

ALITALIA AIRWAYS, PETITIONER, VS. COURT OF APPEALS, AND SPS. JOSE O. JULIANO AND VICTORIA JULIANO, RESPONDENTS.

G.R. No. 77011. July 24, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This petition for review on certiorari of the decision rendered by the respondent court in AC-G.R. CV No. 05340 entitled "Sps. Jose O. Juliano and Victoria G. Juliano v. Alitalia Airways," promulgated on April 11, 1986, and the resolution of the same court dated January 6, 1987, denying the motion for reconsideration, is brought to the Court allegedly on pure questions of law.[1]

The facts from which the case now on review arose have a familiar ring and thus this Court will echo a similar conclusion decreed in jurisprudence.

On September 3, 1981, the private respondents Spouses Jose and Victoria Juliano (hereinafter referred to as the Julianos), arrived at the Fumicino Airport in Rome, Italy in order to board Flight AZ 1774 of Alitalia Airways scheduled to depart at 10:30 a.m. for Hongkong.

However, Flight AZ 1774 left Rome without the Julianos. When private respondent Jose O. Juliano arrived in Manila, he returned to his employer Bristol-Myers, Inc., of which he was Vice-President for Operations, the unused Rome-Hongkong leg of the Alitalia ticket. However, the cost of the Thai Airways tickets they had to purchase in lieu of Alitalia was not refunded by his office.

On December 15, 1981, the Julianos filed a complaint with the Regional Trial Court of Quezon City against the petitioner for damages from the alleged breach of its contractual obligations when the petitioner failed to transport the private respondent to Hongkong on the Alitalia Flight AZ 1774.[2]

The cause of the non-boarding of the Julianos makes up the bone of contention in this controversy.

According to the herein petitioner Alitalia, boarding time was 9:30 o'clock in the morning for Flight AZ 1774. The check-in counter was then closed and all confirmed passengers who failed to check-in before that time were marked as NO SHOW in the airline manifest as in the case of the Julianos.[3] Thereafter, chance passengers, or those without confirmed reservations, were allowed to board.

On the other hand, the Julianos claim that, having left the hotel right after breakfast at 6:30 o'clock in the morning, they arrived at the airport at around 9:15 o'clock in the morning.[4] Notwithstanding this timely arrival at the airport, the Julianos had to contend with a long queue for the check-in because there were no individual counters specifically for Alitalia passengers.[5]

Realizing that it was already close to boarding time, the Julianos, armed with confirmed tickets, decided to approach the check-in counter.[6]

At the counter, a lady employee only brushed them aside and ordered them to fall in line, which they did.[7]

At any rate, they were getting restless because the lines were no longer moving, so they decided to call the attention of the airline authorities.[8]

To make matters worse, the herein petitioner allegedly began to discriminate. The Julianos noticed that despite the fact that their line was not moving, some of the passengers were being escorted ahead of the line in order to be checked-in.[9]

For the second time, the Julianos approached the lady at the counter to explain that they would miss the flight[10] if they were not checked in.

It was then that the Julianos ran into Ms. Chuchi Estanislao,[11] an employee of the University of the Philippines Asian Institute of Tourism, who could not also check in. Together with Ms. Estanislao, they approached the Alitalia employee wearing a uniform with the tag "supervisor". He only shrugged when shown the confirmed tickets and said that the Julianos should try to check-in already because it was near departure time.[12]

On the witness stand during the hearing at the trial court, Anthony Wong, commercial manager of Alitalia Airways at Hong Kong, testified that as a matter of policy Alitalia would deny to anyone the opportunity to board the airline. It would be contrary to the profit motive of an airline to fly any plane with vacant seats. In fact, the reason why even chance passengers are admitted is to fill up all the seats not taken because of the number of NO SHOW (failure to appear) passengers with confirmed tickets.

Just the same, an airline could overbook itself precisely to ensure that all seats would be taken and this is what the lower court found with Alitalia.¹⁵ As a consequence, some of the passengers in Rome had to be "bumped off" to accommodate the passengers embarking at the rest of the leg of the trip. In fact more passengers were picked up by the same flight as it proceeded to Athens, Bangkok, and then Hongkong.¹⁶

Thus, the lower court adjudged Alitalia liable for damages. The airlines appealed from the decision of the trial court, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court sentences defendant Alitalia Airways to pay to plaintiff spouses Jose O. Juliano and Victoria G. Juliano the following:

1. U.S. \$2,065.00 as actual damages payable in Philippine Currency at the official rate of exchange at the time of payment;
2. P400,000.00 as moral damages;
3. P50,000.00 as attorney's fees, costs.¹⁷

This decision was *motu proprio* amended by the trial court on September 19, 1984 to include the award of P50,000.00 as exemplary damages.

Both parties appealed.

The respondent Court of Appeals modified the judgment as follows:

WHEREFORE, the decision sought to be reconsidered is MODIFIED by

- 1) reducing the award of moral damages to P200,000.00;
- 2) reducing the award of exemplary damages to P25,000.00; and
- 3) reducing attorney's fees to P30,000.00,

the rest of the decision is maintained.

SO ORDERED.¹⁸

Alitalia assails the decision of the respondent court on the grounds that the trial court had erred in awarding actual, moral, and exemplary damages and prays for a reversal.¹⁹ On the other hand, the Julianos question the award as inadequate as compared with the damages awarded in the cases of *Lopez, et al. v. Pan American World Airways*²⁰ or *Ortigas, Jr. v. Lufthansa German Airlines*²¹ and now pray that they be increased.

As adverted to at the outset, the present petition is alleged to invoke only pure questions of law, to wit:

1. The finding of the respondent Court of Appeals to the effect that "by Alitalia's own admission the Julianos arrived for check-in with plenty of time to spare and should have been allowed to board the plane" was (sic) a gross misapprehension and a quotation out of context of a statement made *arguendo* in petitioner's brief and is contrary to private respondents' own admissions and other uncontroverted evidence on record.
2. The respondent Court of Appeals' finding that Alitalia's Flight AZ 1774 on September 3, 1981 was overbooked is contrary to all the evidence on record and is a clear misapprehension of this evidence, if not a deliberate distortion of the same.
3. The finding of the respondent Court of Appeals that the tickets of private respondents are endorsable is not supported by any evidence and is contrary to private respondents' own admission, the finding of the trial court and other evidence on record.
4. The respondent Court of Appeals manifestly overlooked certain relevant facts which, if properly considered, would justify a different conclusion.
5. There is no factual or legal basis for the award of moral and exemplary damages and attorney's fees.²²

From a consideration of the foregoing, it is evident that this petition for review raises no substantial question of law but simply and essentially puts in issue the correctness of the factual findings of the Court of Appeals and the trial court.

For good and sound reasons, the Court has consistently affirmed that review of the findings of fact of the Court of Appeals is not a function that it ordinarily undertakes, such findings being as a rule binding and conclusive.²³ It is true that certain exceptions have become familiar. However nothing in the records warrants a review based on any of these well-recognized exceptions.²⁴

Thus we re-affirm the ruling laid down by the Court in a long line of cases that when an airline issues a ticket to a passenger confirmed on a particular flight, on a certain date, a contract of carriage arises, and the passenger has every right to expect that he would fly on that flight and on that date. If he does not, then the carrier opens itself to a suit for breach of contract of carriage.

Accordingly, the respondent court erred in holding that the Julianos are not entitled to a refund because the purchase of the Thai Airways tickets was unnecessary.

"After they were denied embarkation, the Julianos did not use their Alitalia tickets but bought passage on Thai Airways International in order to get to where they were going. The question now is: was this necessary?²⁵

x x x

The purchase of tickets on Thai Airways was by calculated choice, not by necessity. This being the case, since the Julianos could have flown Alitalia just the same there being no compelling necessity anymore for them to fly the same day, Our conclusion is that they are not entitled to a refund of the cost of their Thai tickets."²⁶

When a passenger contracts for a specific flight, he has a purpose in making that choice which must be respected. This choice, once exercised, must not be impaired by a breach on the part of the airline without the latter incurring any liability. Besides, why should the Julianos be compelled to wait for another Alitalia flight to risk a similar rebuff and suffer the consequent further delay?

It was already too much of a coincidence that, at Fumicino Airport, the Julianos would find another Filipino, in the person of Ms. Estanislao, in the same predicament that they were in.²⁷ We will no longer go to the extent of indulging in the conjecture that Ms. Estanislao and the Julianos were singled out to be discriminated against because of their color. What is plain to see is that the airline had deliberately overbooked and in doing so took the risk of having to deprive some passengers of their seats in case all of them would show up for check-in.

That Alitalia had no intention to accommodate all who had confirmed their flight reservations could be seen in the absence of any measure to contact all possible passengers for each flight who might be within the airport premises.²⁸ As a result, some passengers would really be left behind in the long and disorderly queue at the check-in counter.

Common carriers, like commercial airlines, are in the business of rendering service, which is the primary reason for their recognition in our law. They can not be allowed to disregard our laws as if they are doing the passengers any favor by accommodating them.

Because the passengers in a contract of carriage do not contract merely for transportation, they have a right to be treated by the carrier's employees with kindness, respect, courtesy, and consideration.²⁹ Hence the justification why passengers must be spared from the indignity and inconvenience of being refused a confirmed seat on the last minute.

As held in *Trans World Airlines v. Court of Appeals*,³⁰ such inattention to and lack of care [by the petitioner airline] for the interest of its passengers who are entitled to its utmost consideration, particularly as to their convenience, amount to bad faith which entitles the passenger to the award of moral damages. Ergo, we affirm the respondent court's award of moral damages at P200,000.00. This award should be sufficient to indemnify the Julianos for the delay, inconvenience, humiliation, and embarrassment they suffered.

Likewise the award of exemplary damages is well-grounded. With dismay, we note, that the imposition of substantial amounts of damages notwithstanding, international carriers have not been dissuaded from repeating similar derogatory acts.³¹

Nonetheless, we agree with the injunction expressed by the Court of Appeals that passengers must not prey on international airlines for damage awards, like "trophies in a safari." After all neither the social standing nor prestige of the passenger should determine the extent to which he would suffer, because of a wrong done, since the dignity affronted in the individual is a quality inherent in him and not conferred by these social indicators. Thus, as well and aptly put by Justice Serafin Camilon, in his ponencia in this case, the

x x x Propriety of damage awards is judged by their fairness considering all the circumstances. A man's stature is but an accident of life. The role it plays is secondary to the concepts of justice and fair play.³²

Nevertheless we have noted the proliferation of similar offenses by international carriers finding their way to this Court; we have to advocate a punitive stand to stem, if not totally eliminate, this deplorable tide. In the discretion of the Court, the award of exemplary damages should be increased to P200,000.00.³³

WHEREFORE, the decision of the respondent court is MODIFIED in that the petitioner Alitalia Airways is hereby ordered to pay the private respondents Jose O. Juliano and Victoria G. Juliano the following amounts:

- 1) U.S. \$2,065.00 as actual damages, payable in Philippine Currency at the official rate of exchange at the time of payment;
- 2) P200,000.00, as and for moral damages;
- 3) P200,000.00, as and for exemplary damages; and
- 4) P30,000.00, as attorney's fees.

Costs against the petitioner.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Camilon, Serafin E., J., ponente; Campos, Jr., Jose C.; and Jurado, Desiderio P., JJ.; Former Second Civil Cases Division.

[2] Original Record, "Jose O. Juliano and Victoria G. Juliano," CFI (Quezon City, Branch XVIII), Civil Case No. 05340, September 12, 1984, p. 1, Hon. Ernani Cruz Paño, presiding.

[3] Original Record, Id., at 194; T.S.N., July 5, 1984, 9, 10.

[4] T.S.N., July 14, 1982, 5, 18; T.S.N., January 4, 1983, 11.

[5] T.S.N., July 14, 1982, 20.

[6] See the Airline Manifest in Original Record, supra note 1 at 194.

[7] T.S.N., July 14, 1982, 7, 22.

[8] Id., at 7.

[9] Ibid.

[10] Id., 25.

[11] Id., 26; T.S.N., January 4, 1983, 22.

[12] T.S.N., July 14, 1982, 25; 10.

[13] T.S.N., July 5, 1984, 15-17.

[14] Ibid.

15 Original Record, supra note 1 at 153.

16 T.S.N., July 5, 1984, 9, 22.

17 Original Record, supra note 1 at 154.

18 Rollo, 61.

19 Brief for Defendant-Appellant, AC-G.R. CV No. 05340; Rollo, 63.

20 No. L-22415, March 30, 1966, 16 SCRA 444, 445.

The plaintiffs Fernando Lopez, then Philippine Senate President Pro-Tempore, his wife Maria V. Lopez, his

son-in-law Alfredo Montelibano, Jr., and his daughter Mrs. Alfredo Montelibano, Jr., were awarded the following:

1) P200,000.00 as moral damages divided among the plaintiffs, thus: P100,000.00 for Senate President Pro Tempore Fernando Lopez; P50,000.00 for Maria J. Lopez; P25,000.00 for his son-in-law Alfredo Montelibano, Jr.; and P25,000.00 for his daughter Mrs. Alfredo Montelibano, Jr.; 2) P75,000.00 as exemplary or corrective damages; 3) interest at the legal rate of 6% per annum on the moral and exemplary damages aforesated from December 14, 1963, the date of the amended decision of the court a quo, until said damages are fully paid; 4) P50,000.00 as attorney's fees and 5) the costs.

At that time, Mr. Lopez and his family were travelling with first class tickets and were expected by those who would welcome them to travel as such. Besides being a former Vice-President and a member of the Senate, the Upper Chamber of Congress, Mr. Lopez was on his way to the United States to attend a private business conference of the Binalbagan Isabela Sugar Company and a banquet tendered by Filipino friends in his honor as Senate President Pro Tempore.

21 No. L-28773, June 30, 1975, 64 SCRA 654.

The herein petitioner Francisco Ortigas was the holder of a first class ticket with confirmed seat reservations. Although Ortigas has not held any elective public office, he has however a distinguished record as a private citizen, a lawyer, a businessman, a civic and religious leader, and a member of numerous boards and organizations as well as local and international bodies, and is the recipient of awards and citations for outstanding services and achievements.

The appealed judgment was modified by raising the award of moral and exemplary damages to plaintiff Ortigas to P150,000.00 and P100,000.00, respectively.

22 Rollo, 17, 18.

23 Korean Airlines, Co., Ltd. v. Court of Appeals, G.R. No. 61418, September 24, 1987, 154 SCRA 213.

24 RULES OF COURT, Rule 45, sec. 4.

25 Rollo, 50.

26 Rollo, 51.

27 T.S.N., February 10, 1983, 4.

28 T.S.N., July 5, 1984, 11.

29 Air France v. Carrascoso, et al., No. L-21438, September 28, 1966, 18 SCRA 168.

30 G.R. No. 78656, August 30, 1988, 165 SCRA 147.

31 In addition to the aforesaid Trans World Airways v. CA, supra note 30; Lopez v. Pan American World Airways, supra note 19 and Ortigas, Jr. v. Lufthansa German Airlines, supra note 20; there are the cases of Armovit v. CA, G.R. No. 88561, April 20, 1990; Sabena Belgian World Airliner v. CA, G.R. 82068, March 31, 1989; KLM Royal Dutch v. CA, No. L-31150, July 22, 1975, 65 SCRA 237; Zulueta v. Pan American World Airways No. L-28589, February 29, 1972, 43 SCRA 397; Northwest Airlines, Inc. v. Cuenca, L-22425, August 31, 1965, 14 SCRA 1063; Mendoza v. Philippine Airlines, Inc., 90 Phil. 836, 845.

32 Rollo, 56.

33 Supra, note 28.

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