

ALITALIA, PETITIONER, VS. INTERMEDIATE APPELLATE COURT AND FELIPA E. PABLO, RESPONDENTS.

G.R. No. 71929. December 04, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

Dr. Felipa Pablo -- an associate professor in the University of the Philippines,[1] and a research grantee of the Philippine Atomic Energy Agency -- was invited to take part at a meeting of the Department of Research and Isotopes of the Joint FAO-IAEA Division of Atomic Energy in Food and Agriculture of the United Nations in Ispra, Italy.[2] She was invited in view of her specialized knowledge in "foreign substances in food and the agriculture environment." She accepted the invitation, and was then scheduled by the organizers, to read a paper on "The Fate of Radioactive Fusion Products Contaminating Vegetable Crops." [3] The program announced that she would be the second speaker on the first day of the meeting.[4] To fulfill this engagement, Dr. Pablo booked passage on petitioner airline, ALITALIA.

She arrived in Milan on the day before the meeting in accordance with the itinerary and time table set for her by ALITALIA. She was however told by the ALITALIA personnel there at Milan that her luggage was "delayed inasmuch as the same ** (was) in one of the succeeding flights from Rome to Milan." [5] Her luggage consisted of two (2) suitcases: one contained her clothing and other personal items; the other, her scientific papers, slides and other research material. But the other flights arriving from Rome did not have her baggage on board.

By then feeling desperate, she went to Rome to try to locate her bags herself. There, she inquired about her suitcases in the domestic and international airports, and filled out the forms prescribed by ALITALIA for people in her predicament. However, her baggage could not be found. Completely distraught and discouraged, she returned to Manila without attending the meeting in Ispra, Italy.

Once back in Manila she demanded that ALITALIA make reparation for the damages thus suffered by her. ALITALIA offered her "free airline tickets to compensate her for any alleged damages **." She rejected the offer, and forthwith commenced the action[6] which has given rise to the present appellate proceedings.

As it turned out, Prof. Pablo's suitcases were in fact located and forwarded to Ispra,[7] Italy, but only on the day after her scheduled appearance and participation at the U.N. meeting there.[8] Of course Dr. Pablo was no longer there to accept delivery; she was already on her way home to Manila. And for some reason or other, the suitcases were not actually restored to Prof. Pablo by ALITALIA until eleven (11) months later, and four (4) months after institution of her action.[9]

After appropriate proceedings and trial, the Court of First Instance rendered judgment in Dr. Pablo's favor:[10]

‘(1) Ordering the defendant (ALITALIA) to pay ** (her) the sum of TWENTY THOUSAND PESOS (P20,000.00), Philippine Currency, by way of nominal damages;

(2) Ordering the defendant to pay ** (her) the sum of FIVE THOUSAND PESOS (P5,000.00), Philippine

Currency, as and for attorney's fees; (and)

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

ALITALIA appealed to the Intermediate Appellate Court but failed to obtain a reversal of the judgment.[11] Indeed, the Appellate Court not only affirmed the Trial Court's decision but also increased the award of nominal damages payable by ALITALIA to P40,000.00.[12] That increase it justified as follows:[13]

"Considering the circumstances, as found by the Trial Court and the negligence committed by defendant, the amount of P20,000.00 under present inflationary conditions as awarded ** to the plaintiff as nominal damages, is too little to make up for the plaintiffs frustration and disappointment in not being able to appear at said conference; and for the embarrassment and humiliation she suffered from the academic community for failure to carry out an official mission for which she was singled out by the faculty to represent her institution and the country. After weighing carefully all the considerations, the amount awarded to the plaintiff for nominal damages and attorney's fees should be increased to the cost of her round trip air fare or at the present rate of peso to the dollar at P40,000.00."

ALITALIA has appealed to this Court on certiorari. Here, it seeks to make basically the same points it tried to make before the Trial Court and the Intermediate Appellate Court, i.e.:

- 1) that the Warsaw Convention should have been applied to limit ALITALIA'S liability; and
- 2) that there is no warrant in fact or in law for the award to Dr. Pablo of nominal damages and attorney's fees.[14]

In addition, ALITALIA postulates that it was error for the Intermediate Appellate Court to have refused to pass on all the assigned errors and in not stating the facts and the law on which its decision is based.[15]

Under the Warsaw Convention,[16] an air carrier is made liable for damages for:

- 1) the death, wounding or other bodily injury of a passenger if the accident causing it took place on board the aircraft or in the course of its operations of embarking or disembarking:[17]
- 2) the destruction or loss of, or damage to, any registered luggage or goods, if the occurrence causing it took place during the carriage by air;"[18] and
- 3) delay in the transportation by air of passengers, luggage or goods.[19]

In these cases, it is provided in the Convention that the "action for damages, however founded, can only be brought subject to the conditions and limits set out" therein.[20]

The Convention also purports to limit the liability of the carrier in the following manner:[21]

1. In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 250,000 francs. *** 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 that sum is greater than the actual value to the consignor at delivery.
- 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 waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5000 francs per passenger.

4. The limits prescribed ** shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

The Warsaw Convention however denies to the carrier availment "of the provisions which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court seised of the case, is considered to be equivalent to wilful misconduct," or "if the damage is (similarly) caused ** by any agent of the carrier acting within the scope of his employment." [22] The Hague Protocol amended the Warsaw Convention by removing the provision that if the airline took all necessary steps to avoid the damage, it could exculpate itself completely, [23] and declaring the stated limits of liability not applicable "if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result." The same deletion was effected by the Montreal Agreement of 1966, with the result that a passenger could recover unlimited damages upon proof of wilful misconduct. [24]

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. [25] 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" [26] 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." [27] 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.

In *Pan American World Airways, Inc. v. I.A.C.*, [28] for example, the Warsaw Convention was applied as regards the limitation on the carrier's liability, there being a simple loss of baggage without any otherwise improper conduct on the part of the officials or employees of the airline or other special injury sustained by the passenger.

On the other hand, the Warsaw Convention has invariably been held inapplicable, or as not restrictive of the carrier's liability, where there was satisfactory evidence of malice or bad faith attributable to its officers and

employees.[29] Thus, an air carrier was sentenced to pay not only compensatory but also moral and exemplary damages, and attorney's fees, for instance, where its employees rudely put a passenger holding a first-class ticket in the tourist or economy section,[30] or ousted a brown Asiatic from the plane to give his seat to a white man,[31] or gave the seat of a passenger with a confirmed reservation to another,[32] or subjected a passenger to extremely rude, even barbaric treatment, as by calling him a "monkey." [33]

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 special 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. As to the purely technical argument that the award to her of such nominal damages is precluded by her omission to include a specific claim therefor in her complaint, it suffices to draw attention to her general prayer, following her plea for moral and exemplary damages and attorney's fees, "for such other and further just and equitable relief in the premises," which certainly is broad enough to comprehend an application as well for nominal damages. Besides, petitioner should have realized that the explicit assertion, and proof, that Dr. Pablo's right had been violated or invaded by it -- absent any claim for actual or compensatory damages, the prayer thereof having been voluntarily deleted by Dr. Pablo upon the return to her of her baggage -- necessarily raised the issue, of nominal damages.

This Court also agrees that respondent Court of Appeals correctly awarded attorney's fees to Dr. Pablo, and the amount of P5,000.00 set by it is reasonable in the premises. The law authorizes recovery of attorney's fees inter alia where, as here, "the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest," [34] or "where the court deems it just and equitable." [35]

WHEREFORE, no error being perceived in the challenged decision of the Court of Appeals, it appearing on the

contrary to be entirely in accord with the facts and the law, said decision is hereby **AFFIRMED**, with costs against the petitioner.

SO ORDERED.

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

[1] Teaching such natural science subjects as Botany, Biology and Plant Physiology

[2] Rollo, p. 36

[3] Ibid, reference being made to Exhs. "A-2-a" and "A-2-b"

[4] This was on November 6, 1972.

[5] Rollo, p. 88

[6] On June 7, 1973 (Rollo, p. 90)

[7] Specifically to the Hotel Europa, as indicated by Prof. Pablo (Rollo, pp. 88-89).

[8] Rollo, p. 89. The baggage arrived on Nov. 7, 1972; but by that time, Prof. Pablo had already left Rome for Hongkong.

[9] Delivery appears to have been effected on October 17, 1973 (Rollo, p. 136).

[10] Rollo, p. 43: Record on Appeal, pp. 61-62. The decision was written by Judge Ricardo D. Galano and is dated February 2, 1975.

[11] Its appeal was docketed as AC-G.R. CV No. 59501

[12] Rollo, pp. 35-39. The decision was written for the Second Civil Cases Division by Campos, Jr., J., with whom concurred Pascual, Camilon and Jurado, JJ.

[13] Id., pp. 38-39

[14] Id., pp. 91-92

[15] Id., p. 91

[16] Full title: "Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw, October 12, 1929" (League of Nations -- Treaty Series), coming into force on Feb. 13, 1933; adhered to by the Republic of the Philippines on Nov. 9, 1950 with reservation; the Philippines deposited the Instrument of Adherence with the Polish Government on Nov. 9, 1950; and the Convention entered into force for the Philippines on Feb. 7, 1951 (Philippine Treaties Index [1946-1982] citing 137 League of Nations Treaties Series 11). The Warsaw Convention was amended by (1) the Hague Protocol on September 28, 1955 (Id., and United Nations, Treaty Series, Vol. 261, p. 423 and Vol. 266, p. 444), entering into force for the Philippines on February 28, 1967; (2) the Montreal Agreement in 1966, of which the Philippine Airlines and Alitalia are signatories; (3) the Guatemala Protocol in 1971 (apparently not adhered to by IATA members); and (4) the Montreal Protocols (Numbered 3 and 4) (1975) (also apparently not effective among IATA members).

[17] ART. 17

[18] ART. 18 (par.1), "transportation by air" being defined as "the period during which the baggage or goods are in charge of the carrier whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatever," but not where said baggage or goods are transported by land, sea or river outside an airport unless it be in "the performance of a contract for transportation by air for the purpose of loading, delivery or transshipment (pars. 2 and 3, ART. 18)

[19] ART. 19

[20] ART. 24, which also states that with regard to Article 17, the application of the rule is "without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights."

[21] ART. 22, as amended by the Hague Protocol, *supra*; the Montreal Agreement of 1966 set the limitation of damages at \$75,000 per passenger; the Guatemala Protocol, 1971, boosted the limit to \$100,000 per passenger, liability for baggage was increased to \$1,000, and the right to bring suit was expanded.

[22] ART. 25

[23] ART. 20 (1). "The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures."

[24] *Lisi v. Alitalia-Linee Aeree Italiane*, 370 F 2d 508 [2nd Cir 1966] *aff'd* 390 US 455 [1968], rehearing denied 397 US 939 [1968] and *Egan v. Kallsman Instrument corp.*, 21 NY 2d 160, 287 NYS 2d 14 [1967], CERT. DENIED 390 US 1039 [1968]

[25] *Northwest Airlines, Inc. v. Cuenca*, 14 SCRA 1065 (1965) which *inter alia* states that the Convention "merely declares the carrier liable for damages in the enumerated cases, if the conditions therein specified are present."

[26] *Id.*

[27] *Id.*

[28] 164 SCRA 268, citing *Ong Yiu v. C.A.* 91 SCRA 223; SEE *Burnett v. Trans World Airlines, Inc.* (DC NM), 368 F Supp. 1152 holding that the airline was not responsible to its passengers for mere mental anguish sustained as a result of the hijacking, in the absence of physical injuries

[29] SEE *KLM Royal Dutch Airlines v. Tuller*, 119 App DC 282, 292 F 2d 775, cert den 368 US 921, 7 L Ed 2d 136, 82 S Ct 243; *American Airlines, Inc. v. Ulen*, 87 App DC 307, 186 F 2d 529; *Goepp v. American Overseas Airlines, Inc.*, 281 App Div 105, 117 NYS 2d 276, *aff'd* 305 NY 830, 114 NE 2d 37, cert den 346 US 874, 98 L Ed 382, 74 S Ct 124

[30] *Northwest Airlines, Inc. v. Cuenca*, 14 SCRA 1063; *Lopez v. Pan Am*, 16 SCRA 43

[31] *Air France v. Carrasco*, 18 SCRA 155. In *Ortigas, Jr. v. Lufthansa German Airlines*, 64 SCRA 610 (1975), plaintiff's seat in the first-class section was given to a Belgian, and consequently plaintiff, who held a first-class ticket, confirmed and validated, was relegated to a tourist- or economy-class seat.

[32] *Korean Airlines Co., Ltd. v. C.A.*, 154 SCRA 211; see also, *KLM Royal Dutch Airlines v. C.A.*, 65 SCRA 237

[33] *Zulueta v. Pan Am*, 43 SCRA 397

[34] Civil Code, ART. 2208, par. (2); see *Rivera v. Litum & Co., Inc.*, 4 SCRA 1072 (1962); *Filipino Pipe & Foundry Corporation v. Central Bank*, 23 SCRA 1044 (1968); *Ganaban v. Bayle*, 30 SCRA 365 (1969); *Valenzuela v. C.A.*, G.R. No. 56168, Dec. 22, 1988

[35] *Id.*, *id.*, par. (11); see *Civil Aeronautics Administration v. C.A.*, G.R. No. 51806, Nov. 8, 1988

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