same sense as "force majeure" (Words and Phrases, Permanent Edition, Vol. 17, p. 362).

In order to constitute a *caso fortuito* or *force majeure* that would exempt a person from liability under Article 1174 of the Civil Code, it is necessary that the following elements must concur: (a) the cause of the breach of the obligation must be independent of the human will (the will of the debtor or the obligor); (b) the event must be either unforeseeable or unavoidable; (c) the event must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and (d) the debtor must be free from any participation in, or aggravation of the injury to the creditor (Lasam v. Smith, 45 Phil. 657 [1924]; Austria v. Court of Appeals, 39 SCRA 527 [1971]; Estrada v. Consolacion, *supra*; Vasquez v. Court of Appeals, 138 SCRA 553 [1985]; Juan F. Nakpil & Sons v. Court of Appeals, 144 SCRA 596 [1986]). *Caso fortuito* or *force majeure*, by definition, are extraordinary events not foreseeable or avoidable, events that could not be foreseen, or which, though foreseen, are inevitable. It is, therefore, not enough that the event should not have been foreseen or anticipated, as is commonly believed, but it must be one impossible to foresee or to avoid. The mere difficulty to foresee the happening is not impossibility to foresee the same (Republic v. Luzon Stevedoring Corporation, 21 SCRA 279 [1967]).

Applying the above guidelines to the case at bar, the failure to transport petitioners safely from Davao to Manila was due to the skyjacking incident staged by six (6) passengers of the same plane, all members of the Moro National Liberation Front (MNLF), without any connection with private respondent, hence, independent of the will of either the PAL or of its passengers.

Under normal circumstances, PAL might have foreseen the skyjacking incident which could have been avoided had there been a more thorough frisking of passengers and inspection of baggages as authorized by R.A. No. 6235. But the incident in question occurred during Martial Law where there was a military take-over of airport security including the frisking of passengers and the inspection of their luggage preparatory to boarding domestic and international flights. In fact the military take-over was specifically announced on October 20, 1973 by General Jose L. Rancudo, Commanding General of the Philippine Air Force in a letter to Brig. Gen. Jesus Singson, then Director of the Civil Aeronautics Administration (Rollo, pp. 71-72) later confirmed shortly before the hijacking incident of May 21, 1976 by Letter of Instruction No. 399 issued on April 28, 1976 (Rollo, p. 72).

Otherwise stated, these event rendered it impossible for PAL to perform its obligations in a normal manner and obviously it cannot be faulted with negligence in the performance of duty taken over by the Armed Forces of the Philippines to the exclusion of the former.

Finally, there is no dispute that the fourth element has also been satisfied. Consequently the existence of force majeure has been established exempting respondent PA1 from the payment of damages to its passengers who suffered death or injuries in their persons and for loss of their baggages.

PREMISES CONSIDERED, the petition is hereby DISMISSED for lack of merit and the decision of the Court of First Instance of South Cotabato, Branch I is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

* Presided over by CFI Judge Pedro Samson C. Animas.

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