

**PAN AMERICAN WORLD AIRWAYS, INC., PETITIONER, VS. THE
INTERMEDIATE APPELLATE COURT, TEOFISTA P. TINITIGAN,
JOINED BY HER HUSBAND, SEVERINO TINITIGAN, RESPONDENTS.**

G.R. No. 74442. August 31, 1987

Ponente: PARAS, J.

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PARAS, J.:

Before Us is a petition to review by certiorari the judgment[1] of the respondent Court of Appeals (IAC) affirming with modification the decision[2] rendered by the trial court in favor of the plaintiff[3] and against the defendant[4] sentencing the latter to pay the former the sum of US\$1,546.15 or its equivalent in Philippine Currency as actual and compensatory damages, P500,000.00 as moral damages, P200,000.00 as exemplary damages, P100,000.00 as attorney's fees and to pay the costs of litigation. The modification consists in that the payment of US\$1,546.15 or its equivalent in Philippine Currency must be valued at the present rate of exchange.

The statement of the case is as follows:

On February 5, 1975, private respondent herein, Teofista P. Tinitigan, filed a complaint against petitioner herein, Pan American World Airways, Inc. (Pan Am for brevity) for damages arising from defendant's alleged refusal to accommodate her on Pan Am Flight No. 431 from Sto. Domingo, Republica Dominica to San Juan, Puerto Rico on April 29, 1973 notwithstanding the fact that she possessed a confirmed plane ticket purchased from Pan Am's Office at Sto. Domingo and thus causing her to suffer mental anguish, serious anxiety, besmirched reputation, wounded feelings and social humiliation. She prayed that she be awarded moral damages of P500,000.00, exemplary damages of P200,000.00, attorney's fees of P100,000.00 and actual damages sustained by her in the amount of US\$1,546.15.

In its Answer, defendant denied that plaintiff was a confirmed passenger since the ticket for Flight No. 431 issued to her was on an open space basis which meant that she could only be accommodated if any of the confirmed passengers failed to show up at the airport before departure. Plaintiff was advised by defendant of this fact when plaintiff changed her ticket for a new route with San Juan as additional part of her itinerary.

After due trial, the lower court rendered judgment on August 6, 1980 in favor of plaintiff and awarded the amount of damages as prayed for.

Defendant appealed said decision on both questions of fact and law to the respondent court assigning errors, to wit:

I. The lower court erred in holding that plaintiff had a confirmed reservation on Pan Am Flight 431 from Santo Domingo, Republica Dominica to San Juan, Puerto Rico on April 29, 1973.

II. The lower court erred in holding defendant?appellant liable for compensatory damages in the sum of US\$1,546.15, moral damages in the sum of P500,000.00 and exemplary damages in the sum of P200,000.00, it being contrary to law and the evidence.

III. The lower court erred in awarding attorney's fees to plaintiff.

IV. The lower court erred in not dismissing the complaint.

Respondent-appellate Court affirmed the assailed judgment of the trial court with modification as earlier stated. Hence, the instant petition, appellant-petitioner submitting the following grounds:

I. Respondent is a holder of an open, unconfirmed or a standby ticket.

II. Private respondent's ticket was not issued with an assigned seat.

III. The issuance of the boarding card to respondent Tinitigan and the fact that she was allowed to go through the departure area passing through customs and immigration did not make her a confirmed passenger.

IV. There is no evidence to support respondent court's findings that private respondent's seat was given to a white man.

V. The conclusion that the luggage of private respondent was taken on board flight 431 is not borne out by the evidence.

VI. Petitioner did not breach its contract with private respondent.

VII. There is no evidence to support private respondent's alleged loss of \$1,000.00 in profits.

In other words, the aforementioned grounds can be briefly stated as follows:

I. The respondent court misappreciated and ignored the facts of the case;

II. The conclusions of the respondent court were not supported by the evidence.

Evidence for the plaintiff in the lower court consisted of Teofista Tinitigan's sole testimony in open court supported by documentary evidence marked as Exhibits "A" to "J" while evidence for the defendant consisted of documents marked as Exhibits "1" to "12".

Findings of fact of the lower court show that plaintiff, a businesswoman and a multimillionaire in her own right as evidenced by Exhs. "J" to "J-7", (proprietor of Sampaguita Restaurant, New York City USA; Treasurer of the Molave Development Corp., Phil., proprietor of Cavite Household Appliances and Rowena's Handicraft, Phi.), was on a business trip with a Pan-Am ticket (San Francisco-Miami-Haiti-San Francisco). While in Haiti, she inquired from Pan-Am employees how she could proceed to San Juan, Puerto Rico for business reasons. Where-upon she was advised that her ticket was valid for Sto. Domingo, Republica Dominica only but in Santo Domingo she could make arrangements with Pan-Am for her trip to San Juan.

While in Sto. Domingo, after talking thru the telephone with Mrs. Lilibeth Warner, the former said that she (plaintiff) must be in San Juan that same day, to sign her contract or lose it. Plaintiff expected to make a profit of \$1,000 in said contract. Plaintiff then proceeded to the airport at about 2 o'clock in the afternoon, or 3 hours ahead of the scheduled Pan Am flight. She was told to wait and upon the arrival of the plane bound for San Juan, she surrendered to the Pan Am employees passenger ticket No. 0264200919952 (Exh. "3") with Sto. Domingo-Miami Route and she was issued passenger ticket No. 023443466114 (Exh. "D" of Exh. "2") for flight No. 431 with Sto. Domingo-San Juan-Miami route. She was also issued baggage claim No. 474-618 (Exh. "A") and given the corresponding boarding pass (Exh. "B") and assigned seat 3-A (Exh. "B-1") after she paid the fare and terminal fee. Appellee was then instructed to proceed to the Immigration Section where her passport (Exh. "C") was stamped accordingly.

While plaintiff was standing in line preparatory to boarding the aircraft, Rene Nolasco, a Pan Am employee

ordered her in a loud voice to step out of line because her ticket was not confirmed to her consternation and embarrassment in the presence of several people who heard the order. Despite her pleas that she should be in San Juan because it was very important to her, she was not allowed to board the aircraft. And as if to add insult to injury, she saw that her seat was given to a white man prompting her to engage Nolasco, who knows both the English and Spanish languages, in a heated argument provoking her into telling him that she would file a suit against Pan Am. Later, a few Pan Am employees went near her to tell her she could finally board the plane and on the pre-text that they would inspect her baggage, they led her to another place, which she finally realized, was not the departure area. Meanwhile, the plane took off without her but with her luggage on board. She was forced to return to her Hotel without any luggage much less an extra dress. It was a good thing that the Hotel people remembered her because they do not usually accommodate female guests, without any luggage to stay in the Hotel. While normally, hotel accommodation was paid before departure, plaintiff was made to pay the room accommodation in advance (Exh. "E").

She finally retrieved her luggage after five days in San Francisco after presenting her baggage ticket (Exh. "A"). She brought the matter to the attention of Mr. V.W. Smith, Manager of Pan Am in San Francisco, who sent a letter of apology (Exh. "G") for the "inconveniences" Pan Am caused her (plaintiff) and attached a refund check (Exh. "H") reflecting the value of the flight coupon issued for the flight from Sto. Domingo to San Juan in which plaintiff was denied boarding.

On the other hand, there was no oral evidence for defendant Pan Am. Evidence consisted of documents which included depositions and counterdepositions of witnesses and the following:

"Exh. "1", Pan Am manifest on Flight 431 dated April 29, 1973 from Sto. Domingo to San Juan, Dominican Republic; Exh. 2, Ticket Coupon No. 026443466114 dated April 29, 1973 issued to plaintiff with status "open" with routing Sto. Domingo-Miami; Exh. 3, Ticket Coupon No. 0264200919952 dated April 29, 1973; Exh. 4, Letter of defendant's witness Raul Fiallo to Director of Pan Am, Manila dated March 29, 1974 furnishing a copy of said letter to Pan Am Sto. Domingo; Exh. 5 Item No. 26 in Exhibit 1 enclosed in blue ink which reads "T. Tinitigan NB"; Exh. 6, Message sent by deponent Raul Fiallo to Mr. McKenzie, Pan Am, Manila; Exh. 7, Brown envelope containing the deposition of the witness; Exhs. 8, 8-A to 8-G, Certification of the deposition officer and the deposition of Raul Fiallo consisting of 8 pages in Spanish; Exh. 8-A-1, Signature of the deponent appearing at the left hand margin in every page of the deposition; Exhs. 9, 9-A to 9-F, Translation of the deposition from Spanish to English consisting of 7 pages; Exh. 10 Official Receipt representing fee of the Languages Internationale in translating the deposition from Spanish to English; Exh. 11, Deponent's answer to cross interrogatories written in Spanish; and Exh. 12, Translation to deponent's answer to cross-interrogatories from Spanish to English by Languages Internationale upon plaintiff's request. (pp. 46-47, Record on Appeal)

Considering the aforementioned evidence for both parties, the lower court said:

"Examining the evidence presented, the Court finds that the same preponderates in favor of the plaintiff. The plaintiff having been issued by the defendant with the necessary ticket (Exh. "D"), baggage claim symbol (Exh. "A"), the requisite boarding pass (Exh. "B") with assigned seat 3-A and her having been cleared through immigration (Exhs. C and C-1) all clearly and unmistakably show that plaintiff was indeed a confirmed passenger of defendant's Flight No. 431 for San Juan and that for all legal intents and purposes the contract of carriage between the plaintiff and the defendant was already perfected which bound the latter to transport the former to her place of destination on said Flight. This conclusion finds eloquent support in Exhibit Q of the defendant showing that plaintiff was included in the passenger manifest of said flight. The failure therefore of the defendant to accommodate plaintiff in said flight and the taking in by it of a white man in lieu of plaintiff, who was brazenly ordered by an employee of the defendant to get off the line and unceremoniously whisked off from the departure area on the pretext that her luggage had to undergo custom's inspection to plaintiff's

chagrin and great humiliation, smacks of a clear case of racial discrimination for which the defendant should be held liable in damages to the plaintiff.

Moreover, the written apology offered by the defendant to the plaintiff, thru its Manager in San Francisco, (Exh. G) is a tell-tale indication of an admission of fault by the defendant for the "inconvenience" it caused plaintiff.

The defense put up by the defendant to the effect that the issuance by it of the boarding pass in favor of plaintiff with an assigned seat was merely in compliance with the formal requirements of immigration fails to generate belief. There was no evidence presented, save the evidently self-serving declaration of deponent Fiallo Rodriguez, of such a requirement by the immigration laws of said foreign country.

Considering the sex, age and the social and business stature of the plaintiff in the community, the amounts of moral damages being claimed by her in the complaint cannot be said to be unreasonable. Moreover, the award of exemplary damages is called for under the circumstances to teach defendant a lesson for the public good.

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant sentencing the latter to pay the former the sum of US\$1,546.15 or its equivalent in Philippine Currency, as actual and compensatory damages, P200,000.00 as moral damages, P200,000.00 as exemplary damages, P20,000.00 as attorney's fees and the costs of litigation.

SO ORDERED. (pp. 47-49, Record on Appeal)

In its ruling, the appellate respondent court was merely echoing the findings of the lower court and in finding no merit in the appeal, gave the following reasons:

FIRST: It is clear from the evidence that defendant issued a Passenger Ticket and Baggage Check No. 026443466114 (Exh. "D") with assigned seat 3-A (Exh. "B-1") and the corresponding pass (Exh. "B") and baggage claim symbol (Exh. "A"). Plaintiff was made to pay the fare and terminal fee. At the immigration section, plaintiff's passport (Exh. "C") was stamped accordingly (Exh. "C-3"). Plaintiff's name was included in the passenger manifest (Exh. "1", "5") of PANAM for Flight 431 dated April 19, 1973. And these show that plaintiff was indeed a confirmed passenger of defendant's Flight 431 for San Juan on April 29, 1973. There was, therefore, a contract or carriage perfected between plaintiff and defendant for the latter to take plaintiff to her place of destination.

By refusing to accommodate plaintiff in said flight, defendant had willfully and knowingly violated the contract of carriage and failed to bring the plaintiff to her place of destination under its contract with plaintiff.

Defendant has from the start argued that plaintiff was merely a chance passenger thus she had to give way to a passenger with a confirmed reservation. However, defendant through Mr. Jose Raul Fiolla Rodriguez, testified that he cannot say exactly what the total capacity of the plane on Flight 431 was; that he does not know whether Mrs. Tinitigan was allowed to buy a ticket because there was still space available; that he cannot say whether Mrs. Tinitigan was the first or last to buy a ticket to San Juan because there is no knowing; that there is no way of knowing who occupied the seat (3-A) assigned to Mrs. Tinitigan; that he does not know if the ticket number of the person who occupied seat 3-A was higher or lower than the ticket number of Mrs. Tinitigan because it cannot be determined; that a higher number than that of Mrs. Tinitigan's ticket does not necessarily mean that Mrs. Tinitigan bought her ticket ahead; that no one else with open ticket was assigned the same seat number as Mrs. Tinitigan; that PANAM does not practice the principle of "first come, first served."

In other words, defendant would like us to believe that plaintiff was a chance passenger only and was not assured of her flight on that day. Defendant, however, has no way of proving the same as it was not certain whether plaintiff was a chance passenger or not.

Bad faith means a breach of a known duty through some motive or interest or illwill. Self enrichment or fraternal interest and not personal illwill, may have been the motive of defendant, but it is malice nevertheless. The fact that plaintiff was ordered out under some pre-text in order to accommodate a white man in an airline owned by an American firm with a reputation for bumping off non-caucasians to accommodate whites is very regrettable.

When defendant's employee ordered plaintiff to step out of line because her ticket was not confirmed despite plaintiff's pleas that she should be in San Juan that day, this caused plaintiff embarrassment because so many people heard the same and plaintiff was prevented from boarding the plane at all while her seat (3-A) was given to another passenger (a white man). For being subjected to such indignities, plaintiff suffered social humiliation, wounded feelings, serious anxiety, and mental anguish. Defendant should be held liable to plaintiff for moral damages.

A contract to transport passengers is quite different in kind and degree from any other contractual relation. And this, because of the relation which an air-carrier sustains with the public. Its business is mainly with the travelling public. It invites people to avail of the comforts and advantages it offers. The contract of carriage, therefore, generates a relation attended with a public duty. Neglect or malfeasance of the carrier's employees, naturally, could give ground for an action for damages.[5]

By not allowing plaintiff to board Flight 431 on April 29, 1973, plaintiff was not able to sign a contract with Mrs. Lilibeth Warner who had earlier placed an order for a sizeable number of "capiz" shells in which transaction plaintiff expected to derive a profit of US \$1,000.00. Plaintiff had to return to the Hotel El Embajador from the aircraft costing her US\$20.00. She had to pay for additional accommodations in said hotel for US\$26.15 and the damage to her personal property amounted to US\$500.00. Defendant should be held liable to the plaintiff in the amount of US\$1,546.15 or its equivalent in Philippine Currency at the present rate of exchange as actual or compensatory damages.

Defendant having breached its contract with plaintiff in bad faith, it is not error for the trial court to have awarded exemplary damages. The rationale behind exemplary or corrective damages is, as the name implies, to provide an example or correction for public good.[6] In view of its nature, it should be imposed in such amount as to sufficiently and effectively deter similar breach of contract in the future by defendant and other airlines.

An award of attorney's fees is also in order, having found bad faith on the part of defendant.

WHEREFORE, the decision appealed from is hereby AFFIRMED with the following modifications: defendant is sentenced to pay the plaintiff the sum of US\$1,546.15 or its equivalent in Philippine Currency at the present rate of exchange with the US dollar.

Costs against defendant-appellant.

SO ORDERED.

(pp. 3-5, Decision, pp. 96-98, Rollo)

It is noted that petitioner submitted in this petition the same grounds enumerated in its Motion for Reconsideration of the assailed judgment of the respondent appellate court anchoring its claim mainly on the appreciation of facts as supported by the evidence on record. These same grounds are also raised in petitioner's appeal from the judgment of the lower court to the respondent appellate court which affirmed the said assailed judgment.

All of the issues raised by petitioner are factual issues which the trial court ruled upon by favoring plaintiff's evidence as more credible than the evidence for the defendant. A cursory reading of the decision of the trial court as well as the decision of the appellate court reveals that all evidence available were considered. It is not the function of this Court to analyze or weigh evidence all over again, as Our jurisdiction is limited to reviewing

errors of law that might have been committed by the lower courts. Moreover, the findings of the lower court as to the credibility of the witnesses will not be generally disturbed on appeal and if the appeal is on questions of fact, the factual findings of the appellate court are binding on Us (Collector of Customs of Manila vs. IAC, 137 SCRA 3).

We believe, however the amount of some damages awarded to be exorbitant. We therefore reduce the moral and exemplary damages to the combined total sum of Two Hundred Thousand (P200,000.00) Pesos and the attorney's fees to Twenty Thousand (P20,000.00) Pesos. The award of actual damages in the amount of One Thousand Five Hundred Forty Six American dollars and fifteen cents (US\$1,546.15) computed at the exchange rate prevailing at the time of payment is hereby retained and granted.

WHEREFORE, as modified, the assailed decision of respondent appellate court is hereby AFFIRMED.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Gancayco, JJ., concur.

[1] Penned by Justice Jose C. Campos, Jr., concurred in by Justices Crisolito Pascual, Serafin C. Camilon and Desiderio P. Jurado.

[2] Written by Judge Enrique A. Agana, Sr.

[3] Private respondent herein and appellee in the IAC, Teofista P. Tinitigan.

[4] Petitioner herein and appellant in the IAC, Pan American World Airways, Inc.

[5] Zulueta vs. Pan American World Airways, Inc., L-28589, February 29, 1972, 43 SCRA 397.

[6] Civil Code, Arts. 2229, 2232.

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