

PAN AMERICAN WORLD AIRWAYS, INC., PETITIONER, VS. JOSE K. RAPADAS AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. 60673. May 19, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review assailing the decision of the respondent Court of Appeals which affirmed in toto the trial court decision on the liability of petitioner Pan American World Airways for damages due to private respondent. The trial court ruled that the petitioner can not avail of a limitation of liabilities for lost baggages of a passenger. The dispositive portion of the trial court decision reads:

"WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered ordering defendant to pay plaintiff by way of actual damages the equivalent peso value of the amount of \$5,228.90 and 100 paengs, nominal damages in the amount of P20,000.00 and attorney's fees of P5,000.00, and the costs of the suit. Defendant's counterclaim is dismissed." (Rollo, p. 13)

On January 16, 1975, private respondent Jose K. Rapadas held Passenger Ticket and Baggage Claim Check No. 026-394830084-5 for petitioner's Flight No. 841 with the route from Guam to Manila. While standing in line to board the flight at the Guam airport, Rapadas was ordered by petitioner's handcarry control agent to check-in his Samsonite attache case. Rapadas protested pointing to the fact that other co-passengers were permitted to handcarry bulkier baggages. He stepped out of the line only to go back again at the end of it to try if he can get through without having to register his attache case. However, the same man in charge of handcarry control did not fail to notice him and ordered him again to register his baggage. For fear that he would miss the plane if he insisted and argued on personally taking the valise with him, he acceded to checking it in. He then gave his attache case to his brother who happened to be around and who checked it in for him, but without declaring its contents or the value of its contents. He was given a Baggage Claim Tag No. P-749-713. (Exhibit "B" for the plaintiff?respondent)

Upon arriving in Manila on the same date, January 16, 1975, Rapadas claimed and was given all his checked-in baggages except the attache case. Since Rapadas felt ill on his arrival, he sent his son, Jorge Rapadas to request for the search of the missing luggage. The petitioner exerted efforts to locate the luggage through the Pan American World Airways-Manila International Airport (PAN AM-MIA) Baggage Service.

On January 30, 1975, the petitioner required the private respondent to put the request in writing. The respondent filled in a Baggage Claim Blank Form. Thereafter, Rapadas personally followed up his claim. For several times, he called up Mr. Panuelos, the head of the Baggage Section of PAN AM. He also sent letters demanding and reminding the petitioner of his claim.

Rapadas received a letter from the petitioner's counsel dated August 2, 1975 offering to settle the claim for the sum of one hundred sixty dollars (\$160.00) representing the petitioner's alleged limit of liability for loss or damage to a passenger's personal property under the contract of carriage between Rapadas and PANAM. Refusing

to accept this kind of settlement, Rapadas filed the instant action for damages on October 1, 1975. Rapadas alleged that PAN AM discriminated or singled him out in ordering that his luggage be checked-in. He also alleged that PAN AM neglected its duty in the handling and safekeeping of his attache case from the point of embarkation in Guam to his destination in Manila. He placed the value of the lost attache case and its contents at US\$42,403.90. According to him, the loss resulted in his failure to pay certain monetary obligations, failure to remit money sent through him to relatives, inability to enjoy the fruits of his retirement and vacation pay earned from working in Tonga Construction Company (he retired in August 1974) and inability to return to Tonga to comply with then existing contracts.

In its answer, petitioner-defendant PAN AM acknowledged responsibility for the loss of the attache case but asserted that the claim was subject to the "Notice of Baggage Liability Limitations" allegedly attached to and forming part of the passenger ticket. The petitioner argued that the same notice was also conspicuously posted in its offices for the guidance of the passengers.

At the trial, private respondent showed proof of his retirement award and vacation pay amounting to \$4,750.00. He claimed that the attache case also contained other money consisting of \$1,400 allegedly given to him by his son, Jaime, as a round trip fare of his (plaintiff-respondent) wife, but which amount was later found to be actually intended by Jaime as payment for arrears of a lot purchased from Tropical Homes, Inc.; \$3,000 allegedly given by his brothers for payment of taxes and for constructing improvements on the Rapadas estates; and \$300.00 birthday present of the spouses Mr. and Mrs. Ruben Canonizado to plaintiff-respondent's wife. He also claimed having kept several items in the attache case, namely - (1) contracts and records of employment, letters of commendation, testimonials and newspaper clippings on his achievement for 13 years in Tonga, New Zealand and Australia, drafts of manuscripts, photographs and driver's license alleged to be worth \$20,000.00; a Polaroid camera, films, calculator, and other personal items worth \$403.90; memorabilia, autographs personally acquired from Charles Lindberg, Lawrence Rockefeller and Ryoichi Sasakawa, a commemorative palladium coin worth Tongan 100 paengs and unused Tongan stamps, all totalling \$7,500.00; and a plan worth \$5,000.00 drawn by his son Jaime, who is an architect, for the construction of a residential house and a 6-story commercial building. Rapadas claimed the amount of the attache case itself to be \$25.50. (See Decision in Civil Case No. 99564 in Amended Record on Appeal, pp. 61-85)

The lower court ruled in favor of complainant Rapadas after finding no stipulation giving notice to the baggage liability limitation. The court rejected the claim of defendant PANAM that its liability under the terms of the passenger ticket is only up to \$160.00. However, it scrutinized all the claims of the plaintiff. It discredited insufficient evidence to show discriminatory acts or bad faith on the part of petitioner PANAM.

On appeal, the Court of Appeals affirmed the trial court decision. Hence, this petition.

The main issue raised in the case at bar is whether or not a passenger is bound by the terms of a passenger ticket declaring that the limitations of liability set forth in the Warsaw Convention (October 12, 1929; 137 League of Nations Treaty Series II; See Proclamation No. 201 [1955], 51 O.G. 4933 [October, 1955]) as amended by the Hague Protocol (September 28, 1955; 478 UNTS 373; III PTS 515), shall apply in case of loss, damage or destruction to a registered luggage of a passenger.

The petitioner maintains that its liability for the lost baggage of respondent Rapadas was limited to \$160.00 since the latter did not declare a higher value for his baggage and did not pay the corresponding additional charges.

The private respondent, on the other hand, insists that he is entitled to as much damages as those awarded by the court and affirmed by the respondent appellate court.

After a review of the various arguments of the opposing parties as well as the records of the case, the Court finds sufficient basis under the particular facts of this case for the availment of the liability limitations under the Warsaw Convention.

There is no dispute, and the courts below admit, that there was such a Notice appearing on page two (2) of the airline ticket stating that the Warsaw Convention governs in case of death or injury to a passenger or of loss, damage or destruction to a passenger's luggage,

The Notice states:

"If the passenger's journey involves an ultimate destination or stop in a country other than the country of departure the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage. See also notice headed "Advice to International Passengers on Limitation of Liability." (The latter notice refers to limited liability for death or personal injury to passengers with proven damages not exceeding US \$75,000 per passenger; Exhibit "K" for plaintiff respondent, Table of Exhibits, p. 19)

Furthermore, paragraph 2 of the "Conditions of Contract" also appearing on page 2 of the ticket states:

"2. Carriage hereunder is subject to the rules and limitations relating to liability established by the Warsaw Convention unless such carriage is not 'international carriage' as defined by that Convention." (Exhibit "K", supra)z

We note that plaintiff-respondent Rapadas presented as proof of the Passenger Ticket and Baggage Check No. 026-394830084-5 a xerox copy of its page 2 which contains the Notice and Conditions of Contract, and also page 3 which recites the Advice to International Passengers on Limitation of Liability. He also presented two xerox copies of Flight Coupon No. 3 of the same passenger ticket showing the fares paid for the trips Honolulu to Guam, Guam to Manila, and Manila to Honolulu to prove his obligations which remained unpaid because of the unexpected loss of money allegedly placed inside the missing attache case. Rapadas explained during the trial that the same passenger ticket was returned by him to one Mr. S. L. Faupula of the Union Steam Ship Company of New Zealand, Ltd., Tonga who demanded the payment of the fares or otherwise, the return of the unused plane tickets (including the subject Passenger Ticket & Baggage Check No. 026-394830084-5). The issuance of these tickets was facilitated by Mr. Faupula on credit.

Meanwhile, the petitioner offered as evidence Exhibit "1" also showing page 2 of the passenger ticket to prove the notice and the conditions of the contract of carriage. It likewise offered Exhibit "1-A", a xerox copy of a "Notice of Baggage Liability Limitations" which the trial court disregarded and held to be non-existent. The same Exhibit "1-A" contained the following stipulations:

"NOTICE OF BAGGAGE LIABILITY LIMITATIONS- Liability for loss, delay, or damage to baggage is limited as follows unless a higher value is declared in advance and additional charges are paid: (1) for most international travel (including domestic portions of international journeys) to approximately \$8.16 per pound (\$18.00 per kilo; now \$20.00 per Exhibit "13") for checked baggage and \$360 (now \$400 per Exhibit "13") per passenger for unchecked baggage; (2) for travel wholly between U.S. points, to \$500 per passenger on most carriers (a few have lower limits). Excess valuation may not be declared on certain types of valuable articles. Carriers assume no liability for fragile or perishable articles. Further information may be obtained from the carrier." (Table of Exhibits, p. 45)

The original of the Passenger Ticket and Baggage Check No. 026-394830084-5 itself was not presented as evidence as it was among those returned to Mr. Faupula. Thus, apart from the evidence offered by the defendant airline, the lower court had no other basis for determining whether or not there was actually a stipulation on the

specific amounts the petitioner had expressed itself to be liable for loss of baggage.

Although the trial court rejected the evidence of the defendant-petitioner of a stipulation particularly specifying what amounts it had bound itself to pay for loss of luggage, the Notice and paragraph 2 of the "Conditions of Contract" should be sufficient notice showing the applicability of the Warsaw limitations.

The Warsaw Convention, as amended, specifically provides that it is applicable to international carriage which it defines in Article 1, par. 2 as follows:

"(2) For the purposes of this Convention, the expression 'international carriage' means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a breach in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another State, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention." ("High Contracting Party" refers to a state which has ratified or adhered to the Convention, or which has not effectively denounced the Convention [Article 40A(1)]).

Nowhere in the Warsaw Convention, as amended, is such a detailed notice of baggage liability limitations required. Nevertheless, it should become a common, safe and practical custom among air carriers to indicate beforehand the precise sums equivalent to those fixed by Article 22 (2) of the Convention.

The Convention governs the availment of the liability limitations where the baggage check is combined with or incorporated in the passenger ticket which complies with the provisions of Article 3, par. 1(c). (Article 4, par. 2) In the case at bar, the baggage check is combined with the passenger ticket in one document of carriage. The passenger ticket complies with Article 3, par. 1(c) which provides:

"(1) In respect of the carriage of passengers a ticket shall be delivered containing:

(a) x x x

(b) x x x

(c) a notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage."

We have held in the case of *Ong Yiu v. Court of Appeals*, supra, and reiterated in a similar case where herein petitioner was also sued for damages, *Pan American World Airways v. Intermediate Appellate Court* (164 SCRA 268 [1988]) that:

"It (plane ticket) is what is known as a contract of 'adhesion', in regards which it has been said that contracts of adhesion wherein one party imposes a ready made form of contract on the other, as the plane ticket in the case at bar, are contracts not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his consent. (Tolentino, Civil Code, Vol. IV, 1962 ed., p. 462, citing Mr. Justice J.B.L. Reyes, Lawyer's Journal, January 31, 1951, p. 49) And as held in *Randolph v. American Airlines*, 103 Ohio App. 172, 144 N.E. 2d 878; *Rosenchein v. Trans World Airlines, Inc.*, 349 S.W. 2d 483, 'a contract limiting liability upon an agreed valuation does not offend against the policy of the law forbidding one from contracting against his own negligence.'

"Considering, therefore, that petitioner had failed to declare a higher value for his baggage, he cannot be

permitted a recovery in excess of P100.00 xxx" (91 SCRA 223 at page 231)"

We hasten to add that while contracts of adhesion are not entirely prohibited, neither is a blind reliance on them encouraged. In the face of facts and circumstances showing they should be ignored because of their basically one sided nature, the Court does not hesitate to rule out blind adherence to their terms. (See *Sweet Lines, Inc. v. Teves*, 83 SCRA 361, 368-369 [1978])

The arguments of the petitioner do not belie the fact that it was indeed accountable for the loss of the attache case. What the petitioner is concerned about is whether or not the notice, which it did not fail to state in the plane ticket and which it deemed to have been read and accepted by the private respondent will be considered by this Court as adequate under the circumstances of this case. As earlier stated, the Court finds the provisions in the plane ticket sufficient to govern the limitations of liabilities of the airline for loss of luggage. The passenger, upon contracting with the airline and receiving the plane ticket, was expected to be vigilant insofar as his luggage is concerned. If the passenger fails to adduce evidence to overcome the stipulations, he cannot avoid the application of the liability limitations.

The facts show that the private respondent actually refused to register the attache case and chose to take it with him despite having been ordered by the PANAM agent to check it in. In attempting to avoid registering the luggage by going back to the line, private respondent manifested a disregard of airline rules on allowable handcarried baggages. Prudence of a reasonably careful person also dictates that cash and jewelry should be removed from checked-in-luggage and placed in one's pockets or in a handcarried Manila-paper or plastic envelope.

The alleged lack of enough time for him to make a declaration of a higher value and to pay the corresponding supplementary charges cannot justify his failure to comply with the requirement that will exclude the application of limited liability. Had he not wavered in his decision to register his luggage, he could have had enough time to disclose the true worth of the articles in it and to pay the extra charges or remove them from the checked-in-luggage. Moreover, an airplane will not depart meantime that its own employee is asking a passenger to comply with a safety regulation.

Passengers are also allowed one handcarried bag each provided it conforms to certain prescribed dimensions. If Mr. Rapadas was not allowed to handcarry the lost attache case, it can only mean that he was carrying more than the allowable weight for all his luggages or more than the allowable number of handcarried items or more than the prescribed dimensions for the bag or valise. The evidence on any arbitrary behavior of a Pan Am employee or inexcusable negligence on the part of the carrier is not clear from the petition. Absent such proof, we cannot hold the carrier liable because of arbitrariness, discrimination, or mistreatment.

We are not by any means suggesting that passengers are always bound to the stipulated amounts printed on a ticket, found in a contract of adhesion, or printed elsewhere but referred to in handouts or forms. We simply recognize that the reasons behind stipulations on liability limitations arise from the difficulty, if not impossibility, of establishing with a clear preponderance of evidence the contents of a lost valise or suitcase. Unless the contents are declared, it will always be the word of a passenger against that of the airline. If the loss of life or property is caused by the gross negligence or arbitrary acts of the airline or the contents of the lost luggage are proved by satisfactory evidence other than the self-serving declarations of one party, the Court will not hesitate to disregard the fine print in a contract of adhesion. (See *Sweet Lines Inc. v. Teves*, supra). Otherwise, we are constrained to rule that we have to enforce the contract as it is the only reasonable basis to arrive at a just award.

We note that the finding on the amount lost is more of a probability than a proved conclusion.

The trial court stated:

x x x x x x x x

"We come now to the actual loss of \$4,750.00 which the plaintiff claims was the amount of his retirement award and vacation pay. According to the plaintiff, this was in cash of \$100 denominations and was placed in an envelope separate from the other money he was carrying. Plaintiff presented the memorandum award, Exhibit T-1 and the vouchers of payment, Exhibits T-2 and T-3. Under the circumstances, recited by the plaintiff in which the loss occurred, the Court believes that plaintiff could really have placed this amount in the attache case considering that he was originally handcarrying said attache case and the same was locked, and he did not expect that he would be required to check it in. x x x" (Amended Record on Appeal, p. 75; Underscoring ours)

The above conclusion of the trial court does not arise from the facts. That the attache case was originally handcarried does not beg the conclusion that the amount of \$4,750.00 in cash could have been placed inside. It may be noted that out of a claim for US\$42,403.90 as the amount lost, the trial court found for only US\$5,228.90 and 100 paengs. The court had doubts as to the total claim.

The lost luggage was declared as weighing around 18 pounds or approximately 8 kilograms. At \$20.00 per kilogram, the petitioner offered to pay \$160.00 as a higher value was not declared in advance and additional charges were not paid. We note, however, that an amount of \$400.00 per passenger is allowed for unchecked luggage. Since the checking-in was against the will of the respondent, we treat the lost bag as partaking of involuntarily and hurriedly checked-in luggage and continuing its earlier status as unchecked luggage. The fair liability under the petitioner's own printed terms is \$400.00. Since the trial court ruled out discriminatory acts or bad faith on the part of Pan Am or other reasons warranting damages, there is no factual basis for the grant of P20,000.00 damages.

As to the question of whether or not private respondent should be paid attorney's fees, the Court sustains the finding of the trial court and the respondent appellate court that it is just and equitable for the private respondent to recover expenses for litigation in the amount of P5,000.00. Article 22(4) of the Warsaw Convention, as amended does not preclude an award of attorney's fees. That provision states that the limits of liability prescribed in the instrument "shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and other expenses of litigation incurred by the plaintiff." We, however, raise the award to P10,000.00 considering the resort to the Court of Appeals and this Court.

WHEREFORE, the petition is hereby GRANTED and the decision of the respondent Court of Appeals is REVERSED and SET ASIDE. The petitioner is ordered to pay the private respondent damages in the amount of US\$400.00 or its equivalent in Philippine Currency at the time of actual payment, P10,000.00 in attorney's fees, and costs of the suit.

SO ORDERED.

Feliciano, Bidin, Davide, Jr., and Romero, JJ., concur.

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