

CATHAY PACIFIC AIRWAYS, LTD, PETITIONER, VS. COURT OF APPEALS AND TOMAS L. ALCANTARA, RESPONDENTS.

G.R. No. 60501. March 05, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals which affirmed with modification that of the trial court by increasing the award of damages in favor of private respondent Tomas L. Alcantara.

The facts are undisputed: On 19 October 1975, respondent Tomas L. Alcantara was a first class passenger of petitioner Cathay Pacific Airways, Ltd. (CATHAY for brevity) on its Flight No. CX-900 from Manila to Hongkong and onward from Hongkong to Jakarta on Flight No. CX-711. The purpose of his trip was to attend the following day, 20 October 1975, a conference with the Director General of Trade of Indonesia, Alcantara being the Executive Vice-President and General Manager of Iligan Cement Corporation, Chairman of the Export Committee of the Philippine Cement Corporation, and representative of the Cement Industry Authority and the Philippine Cement Corporation. He checked in his luggage which contained not only his clothing and articles for personal use but also papers and documents he needed for the conference.

Upon his arrival in Jakarta, respondent discovered that his luggage was missing. When he inquired about his luggage from CATHAY's representative in Jakarta, private respondent was told that his luggage was left behind in Hongkong. For this, respondent Alcantara was offered \$20.00 as "inconvenience money" to buy his immediate personal needs until the luggage could be delivered to him.

His luggage finally reached Jakarta more than twenty four (24) hours after his arrival. However, it was not delivered to him at his hotel but was required by petitioner to be picked up by an official of the Philippine Embassy.

On 1 March 1976, respondent filed his complaint against petitioner with the Court of First Instance (now Regional Trial Court) of Lanao del Norte praying for temperate, moral and exemplary damages, plus attorney's fees.

On 18 April 1976, the trial court rendered its decision ordering CATHAY to pay plaintiff P20,000.00 for moral damages, P5,000.00 for temperate damages, P10,000.00 for exemplary damages, and P25,000.00 for attorney's fees, and the costs.[1]

Both parties appealed to the Court of Appeals. CATHAY assailed the conclusion of the trial court that it was accountable for breach of contract and questioned the non-application by the court of the Warsaw Convention as well as the excessive damages awarded on the basis of its finding that respondent Alcantara was rudely treated by petitioner's employees during the time that his luggage could not be found. For his part, respondent Alcantara assigned as error the failure of the trial court to grant the full amount of damages sought in his complaint.

On 11 November 1981, respondent Court of Appeals rendered its decision affirming the findings of fact of the

trial court but modifying its award by increasing the moral damages to P80,000.00, exemplary damages to P20,000.00 and temperate or moderate damages to P10,000.00. The award of P25,000.00 for attorney's fees was maintained.

The same grounds raised by petitioner in the Court of Appeals are reiterated before Us. CATHAY contends that: (1) the Court of Appeals erred in holding petitioner liable to respondent Alcantara for moral, exemplary and temperate damages as well as attorney's fees; and, (2) the Court of Appeals erred in failing to apply the Warsaw Convention on the liability of a carrier to its passengers.

On its first assigned error, CATHAY argues that although it failed to transport respondent Alcantara's luggage on time, the one-day delay was not made in bad faith so as to justify moral, exemplary and temperate damages. It submits that the conclusion of respondent appellate court that private respondent was treated rudely and arrogantly when he sought assistance from CATHAY's employees has no factual basis, hence, the award of moral damages has no leg to stand on.

Petitioner's first assigned error involves findings of fact which are not reviewable by this Court.[2] At any rate, it is not impressed with merit. Petitioner breached its contract of carriage with private respondent when it failed to deliver his luggage at the designated place and time, it being the obligation of a common carrier to carry its passengers and their luggage safely to their destination, which includes the duty not to delay their transportation,[3] and the evidence shows that petitioner acted fraudulently or in bad faith.

Moral damages predicated upon a breach of contract of carriage may only be recoverable in instances where the mishap results in death of a passenger,[4] or where the carrier is guilty of fraud or bad faith.[5]

In the case at bar, both the trial court and the appellate court found that CATHAY was grossly negligent and reckless when it failed to deliver the luggage of petitioner at the appointed place and time. We agree. CATHAY alleges that as a result of mechanical trouble, all pieces of luggage on board the first aircraft bound for Jakarta were unloaded and transferred to the second aircraft which departed an hour and a half later. Yet, as the Court of Appeals noted, petitioner was not even aware that it left behind private respondent's luggage until its attention was called by the Hongkong Customs authorities. More, bad faith or otherwise improper conduct may be attributed to the employees of petitioner. While the mere failure of CATHAY to deliver respondent's luggage at the agreed place and time did not ipso facto amount to willful misconduct since the luggage was eventually delivered to private respondent, albeit belatedly,[6] We are persuaded that the employees of CATHAY acted in bad faith. We refer to the deposition of Romulo Palma, Commercial Attache of the Philippine Embassy at Jakarta, who was with respondent Alcantara when the latter sought assistance from the employees of CATHAY. This deposition was the basis of the findings of the lower courts when both awarded moral damages to private respondent. Hereunder is part of Palma's testimony -

“Q:

What did Mr. Alcantara say, if any?

A:

Mr. Alcantara was of course I could understand his position. He was furious for the experience because probably he was thinking he was going to meet the Director-General the following day and, well, he was with no change of proper clothes and so, I would say, he was not happy about the situation.

Q:

What did Mr. Alcantara say?

A:

He was trying to press the fellow to make the report and if possible make the delivery of his baggage as soon as possible.

Q:

And what did the agent or duty officer say, if any?

A:

The duty officer, of course, answered back saying 'What can we do, the baggage is missing. I cannot do anything.' something like it. 'Anyhow you can buy anything you need, charged to Cathay Pacific.'

Q:

What was the demeanor or comportment of the duty officer of Cathay Pacific when he said to Mr. Alcantara 'You can buy anything chargeable to Cathay Pacific'?

A:

If I had to look at it objectively, the duty officer would like to dismiss the affair as soon as possible by saying indifferently 'Don't worry. It can be found.'"[7]

Indeed, the aforequoted testimony shows that the language and conduct of petitioner's representative towards respondent Alcantara was discourteous or arbitrary to justify the grant of moral damages. The CATHAY representative was not only indifferent and impatient; he was also rude and insulting. He simply advised Alcantara to buy anything he wanted. But even that was not sincere because the representative knew that the passenger was limited only to \$20.00 which, certainly, was not enough to purchase comfortable clothings appropriate for an executive conference. Considering that Alcantara was not only a revenue passenger but even paid for a first class airline accommodation and accompanied at the time by the Commercial Attache of the Philippine Embassy who was assisting him in his problem, petitioner or its agents should have been more courteous and accommodating to private respondent, instead of giving him a curt reply, "What can we do, the baggage is missing. I cannot do anything x x x x Anyhow, you can buy anything you need, charged to Cathay Pacific." CATHAY's employees should have been more solicitous to a passenger in distress and assuaged his anxieties and apprehensions. To compound matters, CATHAY refused to have the luggage of Alcantara delivered to him at his hotel; instead, he was required to pick it up himself and an official of the Philippine Embassy. Under the circumstances, it is evident that petitioner was remiss in its duty to provide proper and adequate assistance to a paying passenger, more so one with first class accommodation.

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.[8] Conversely, if the defendant airline is shown to have acted fraudulently or in bad faith, the award of moral and exemplary damages is proper.

However, respondent Alcantara is not entitled to temperate damages, contrary to the ruling, of the court a quo, in the absence of showing that he sustained some pecuniary loss.[9] It cannot be gainsaid that respondent's luggage was ultimately delivered to him without serious or appreciable damage.

As regards its second assigned error, petitioner airline contends that the extent of its liability for breach of contract should be limited absolutely to that set forth in the Warsaw Convention. We do not agree. As We have repeatedly held, although the Warsaw Convention has the force and effect of law in this country, being a treaty commitment

assumed by the Philippine government, said convention does not operate as an exclusive enumeration of the instances for declaring a carrier liable for breach of contract of carriage or as an absolute limit of the extent of that liability.[10] The Warsaw Convention declares the carrier liable for damages in the enumerated cases and under certain limitations.[11] However, it must not be construed to preclude the operation of the Civil Code and other pertinent laws. It does not regulate, much less exempt, the carrier from liability for damages for violating the rights of its passengers under contract of carriage,[12] especially if wilfull misconduct on the part of the carrier's employees is found or established, which is clearly the case before Us. For, the Warsaw Convention itself provides in Art. 25 that -

“(1) The carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability, if the damage is caused by his wilfull misconduct or by such default on his part as, in accordance with the law of the court to which the case is submitted, is considered to be equivalent to wilfull misconduct.

“(2) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused under the same circumstances by any agent of the carrier acting within the scope of his employment.”

When petitioner airline misplaced respondent's luggage and failed to deliver it to its passenger at the appointed place and time, some special species of injury must have been caused to him. For sure, the latter underwent profound distress and anxiety, and the fear of losing the opportunity to fulfill the purpose of his trip. In fact, for want of appropriate clothings for the occasion brought about by the delay of the arrival of his luggage, to his embarrassment and consternation respondent Alcantara had to seek postponement of his pre-arranged conference with the Director General of Trade of the host country.

In one case,[13] this Court observed that a traveler would naturally suffer mental anguish, anxiety and shock when he finds that his luggage did not travel with him and he finds himself in a foreign land without any article of clothing other than what he has on.

Thus, respondent is entitled to moral and exemplary damages. We however find the award by the Court of Appeals of P80,000.00 for moral damages excessive, hence, We reduce the amount to P30,000.00. The exemplary damages of P20,000.00 being reasonable is maintained, as well as the attorney's fees of P25,000.00 considering that petitioner's act or omission has compelled Alcantara to litigate with third persons or to incur expenses to protect his interest.[14]

WHEREFORE, the assailed decision of respondent Court of Appeals is **AFFIRMED** with the exception of the award of temperate damages of P10,000.00 which is deleted, while the award of moral damages of P80,000.00 is reduced to P30,000.00. The award of P20,000.00 for exemplary damages is maintained as reasonable together with the attorney's fees of P25,000.00. The moral and exemplary damages shall earn interest at the legal rate from 1 March 1976 when the complaint was filed until full payment.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Quason, JJ., concur.

[1] Record on Appeal, pp. 12-23; Rollo, p. 30.

[2] *Philippine Air Lines v. Court of Appeals*, G.R. No. 92501, 6 March 1992, 207 SCRA 100.

[3] *Tan Liao v. American President Lines*, 98 Phil 203.

[4] Arts. 1764 and 2206, New Civil Code.

[5] Art. 2220, New Civil Code; *China Airlines, Ltd. v. IAC*, G.R. No. 73835, 17 January 1989, 169 SCRA 226.

[6] *Alitalia v. IAC*, G.R. No. 71929, 4 December 1990, 192 SCRA 9.

[7] Records, pp. 12-13.

[8] *China Airlines Limited v. Court of Appeals*, G.R. No. 94590, 29 July 1992.

[9] Art. 2224, New Civil Code.

[10] See Note 6; *Northwest Airlines, Inc. v. Cuenca*, No. L-22425, 31 August 1965, 14 SCRA 1063.

[11] Art. 22. 1. In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 250,000 francs. x x x Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

“2.a) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 250 francs per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the actual value to the consignor at delivery.

“2.b) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier’s liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air way bill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.”

[12] See Note 6.

[13] *Pan American World Airways, Inc. v. IAC*, G.R. No. 68988, 21 June 1990, 186 SCRA 687.

[14] Art. 2208, par. (2), New Civil Code.

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