

PHILIPPINE AIRLINES, INC., PETITIONER, VS. THE INTERMEDIATE APPELLATE COURT, GEORGE LORENZANA AND VERONICA G. LORENZANA, RESPONDENTS.

G.R. No. 70481, December 11, 1992

Ponente: MELO, J.

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MELO, J.:

According to the court of origin, petitioner's liability for the missing luggage owned by private respondent can be attributed to the non-delivery thereof to the Pan Am Office in Tokyo after it was received by petitioner's office at the Manila International Airport (Page 11, Record on Appeal; Page 38, Rollo). Both petitioner and Pan American World Airways, Inc. appealed the adverse finding but the First Civil Cases Division of the then Intermediate Appellate Court, (P.J. Gaviola, Caguioa (P), Quetulio--Losa, Ines-Luciano, JJ.), was far from persuaded.

The decretal portion rendered by the appellate court which petitioner impugns via the petition for certiorari before Us reads:

"WHEREFORE, No. 1 of the dispositive portion of the judgment of the trial court, dated January 31, 1979 is hereby modified so as to read:

1) Ordering defendants, jointly and severally, to pay plaintiffs as actual damages the sum of \$5,000 or its equivalent in Philippine currency computed according to the rate of exchange of the date of the promulgation of this decision, with interest thereon at the legal rate of 12% per annum from the date of the filing of the complaint until the amount of this judgment is fully paid.

The rest of the dispositive portion from pars. 2 to par. 5 are hereby affirmed." (Page 14, Decision; Page 53, Rollo)

Before boarding petitioner's airplane on August 4, 1974 for their business sojourn from Manila to Honolulu via Tokyo, private respondents, the spouses George and Veronica Lorenzana, checked in two pieces of baggage for which they were given baggage claim tickets. George's personal effects and some of Veronica's things were in one baggage while the other luggage contained Veonica's other personal items and samples of women's apparel intended to be shown to prospective customers in America and Canada. On the Tokyo-Honolulu leg, they changed planes from PAL to Pan Am. When they arrived in Honolulu, only the luggage containing George's personal effects was located. Efforts exerted to report and claim the missing bag were futile and instead, private respondents were requested to follow-up the matter during their stay in Honolulu.

After staying in Honolulu for three days, without the missing luggage being delivered to them, George and Veronica decided to fly to Los Angeles where they stayed for more than a week before leaving for San Francisco where they spent two days. Thereafter, the couple proceeded to Vancouver and Toronto, Canada and returned to Manila on September 24, 1974.

It was sometime in April, 1975 when the couple was informed that the luggage was located and on December 5, 1975, the luggage was finally delivered to them. It turned out that the missing luggage was not turned over by the

employees of the Philippines Airlines to the Pan Am Office in Tokyo and that the baggage was returned to Manila on September 16, 1974.

In the suit for breach of contract, Pan Am interposed the defense that it did not receive the baggage from the Philippine Airlines. For its part, PAL admitted that it failed to deliver one of the pieces of luggage at the destination of private respondents in the United States and during the entire trip (paragraph 6, Answer). Nevertheless, it proffered the excuse that private respondents omitted to retrieve the bag after George was informed of its discovery and that at any rate, the carrier's liability under the Warsaw Convention is limited, in the absence of a declaration from the passenger, of a higher value (paragraph 15, Answer).

After due hearing, the trial court pronounced petitioner accountable for the non-delivery mainly due to its frank representation that it breached the contract with private respondents (Page 4, Decision; page 38, Record on Appeal). On the other hand, the appellate court relied more on the presumption of culpa which neither PAL nor Pan Am was able to overcome by the requisite quantum of evidence. Regarding the exculpation raised by petitioner premised on the caveat under the Warsaw Convention, respondent court expressed the view that the proviso which concerns limited culpability for damage, loss or delay in transportation of the goods is inapplicable since the bag was not delivered to private respondent during the whole trip.

On the expenses incurred by private respondents, the appellate court sustained the claim of \$5,000 asserted by private respondent George Lorenzana on the witness stand representing the cost of the tickets and travelling expenses, in default of any evidence to the contrary. The so-called unrealized income was perceived as speculative while the trial court's refusal to grant moral and exemplary damages was affirmed by the reviewing authority.

In the petition at bar, petitioner ascribes five errors which were supposedly committed by the appellate court yet, a serious study of the different angles for possible reversal fails to muster the desired conclusion.

Petitioner begins with the hypothesis that it is private respondents who should be faulted for the alleged "delay in delivery" because an appreciable length of time elapsed from the moment they were informed of the whereabouts of the bag until an effort was exerted to retrieve it. However, an argument of this nature, which springs from petitioner's incongruous interpretation of "delay", is far from persuasive, since it is designed to toss the onus probandi on the admitted fact of non-delivery by the carrier to the passenger's shoulders. To be sure, it was ingeniously crafted for the purpose of extricating petitioner from the fatal aftermath of its admission in judicio for it was explicitly stated in its Answer that petitioner failed to deliver the baggage to private respondents during the entire length of the trip (paragraph 6, Answer; Article 1431, new Civil Code; Section 4, Rule 129; Section 2(a), Rule 131, Revised Rules on Evidence). Indeed, petitioner is quite candid in conceding at this stage that "the baggage was meant to travel with respondents Lorenzanas all the way until their return to Manila" (Page 12, Petition; Page 23, Rollo) which stance is enough to negate petitioner's concept of delay. By parity of reasoning:

"Delay'," as used in a contract exempting a telegraph company from all liability for any delay, error, or remissness in sending a message, implies that the message was or would be sent at some time, but not sent or delivered promptly, and the company is not exempt from liability for a total to send and deliver a message." (Balduin vs. U.S., Tel. Co., N.Y., 54 Barb. 505, 512, 6 Abb. Prac. N.S., 405, 423; 11-A Words and Phrases, Permanent Edition, 1971, page 414).

To bring the case within the ambit of the limited liability clause for loss, damage, or delay under Article 22 in conjunction with the second paragraph of Article 26 of the Warsaw Convention, petitioner is inclined to construe its accountability by arguing that the missing bag was merely delayed. Petitioner is categorical in its disputation that since the bag was neither lost nor damaged, the baggage was merely delayed, hence the caveat must perforce

apply. (Page 10, Memorandum; Page 133, Rollo). This process of exclusion typifies the classic fallacy of non-sequitur because the fact of the matter is that the missing luggage was not over by the employees of petitioner to the Pan Am Office in Tokyo and was returned to Manila on September 16, 1974 (Page 3, Decision in Civil Case No. 103684; Page 38, Record on Appeal). Still worse, the luggage was not forthwith delivered to private respondents who returned from their trip to the U.S. and Canada on September 24, 1974. It was not until more than a year thereafter, or on December 5, 1975, when the luggage was finally delivered to private respondents. There is thus no occasion to speak of delay since the baggage was not delivered at all to the passenger for purposes of the trip in contravention of a common carrier's undertaking to transport the goods from the place of embarkation to the ultimate point of destination. In point of law, petitioner cannot therefore ascribe an alleged reversible error on the part of respondent court for adhering to the pronouncement of this Court in *Northwest Airlines, Inc. vs. Cuenca* (14 SCRA 1063 [1965]) when the exculpatory clauses raised by the common carrier therein, predicated on the limited liability provisions under the Warsaw Pact, were brushed aside in this manner:

"Petitioner argues that pursuant to those provisions, an air "carrier is liable only" in the event of death of a passenger or injury suffered by him, or of destruction or loss of, or damage to any checked baggage or any goods, or of delay in the transportation by air of passengers, baggage or goods. This pretense is not borne out by the language of said Articles. The same merely declare the carrier liable for damages in the enumerated cases, if the conditions therein specified are present. Neither, said provisions nor others in the aforementioned Convention regulate or exclude liability for other breaches of contract by the carrier. Under petitioner's theory, an air carrier would be exempt from any liability for damages in the event of its absolute refusal, in bad faith, to comply with a contract of carriage, which is absurd." (at p. 1065.)

Petitioner argues next that the award of damages is bereft of factual foundation. But the record in the court of origin, as synthesized by respondent court, reflects the bases for entitlement thereto:

"Plaintiffs' stand on actual damages is sustained by the law and the evidence. Because of the non-delivery of the luggage during the entire length of plaintiffs' stay abroad, the entire purpose of their trip was frustrated. This conclusion is borne by the testimonies of plaintiffs who declared without contradiction that plaintiff Veronica G. Lorenzana was not able to promote the sale of her ready made dresses through outlets in the United States and Canada to whom plaintiffs have been supplying Philippine food products (pp. 19-20, tsn., Feb. 16, 1977; pp. 4 and 11, tsn., March 4, 1977), resulting in loss to plaintiff of an expected profit estimated at US\$14,000.00 (p. 26, tsn., Dec. 10, 1976). It has been proven, too, by the declaration of plaintiff George Lorenzana that they spent US\$5,000.00 for their round trip tickets and other traveling expenses (p. 26, Id.). Computed at the exchange rate of P7.43 to US\$1.00, which appears to be accepted by the parties as the prevailing rate when the loss of business income occurred, the actual damages sustained by plaintiffs would amount to P141,170.00 in Philippine Currency." (Page 9, Decision; Page 48, Rollo)

The belated notion advanced by petitioner relative to the absence of credibility on the part of private respondents along this line is also devoid of substance because the conclusion drawn by the trial court as a result of assigning values to narrations at the witness stand command great respect (2 Regalado, Remedial Law Compendium, Sixth Revised Edition, 1989, page 553). It has been repeatedly emphasized in adjective law that a factual query similar to the challenge posed by petitioner is proscribed by and is anathema to the second paragraph of Section 2, Rule 45 of the Revised Rules of Court, absent any convincing demonstration from petitioner of an exceptional circumstance that could have justified deviation from the rule (1 Regalado, Remedial Law Compendium, Fifth Revised Edition, 1988, page 53; *Universal Motors Corporation vs. Court of Appeals* (205 SCRA 448; 455 [1992])). And because of these precepts, petitioners may not likewise assail the award of attorney's fees which respondent court deemed appropriate to uphold.

Lastly, contrary to the opinion expressed by petitioner concerning the pronouncement made by respondent court

in requiring petitioner to pay damages in the sum of \$5,000.00, We believe and so hold that there was no transgression of the Uniform Currency Act since, assuming that Republic Act No. 529, as amended, applies, the obligation itself is still valid to be discharged by payment in legal tender (Vitug, Pandect of Commercial Law and Jurisprudence, Revised Edition, 1990, page 72) which was what respondent court did in requiring petitioner to pay the \$5,000.00 or its equivalent in Philippine Currency.

WHEREFORE, the petition is hereby DISMISSED, and the decision of the respondent court AFFIRMED, with costs against petitioner.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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