

LUFTHANSA GERMAN AIRLINES, PETITIONER, VS. INTERMEDIATE APPELLATE COURT AND SPOUSES HENRY H. ALCANTARA AND TERESITA ALCANTARA, RESPONDENTS.

G.R. No. 71238. March 19, 1992

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for review on certiorari decision of the then Intermediate Appellate Court* dated May 31, 1984, affirming with modification the decision of the then Court of First Instance of Manila, Sixth Judicial District, Branch XXIV, and the resolution dated June 18, 1985 denying the motion for reconsideration of the said decision.

The antecedent facts of this case are as follows:

On January 21, 1979, respondent Henry H. Alcantara shipped thirteen (13) pieces of luggage through petitioner Lufthansa from Teheran to Manila as evidenced by Lufthansa Air Waybill No. 220-9776-2733 (Exhibit "A", also Exhibit "1"). The Air Waybill discloses that the actual gross weight of the thirteen (13) pieces of luggage is 180 kilograms. Respondent Henry H. Alcantara did not declare an inventory of the contents or the value of the luggages when he delivered them to Lufthansa.

On March 3, 1979, the thirteen (13) pieces of luggage were boarded in one of Lufthansa's flights which arrived in Manila on the same date. After the luggages arrived in Manila, the consignee, respondent Teresita Alcantara, was able to claim from the cargo broker Philippine Skylanders, Inc. on March 6, 1979 only twelve (12) out of the thirteen (13) pieces of luggage with a total weight of 174 kilograms (Exhibits "20" and "20-A").

The private respondents advised Lufthansa of the loss of one of the luggages and of the contents thereof (Exhibits "B", "C" and "D"). Petitioner Lufthansa sent telex tracing messages to different stations and to the Philippine Airlines which actually carried the cargo (Exhibits "3", "5", "7", "9", "11", "12", "13" and "14"). But all efforts in tracing the missing luggage were fruitless (Exhibits "4", "6", "8", "10", "12" and "17").

Since efforts to trace the missing luggage yielded negative results, Lufthansa informed Henry Alcantara accordingly and advised him to file a claim invoice (Exhibits "18" and "19").

On September 24, 1979, the private respondents wrote the petitioner demanding the production of the missing luggage within ten (10) days from receipt (Exhibit "E"). Since the petitioner did not comply with said demand, the private respondents filed a complaint dated May 7, 1980, for breach of contract with damages against the petitioner before the Court of First Instance of Manila, Sixth Judicial District, Branch XXIV.

The petitioner filed its answer to the complaint alleging that the Warsaw Convention limits the liability of the carrier, if any, with respect to cargo to a sum of 250 francs per kilo (\$20.00 per kilo or \$9.07 per pound), unless a higher value is declared in advance and additional charges are paid by the passenger and the conditions of the contract as set forth in the air waybill expressly subject the contract of carriage of cargo to the Warsaw Convention. The petitioner also alleged that it never acted fraudulently or in bad faith so as to entitle respondent

spouses to moral damages and attorney's fees, nor did it act in a wanton, fraudulent, reckless, oppressive or malevolent manner as to entitle spouses to exemplary damages.

After trial, on November 18, 1981, the trial court** rendered its decision, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered in favor of plaintiffs, spouses Henry H. Alcantara and Tere-sita Alcantara, and against Lufthansa German Airlines.

"(1) Ordering defendant to pay plaintiffs the sum of P200,000.00 for actual damages, with interest thereon at the legal rate from the date of the filing of the complaint until the principal sum is fully paid;

"(2) Ordering defendant to pay plaintiffs the sum of P20,000.00 as attorney's fees; and

"(3) Ordering defendant to pay the costs of suit.

"SO ORDERED." (Rollo, pp. 62-63)

The petitioner appealed to the then Intermediate Appellate Court. On May 31, 1984, the appellate court promulgated its decision, the dispositive portion of which reads:

"WHEREFORE, PREMISES CONSIDERED, the decision appealed from is hereby AFFIRMED with the modification that the amount of P20,000.00 awarded as attorney's fees shall be deleted, the costs to be borne by the respective parties.

"SO ORDERED." (Rollo, p. 39).

Its motion for reconsideration having been denied, the petitioner filed the instant petition.

The main issue in this case is whether or not the private respondents are entitled to an award of damages beyond the liability set forth in the Warsaw Convention and in the Airwaybill of Lading.

The petitioner contends that the Republic of the Philippines is a party to the "Convention for the Unification of Certain Rules Relating to International Transportation by Air", otherwise known as the Warsaw Convention. After the Senate of the Republic of the Philippines, by its Resolution No. 19 of May 16, 1950, concurred in the adherence by the government of the Philippines to the said Convention, and after the government of the Republic of the Philippines formally notified the government of the Republic of Poland of such adherence on November 9, 1950, Presidential Proclamation No. 201 signed by the late President Ramon Magsaysay on September 23, 1965 made public the adherence of the Republic of the Philippines to the said Warsaw Convention which applies to all international transportation of persons, baggage or goods performed by aircraft for hire. Since the contract between the petitioner and respondent Henry H. Alcantara embodied in Airwaybill No. 220-9776-2733 is one of international carriage by air, it is subject to the Warsaw Convention, which in Article 22 limits the liability of the carrier with respect to checked baggage to a sum of 250 French francs per kilo (equivalent to US\$20.00/kilo) unless a higher value has been declared in advance and additional charges are paid by the passenger. Respondent Henry H. Alcantara having admitted that he did not declare the value or contents of the missing luggage, the liability of the petitioner is therefore limited by the Warsaw Convention and the Airwaybill to US\$20.00 per kilo.

The petitioner further argues that the award of P200,000.00 as actual damages is not borne by evidence. It insists that the testimonial and documentary evidence of respondent spouses failed to indicate the actual value of the alleged contents of the missing luggage and have not presented actual proof as to the contents, total weight and value of the missing luggage as well as the actual damage they suffered (Rollo, pp. 88-89, 95).

On the other hand, the private respondents maintain that the petitioner, as found by the trial and appellate courts,

waived the benefits of the Warsaw Convention when it offered a settlement in the amount of \$200.00 which is much higher than what the Convention prescribes and never raised timely objections during the trial to the introduction of evidence regarding the actual claims and damages sustained by respondent Alcantara.

The private respondents also claim that in the trial of the case, they proved a loss of P200,000.00 and an expense of \$15,000.00 in vainly trying to locate the missing luggage all over Europe and the trial court awarded less than what was proven (Rollo, p. 118).

The petition is without merit.

The loss of one luggage belonging to the private respondents while the same was in the custody of the petitioner is not disputed. The contract of air carriage generates a relation attended with a public duty. Neglect or malfeasance of the carrier's employees could give ground for an action for damages (*Zulueta v. Pan American World Airways, Inc.*, 43 SCRA 37 [1972]). Common carriers are liable for the missing goods for failure to comply with its duty (*American Insurance Co., Inc. v. Macondray & Co., Inc.*, 39 SCRA 494 [1971]).

In *Alitalia vs. Intermediate Appellate Court* (192 SCRA 9 [1990]) where petitioner Alitalia as carrier failed to deliver a passenger's (Dr. Felipa Pablo's) baggage containing the papers she was scheduled to read and the materials which would have enabled her to make scientific presentation (consisting of slides, auto-radiograms or films, tables and tabulations) in a prestigious international conference in Rome where she was invited to participate in the conference, extended by the Joint FAO/IAEA Division of Atomic Energy in Food and Agriculture of the United Nations, as a consequence of which she failed to participate in the conference, this Court held that the Warsaw Convention does not exclude liability for other breaches of contract by the carrier. Thus:

"The Convention does not thus operate as an exclusive enumeration of the instances of an airline's liability, or as an absolute limit of the extent of that liability. Such a proposition is not borne out by the language of the Convention, as this Court has now, and at an earlier time, pointed out. Moreover, slight reflection readily leads to the conclusion that it should be deemed a limit of liability only in those cases where the cause of the death or injury to person, or destruction, loss or damage to property or delay in its transport is not attributable to or attended by any wilful misconduct, bad faith, recklessness, or otherwise improper conduct on the part of any official or employee for which the carrier is responsible, and there is otherwise no special or extraordinary form of resulting injury. The Convention's provisions, in short, do not 'regulate or exclude liability for other breaches of contract by the carrier' or misconduct of its officers and employees, or for some particular or exceptional type of damage. Otherwise, '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.' Nor may it for a moment be supposed that if a member of the aircraft complement should inflict some physical injury on a passenger, or maliciously destroy or damage the latter's property, the Convention might successfully be pleaded as the sole gauge to determine the carrier's liability to the passenger. Neither may the Convention be invoked to justify the disregard of some extraordinary sort of damage resulting to a passenger and preclude recovery therefor beyond the limits set by said Convention. It is in this sense that the Convention has been applied, or ignored, depending on the peculiar facts presented by each case.

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"In the case at bar, no bad faith or otherwise improper conduct may be ascribed to the employees of petitioner airline; and Dr. Pablo's luggage was eventually returned to her, belatedly, it is true, but without appreciable damage. The fact is, nevertheless, that some species of injury was caused to Dr. Pablo because petitioner ALITALIA misplaced her baggage and failed to deliver it to her at the time appointed - a breach of its contract of carriage, to be sure - with the result that she was unable to read the paper and make the scientific presentation (consisting of slides, autoradiograms or films, tables and tabulations) that she had painstakingly

labored over, at the prestigious international conference, to attend which she had traveled hundreds of miles, to her chagrin and embarrassment and the disappointment and annoyance of the organizers. She felt, not unreasonably, that the invitation for her to participate at the conference, extended by the Joint FAO/IAEA Division of Atomic Energy in Food and Agriculture of the United Nations, was a singular honor not only to herself, but to the University of the Philippines and the country as well, an opportunity to make some sort of impression among her colleagues in that field of scientific activity. The opportunity to claim this honor or distinction was irretrievably lost to her because of Alitalia's breach of its contract.

"Apart from this, there can be no doubt that Dr. Pablo underwent profound distress and anxiety, which gradually turned to panic and finally despair, from the time she learned that her suitcases were missing up to the time when, having gone to Rome, she finally realized that she would no longer be able to take part in the conference. As she herself put it, she 'was really shocked and distraught and confused.'

"Certainly, the compensation for the injury suffered by Dr. Pablo cannot under the circumstances be restricted to that prescribed by the Warsaw Convention for delay in the transport of baggage.

"She is not, of course, entitled to be compensated for loss or damage to her luggage. As already mentioned, her baggage was ultimately delivered to her in Manila, tardily, but safely. She is however entitled to nominal damages - which, as the law says, is adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated and recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered - and this Court agrees that the respondent Court of Appeals correctly set the amount thereof at P40,000.00."

In the case at bar, the trial court found that: (a) petitioner airline has not successfully refuted the presumption established by Article 1735 of the Civil Code that the loss of the luggage in question was due to the negligence or fault of its employees; (b) the contents of the missing luggage of private respondents could not be replaced and were assessed at P200,000.00 by the latter; (c) respondent Henry Alcantara spent about \$15,000.00 in trying to locate said luggage in Frankfurt, Germany, London, United Kingdom and Hongkong; (d) there being no evidence to the contrary, the foregoing assessments made by private respondents were fair and reasonable; and (e) private respondents were unable to present ample evidence to prove fraud and bad faith and are therefore not entitled to moral damages under Article 2220 of the Civil Code (Rollo, p. 61).

On the other hand, the Court of Appeals found that the lower court's award of P200,000.00 as actual and compensatory damages is well based factually and legally (Rollo, p. 37) except as to the deletion of attorney's fees due to the absence of findings of gross and evident bad faith (Rollo, p. 39).

Under the circumstances, there appears to be no cogent reason to disturb the factual findings of both the trial court and the Court of Appeals.

Furthermore, the respondent court found that petitioner waived the applicability of the Warsaw Convention to the case at bar when it offered private respondent a higher amount than that which is provided in the said law and failed to raise timely objections during the trial when questions and answers were brought out regarding the actual claims and damages sustained by Alcantara which were even subjected to lengthy cross examination by Lufthansa's counsel. In *Abrenica v. Gonda* (34 Phil. 739), this Court held:

"x x x (I)t has been repeatedly laid down as a rule of evidence that a protest or objection against the admission of any evidence must be made at the proper time, and that if not so made it will be understood to have been waived. The proper time to make a protest or objection is when, from the question addressed to the witness, or from the answer thereto, or from the presentation of proof, the inadmissibility of evidence is, or may be inferred."

"It is also settled that the court cannot disregard evidence which would ordinarily be incompetent under the rules

but has been rendered admissible by the failure of a party to object thereto. Thus:

'x x x The acceptance of an incompetent witness to testify in a civil suit, as well as the allowance of improper questions that may be put to him while on the stand is a matter resting in the discretion of the litigant. He may assert his right by timely objection or he may waive it, expressly or by silence. In any case, the option rests with him. Once admitted, the testimony is in the case for what it is worth and the judge has no power to disregard it for the sole reason that it could have been excluded, if it had been objected to, nor to strike it out on its own motion.' ” (Cruz v. CA, et al., 192 SCRA 209 [1990] citing Marella, vs. Reyes, 12 Phil. 1). (Emphasis supplied).

WHEREFORE, the petition is Dismissed and the questioned decision and resolution of the appellate court are Affirmed. No costs.

SO ORDERED.

Gutierrez, Jr., (Chairman), Davide, Jr., and Romero, JJ., concur.
Feliciano, J., on leave.

* IAC, First Civil Cases Division, Justice Ma. Rosario Quetulia-Losa penned the decision with the concurrence of Acting Presiding Justice Ramon G. Gaviola, Jr. and Justice Eduardo P. Caguioa.

** Judge Augusto M. Amores penned the decision.

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