

PAN AMERICAN WORLD AIRWAYS, INC., PETITIONER, VS. INTERMEDIATE APPELLATE COURT, AND EDMUNDO P. ONGSIAKO, RESPONDENTS.

G.R. No. 68988. June 21, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

Upon the following facts, found to have been satisfactorily established by the evidence, to wit:

- 1) that Edmundo P. Ongsiako, "with one piece of checked-in luggage, was a paying passenger on the * * PAN AM Flight 842 that left Manila for Honolulu, Hawaii, U.S.A., at about 12:30 p.m. on June 8, 1978, with Los Angeles, California, as his ultimate destination;"[1]
- 2) that at Honolulu, Ongsiako "discovered that his luggage was not carried on board ** ; (i)t was left at ** PAN AM's airport office in Manila where it was found a week later;"[2]
- 3) "a PAN AM employee in Honolulu, instead of helping him search for his bag, arrogantly threatened to 'bump him off' in Honolulu should he persist in looking for his bag;"[3]
- 4) that "(o)ffers to forward the luggage to ** (Ongsiako) in Los Angeles or San Francisco were refused, firstly because, by the time it was found, ** (Ongsiako) was about to leave Los Angeles, and secondly, ** (Ongsiako) was not sure where he would be staying in San Francisco;"[4]
- 4) that "(v)erbal complaint was made first at PAN AM's Honolulu airport office, then at Los Angeles, but written complaint was made on July 20, 1978; and
- 5) that "(o)vertures towards settlement were rejected for being too inconsequential,"[5]

PAN AM (Pan American World Airways, Inc.) was sentenced by the Court of First Instance of Rizal,[6] on complaint of Ongsiako, to pay to the latter:

- "1. P9,629.50 representing cost of plaintiff's plane ticket as actual damages;
2. The equivalent in pesos of \$400 at the current exchange rate as temperate or moderate damages;
3. P350,000.00 as moral damages;
4. P100,000.00 as exemplary damages;
5. P25,000.00 as attorney's fees;
6. Costs."

On appeal taken by PAN AM,[7] the Trial Court's judgment was affirmed by the Intermediate Appellate Court, with the sole modification that the award of actual damages was reduced to P4,814.75 and that of exemplary damages, eliminated.[8]

From this judgment of the appellate tribunal, in turn, PAN AM has taken an appeal on certiorari to this Court. After receiving the private respondent's comment on the appeal petition, the reply thereto and the rejoinder to the reply, the Court resolved on March 4, 1985 to give limited due course to the petition as regards the sole issue of moral damages and required simultaneous memoranda from the parties,[9] which have since been submitted.

Article 2220 of the Civil Code says that moral damages may be awarded in "breaches of contract where the defendant acted fraudulently or in bad faith." So, proof of infringement of an agreement by a party, standing alone, will not justify an award of moral damages.[10] There must, in addition, as the law points out, be competent evidence of fraud or bad faith by that party.[11] If the plaintiff, for instance, fails to take the witness stand and testify as to his social humiliation, wounded feelings, anxiety, etc., moral damages cannot be recovered.[12] The rule applies, of course, to common carriers.[13]

This Court finds that these basic legal principles have been correctly applied by both the Trial Court and the Intermediate Appellate Court in light of the proven facts. Said the latter, on this precise matter:[14]

"In the present case, men of reasonable perceptions will not disagree with the conclusion that plaintiff suffered mental anguish, anxiety and shock when he found that his luggage did not travel with him. What traveller would not suffer from such feelings if he found himself in a foreign land without any article of clothing other than what he had on? The injury thus suffered by plaintiff is one that would arise generally, in the special circumstances of this case; it follows as a matter of course. PAN AM breach of the contract was the substantial cause in bringing about the harm or injury to the plaintiff. We adopt here the ruling of the court a quo:

"The Court believes and so holds that there is sufficient evidence of gross and reckless negligence amounting to bad faith on the part of defendant. If defendant was not sure that it could transport plaintiff and his luggage to Los Agneles, it should not have accepted plaintiff who was a waitlisted passenger. It is not a valid excuse on its part to claim that plaintiff checked in at the last minute and that there was insufficient time to load his bag in the plane. In fact, that makes the position of defendant even more untenable, because in accepting and holding on to plaintiff as its passenger, probably to fill in cancelled bookings, although it knew or must have known that the bag of plaintiff might not be loaded on time, it was guilty of conduct amounting to bad faith. x x x Accepting last minute passengers and their baggage with no definite assurance that the carrier can comply with its obligation due to lack of time amounts to "negligence so gross and reckless as to amount to malice or bad faith" (Fores vs. Miranda, L-12163, March 4, 1959; Necesito vs. Paras, L-10606-06, June 30, 1958, cited in Lopez, et al. vs. PAN AM, supra).' (Record on Appeal, pp. 23-25)"

Also a propos and also not otherwise shown to be erroneous are the observations of the Trial Court on this precise point:

" * * (A) PAN AM employee in Honolulu, instead of helping him (Ongsiako) search for his bag, arrogantly threatened to 'bump him off' in Honolulu should he persist in looking for his bag. This happened in the presence of several people, thereby subjecting plaintiff to indignity, embarrassment and humiliation which aggravated his health - his blood pressure, in this case. It is difficult enough to be in a foreign country, worse if one's belongings are missing, and worst, if instead of being helped, he is shouted at and threatened to be 'bumped off' as in this case. This must have been a very distressing and painful experience to plaintiff which justifies a finding of bad faith and an award for moral damages in his favor. Considering the financial standing of plaintiff who heads a corporation with a paid-up capital of 2--1/2 Million Pesos and the anguish, anxiety, wounded feelings, shame and humiliation which he suffered as heretofore discussed, the Court assesses moral damages in his favor in the amount of P350,000.00."

PAN AM assails this award of moral damages as without evidentiary foundation, or at the very least, excessive. It argues that no such arrogance or boorishness was displayed by the PAN AM people at the Honolulu Airport, that

what simply happened was, citing Ongsiako's own testimony, that when Ongsiako could not find his luggage and asked for help, showing them his baggage tag and ticket, one of the PAN AM employees there, "instead of helping ** (him) looked at their watch and said, you better get up or you will be late on your flight, I am sorry I cannot help you, there are so many people waiting for their turn * *." [15] It claims, too, that even the Court of Appeals itself declared that it was "not satisfied with the adequacy of the evidence related to the ill-treatment suffered by the plaintiff at the hands of PAN AM Honolulu airport office employees. ** "[16] The quotations from the transcript and judgment of the Appellate Court are out of context. The record of Ongsiako's testimony reveals that he did say that "the PAN AM employee embarrassed ** (him) in Honolulu by shouting at ** (him)," a statement that he reaffirmed twice, [17] and that that employee even refused to look at his baggage tag. [18] As regards the Intermediate Appellate Court, it also did say that it was sustaining "the full award of moral damages," but that it did not find that the evidence was adequate to establish that the conduct of PAN AM was so "wanton, reckless, oppressive or malevolent" as to justify an award of exemplary damages, a ruling that is not essentially inconsistent with Ongsiako's version of the occurrence. In any event, even accepting PAN AM's version of the occurrence at face value, it is clear that none of the PAN AM employees exerted the least effort to assist Ongsiako in his predicament, despite his appeal for help; that not one of them even deigned to look at Ongsiako's baggage tag, or listen to his problem, or give assurances that something would be done about his difficulties, or otherwise show any sign of sympathy or commiseration; that instead, they looked at their watches -- an impolite and dismaying gesture of impatience, to be sure, considering the circumstances -- and told him he could not be helped because there were other people waiting for their turn -- to be served, of course, like Ongsiako, as they had a right to expect as paying passengers -- and that it was best if he just went to his plane so as not to miss his flight. Surely, these acts of callous indifference to the plight of a person in a foreign land could not be less distressing, depressing or disheartening to the latter, or judged less harshly, simply because not attended by any shouted remarks.

All things considered, the Court is satisfied that moral damages have been correctly granted.

WHEREFORE, the petitioner's appeal is DISMISSED, and the judgment of the Intermediate Appellate Court, AFFIRMED in toto. Costs against the petitioner.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, p. 23

[2] Id.

[3] Id., p. 94

[4] Id., p. 23

[5] Id.

[6] In Civil Case No. 33820, the decision having been rendered by Judge (now Court of Appeals Associate Justice) Ricardo J. Francisco on February 3, 1981 (Rollo, pp. 79-96)

[7] Docketed as AC-G.R. CV No. 68438

[8] Rollo, pp. 23-29. The decision was written for the Second Civil Cases Division by Camilon, J., and concurred in by Pascual and Jurado, JJ. It was promulgated on October 18, 1984.

[9] Rollo,, p. 162

[10] Francisco v. GSIS, March 30, 1963; Verzosa v. Baylon, L-14192, April 29, 1960, 107 Phil. 1010

[11] Coscolluela v. Valderrama, L-13757, Aug. 31, 1961

[12] Francisco v. GSIS, March 30, 1963, 7 SCRA 577

[13] Fores v. Miranda, L-12163, March 4, 1959; Soberano v. Manila Railroad, 18 SCRA 732; Laguna Tayabvas Bus Co. v. Cornista, 11 SCRA 18; Lopez v. Pan American World Airway;s, Inc., 16 SCRA 431; Verzosa v. Baytan, et al., supra, 107 Phil. 1010

[14] Rollo, p. 28

[15] Id., pp. 175-176

[16] Id., p. 176

[17] TSN, Jan. 10, 1980, p. 17; Feb. 6, 1980, pp. 4-5

[18] TSN, Jan. 10, 1980, p. 10

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