

PHILIPPINE AIRLINES, INC., PETITIONER, VS. COURT OF APPEALS AND PEDRO ZAPATOS, RESPONDENTS.

G.R. No. 82619. September 15, 1993

Ponente: BELLOSILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-82619/>

BELLOSILLO, J.:

This petition for review on certiorari seeks to annul and set aside the decision of the then Intermediate Appellate Court,[1] now Court of Appeals, dated 28 February 1985, in AC-G.R. CV No. 69327 ("Pedro Zapatos v. Philippine Airlines, Inc.") affirming the decision of the then Court of First Instance, now Regional Trial Court, declaring Philippine Airlines, Inc., liable in damages for breach of contract.

On 25 November 1976, private respondent filed a complaint for damages for breach of contract of carriage[2] against Philippine Airlines, Inc. (PAL), before the then Court of First Instance, now Regional Trial Court, of Misamis Occidental, at Ozamiz City. According to him, on 2 August 1976, he was among the twenty-one (21) passengers of PAL Flight 477 that took off from Cebu bound for Ozamiz City. The routing of this flight was Cebu-Ozamiz-Cotabato. While on flight and just about fifteen (15) minutes before landing at Ozamiz City, the pilot received a radio message that the airport was closed due to heavy rains and inclement weather and that he should proceed to Cotabato City instead.

Upon arrival at Cotabato City, the PAL Station Agent informed the passengers of their options to return to Cebu on Flight 560 of the same day and thence to Ozamiz City on 4 August 1975, or take the next flight to Cebu the following day, or remain at Cotabato and take the next available flight to Ozamiz City on 5 August 1975.[3] The Station Agent likewise informed them that Flight 560 bound for Manila would make a stop-over at Cebu to bring some of the diverted passengers; that there were only six (6) seats available as there were already confirmed passengers for Manila; and, that the basis for priority would be the check-in sequence at Cebu.

Private respondent chose to return to Cebu but was not accommodated because he checked-in as passenger No. 9 on Flight 477. He insisted on being given priority over the confirmed passengers in the accommodation, but the Station Agent refused private respondent's demand explaining that the latter's predicament was not due to PAL's own doing but to a force majeure.[4]

Private respondent tried to stop the departure of Flight 560 as his personal belongings, including a package containing a camera which a certain Miwa from Japan asked him to deliver to Mrs. Fe Obid of Gingoog City, were still on board. His plea fell on deaf ears. PAL then issued to private respondent a free ticket to Iligan City, which the latter received under protest.[5] Private respondent was left at the airport and could not even hitch a ride in the Ford Fiera loaded with PAL personnel.[6] PAL neither provided private respondent with transportation from the airport to the city proper nor food and accommodation for his stay in Cotabato City.

The following day, private respondent purchased a PAL ticket to Iligan City. He informed PAL personnel that he would not use the free ticket because he was filing a case against PAL.[7] In Iligan City, private respondent hired a car from the airport to Kolambugan, Lanao del Norte, reaching Ozamiz City by crossing the bay in a launch.[8]

His personal effects including the camera, which were valued at P2,000.00, were no longer recovered.

On 13 January 1977, PAL filed its answer denying that it unjustifiably refused to accommodate private respondent.[9] It alleged that there was simply no more seat for private respondent on Flight 560 since there were only six (6) seats available and the priority of accommodation on Flight 560 was based on the check-in sequence in Cebu; that the first six (6) priority passengers on Flight 477 chose to take Flight 560; that its Station Agent explained in a courteous and polite manner to all passengers the reason for PAL's inability to transport all of them back to Cebu; that the stranded passengers agreed to avail of the options and had their respective tickets exchanged for their onward trips; that it was only the private respondent who insisted on being given priority in the accommodation; that pieces of checked-in baggage and handcarried items of the Ozamiz City passengers were removed from the aircraft; that the reason for the pilot's inability to land at Ozamiz City airport was because the runway was wet due to rains thus posing a threat to the safety of both passengers and aircraft; and, that such reason of force majeure was a valid justification for the pilot to bypass Ozamiz City and proceed directly to Cotabato City.

On 4 June 1981, the trial court rendered its decision[10] the dispositive portion of which states:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant Philippine Air Lines, Inc. ordering the latter to pay:

(1) As actual damages, the sum of Two Hundred Pesos (P200.00) representing plaintiff's expenses for transportation, food and accommodation during his stranded stay at Cotabato City; the sum of Forty-Eight Pesos (P48.00) representing his flight fare from Cotabato City to Iligan City; the sum of Five Hundred Pesos (P500.00) representing plaintiff's transportation expenses from Iligan City to Ozamiz City; and the sum of Five Thousand Pesos (P5,000.00) as loss of business opportunities during his stranded stay in Cotabato City;

(2) As moral damages, the sum of Fifty Thousand Pesos (P50,000.00) for plaintiff's hurt feelings, serious anxiety, mental anguish and unkind and discourteous treatment perpetrated by defendant's employees during his stay as stranded passenger in Cotabato City;

(3) As exemplary damages, the sum of Ten Thousand Pesos (P10,000.00) to set a precedent to the defendant airline that it shall provide means to give comfort and convenience to stranded passengers;

(4) The sum of Three Thousand Pesos (P3,000.00) as attorney's fees;

(5) To pay the costs of this suit. "

PAL appealed to the Court of Appeals which on 28 February 1985, finding no reversible error, affirmed the judgment of the court a quo.[11]

PAL then sought recourse to this Court by way of a petition for review on certiorari[12] upon the following issues: (1) Can the Court of Appeals render a decision finding petitioner (then defendant-appellant in the court below) negligent and, consequently, liable for damages on a question of substance which was neither raised in the complaint nor proved at the trial? (2) Can the Court of Appeals award actual and moral damages contrary to the evidence and established jurisprudence?[13]

An assiduous examination of the records yields no valid reason for reversal of the judgment on appeal; only a modification of its disposition.

In its petition, PAL vigorously maintains that private respondent's principal cause of action was its alleged denial of private respondent's demand for priority over the confirmed passengers on Flight 560. Likewise, PAL points out that the complaint did not impute to PAL neglect in failing to attend to the needs of the diverted passengers;

and, that the question of negligence was not and never put in issue by the pleadings or proved at the trial.

Contrary to the above arguments, private respondent's amended complaint touched on PAL's indifference and inattention to his predicament. The pertinent portion of the amended complaint[14] reads:

"10. That by virtue of the refusal of the defendant through its agent in Cotabato to accomodate (sic) and allow the plaintiff to take and board the plane back to Cebu, and by accomodating (sic) and allowing passengers from Cotabato for Cebu in his stead and place, thus forcing the plaintiff against his will, to be left and stranded in Cotabato, exposed to the peril and danger of muslim rebels plundering at the time, the plaintiff, as a consequence, (have) suffered mental anguish, mental torture, social humiliation, bismirched reputation and wounded feeling, all amounting to a conservative amount of thirty thousand (P30,000.00) Pesos."

To substantiate this aspect of apathy, private respondent testified[15] -

"A. I did not even notice that I was I think the last passenger or the last person out of the PAL employees and army personnel that were left there. I did not notice that when I was already outside of the building after our conversation.

Q. What did you do next?

A. I banished (sic) because it seems that there was a war not far from the airport. The sound of guns and the soldiers were plenty.

Q. After that what did you do?

A. I tried to look for a transportation that could bring me down to the City of Cotabato.

Q. Were you able to go there?

A. I was at about 7:00 o'clock in the evening more or less and it was a private jeep that I boarded. I was even questioned why I and who am (sic) I then. Then I explained my side that I am (sic) stranded passenger. Then they brought me downtown at Cotabato.

Q. During your conversation with the Manager were you not offered any vehicle or transportation to Cotabato airport downtown?

A. In fact I told him (Manager) now I am by--passed passenger here which is not my destination what can you offer me. Then they answered, "it is not my fault. Let us forget that.

Q. In other words when the Manager told you that offer was there a vehicle ready?

A. Not yet. Not long after that the Ford Fiera loaded with PAL personnel was passing by going to the City of Cotabato and I stopped it to take me a ride because there was no more available transportation but I was not accommodated."

Significantly, PAL did not seem to mind the introduction of evidence which focused on its alleged negligence in caring for its stranded passengers. Well-settled is the rule in evidence that the protest or objection against the admission of evidence should be presented at the time the evidence is offered, and that the proper time to make protest or objection to the admissibility of evidence is when the question is presented to the witness or at the time the answer thereto is given.[16] There being no objection, such evidence becomes property of the case and all the parties are amenable to any favorable or unfavorable effects resulting from the evidence.[17]

PAL instead attempted to rebut the aforequoted testimony. In the process, it failed to substantiate its counter allegation for want of concrete proof[18] -

"Atty. Rubin O. Rivera - PAL's counsel:

Q. You said PAL refused to help you when you were in Cotabato, is that right?

Private respondent:

A. Yes.

Q. Did you ask them to help you regarding any offer of transportation or of any other matter asked of them?

A. Yes, he (PAL PERSONNEL) said what is? It is not our fault.

Q. Are you not aware that one fellow passenger even claimed that he was given Hotel accommodation because they have no money?

x x x x

A. No, sir, that was never offered to me. I said, I tried to stop them but they were already riding that PAL pick-up jeep, and I was not accommodated."

Having joined in the issue over the alleged lack of care it exhibited towards its passengers, PAL cannot now turn around and feign surprise at the outcome of the case. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.[19]

With regard to the award of damages affirmed by the appellate court, PAL argues that the same is unfounded. It asserts that it should not be charged with the task of looking after the passengers' comfort and convenience because the diversion of the flight was due to a fortuitous event, and that if made liable, an added burden is given to PAL which is over and beyond its duties under the contract of carriage. It submits that granting *arguendo* that negligence exists, PAL cannot be liable in damages in the absence of fraud or bad faith; that private respondent failed to apprise PAL of the nature of his trip and possible business losses; and, that private respondent himself is to be blamed for unreasonably refusing to use the free ticket which PAL issued.

The contract of air carriage is a peculiar one. Being imbued with public interest, the law requires common carriers to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances.[20] In *Air France v. Carrascoso*,[21] we held that -

"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 air carriage, therefore, generates a relation attended with a public duty x x x x" (underlining supplied).

The position taken by PAL in this case clearly illustrates its failure to grasp the exacting standard required by law. Undisputably, PAL'S diversion of its flight due to inclement weather was a fortuitous event. Nonetheless, such occurrence did not terminate PAL's contract with its passengers. Being in the business of air carriage and the sole one to operate in the country, PAL is deemed equipped to deal with situations as in the case at bar. What we said in one case once again must be stressed, i.e., the relation of carrier and passenger continues until the latter has been landed at the port of destination and has left the carrier's premises.[22] Hence, PAL necessarily would still have to exercise extraordinary diligence in safeguarding the comfort, convenience and safety of its stranded passengers until they have reached their final destination. On this score, PAL grossly failed considering the then ongoing battle between government forces and Muslim rebels in Cotabato City and the fact that the private respondent was a stranger to the place. As the appellate court correctly ruled -

"While the failure of plaintiff in the first instance to reach his destination at Ozamis City in accordance with the contract of carriage was due to the closure of the airport on account of rain and inclement weather which

was radioed to defendant 15 minutes before landing, it has not been disputed by defendant airline that Ozamis City has no all-weather airport and has to cancel its flight to Ozamis City or by-pass it in the event of inclement weather. Knowing this fact, it becomes the duty of defendant to provide all means of comfort and convenience to its passengers when they would have to be left in a strange place in case of such by-passing. The steps taken by defendant airline company towards this end has not been put in evidence, especially for those 7 others who were not accommodated in the return trip to Cebu, only 6 of the 21 having been so accommodated. It appears that plaintiff had to leave on the next flight 2 days later. If the cause of non-fulfillment of the contract is due to a fortuitous event, it has to be the sole and only cause (Art. 1755 C.C., Art. 1733 C.C.) Since part of the failure to comply with the obligation of common carrier to deliver its passengers safely to their destination lay in the defendant's failure to provide comfort and convenience to its stranded passengers using extra-ordinary diligence, the cause of non-fulfillment is not solely and exclusively due to fortuitous event, but due to something which defendant airline could have prevented, defendant becomes liable to plaintiff." [23]

While we find PAL remiss in its duty of extending utmost care to private respondent while being stranded in Cotabato City, there is no sufficient basis to conclude that PAL failed to inform him about his non-accommodation on Flight 560, or that it was inattentive to his queries relative thereto.

On 3 August 1975, the Station Agent reported to his Branch Manager in Cotabato City that -

"3. Of the fifteen stranded passengers two pax elected to take F478 on August 05, three pax opted to take F442 August 03. The remaining ten (10) including subject requested that they be instead accommodated (sic) on F446 CBO-IGN the following day where they intended to take the surface transportation to OZC. Mr. Pedro Zapatos had by then been very vocal and boisterous (sic) at the counter and we tactfully managed to steer him inside the Station Agent's office. Mr. Pedro Zapatos then adamantly insisted that all the diverted passengers should have been given priority over the originating passengers of F560 whether confirmed or otherwise. We explained our policies and after awhile he seemed pacified and thereafter took his ticket (in-lieu of (sic) to CBO-IGN, COCON basis), at the counter in the presence of five other passengers who were waiting for their tickets too. The rest of the diverted pax had left earlier after being assured that their tickets will be ready the following day." [24]

Aforesaid Report being an entry in the course of business is prima facie evidence of the facts therein stated. Private respondent, apart from his testimony, did not offer any controverting evidence. If indeed PAL omitted to give information about the options available to its diverted passengers, it would have been deluged with complaints. But, only private respondent complained -

"Atty. Rivera (for PAL)

Q. I understand from you Mr. Zapatos that at the time you were waiting at Cotabato Airport for the decision of PAL, you were not informed of that decision until after the airplane left is that correct?

A. Yes.

COURT:

Q. What do you mean by "yes"? You meant you were not informed?

A. Yes, I was not informed of their decision, that they will only accommodate few passengers.

Q. Aside from you there were many other stranded passengers?

A. I believed, yes.

Q. And you want us to believe that PAL did not explain (to) any of these passengers about the decision

regarding those who will board the aircraft back to Cebu?

A. No, Sir.

Q. Despite these facts Mr. Zapatos did any of the other passengers complained (sic) regarding that incident?

x x x x

A. There were plenty of arguments and I was one of those talking about my case.

Q. Did you hear anybody complained (sic) that he has not been informed of the decision before the plane left for Cebu?

A. No."[25]

Admittedly, private respondent's insistence on being given priority in accommodation was unreasonable considering the fortuitous event and that there was a sequence to be observed in the booking, i.e., in the order the passengers checked-in at their port of origin. His intransigence in fact was the main cause for his having to stay at the airport longer than was necessary -

"Atty. Rivera:

Q. And, you were saying that despite the fact that according to your testimony there were at least 16 passengers who were stranded there in Cotabato airport according to your testimony, and later you said that there were no other people left there at that time, is that correct?

A. Yes, I did not see anyone there around. I think I was the only civilian who was left there.

Q. Why is it that it took you long time to leave that place?

A. Because I was arguing with the PAL personnel. "[26]

Anent the complaint that PAL employees were disrespectful and inattentive toward private respondent, the records are bereft of evidence to support the same. Thus, the ruling of respondent Court of Appeals in this regard is without basis.[27] On the contrary, private respondent was attended to not only by the personnel of PAL but also by its Manager.[28]

In the light of these findings, we find the award of moral damages of Fifty Thousand Pesos (P50,000.00) unreasonably excessive; hence, we reduce the same to Ten Thousand Pesos (P10,000.00). Conformably herewith, the award of exemplary damages is also reduced to Five Thousand Pesos (P5,000.00). Moral damages are not intended to enrich the private respondent. They are awarded only to enable the injured party to obtain means, diversion or amusements that will serve to alleviate the moral suffering he has undergone by reason of the defendant's culpable action.[29]

With regard to the award of actual damages in the amount of P5,000.00 representing private respondent's alleged business losses occasioned by his stay at Cotabato City, we find the same unwarranted. Private respondent's testimony that he had a scheduled business "transaction of shark liver oil supposedly to have been consummated on August 3, 1975 in the morning" and that "since (private respondent) was out for nearly two weeks I missed to buy about 10 barrels of shark liver oil,"[30] are purely speculative. Actual or compensatory damages cannot be presumed but must be duly proved with reasonable degree of certainty. A court cannot rely on speculation, conjecture or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have suffered and on evidence of the actual amount thereof.[31]

WHEREFORE the decision appealed from is AFFIRMED with modification however that the award of moral

damages of Fifty Thousand Pesos (P50,000.00) is reduced to Ten Thousand Pesos (P10,000.00) while the exemplary damages of Ten Thousand Pesos (P10,000.00) is also reduced to Five Thousand Pesos (P5,000.00). The award of actual damages in the amount Five Thousand Pesos (P5,000.00) representing business losses occasioned by private respondent's being stranded in Cotabato City is deleted.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, Davide, Jr., and Quiason, JJ., concur.

[1] Penned by Justice Floreliana Castro-Bartolome, concurred in by Justices Jorge R. Coquia, Mariano A. Zosa and Bienvenido C. Ejercito, Third Civil Cases Division.

[2] Rollo, p. 46.

[3] Record of Exhibits, p. 13.

[4] TSN, 15 March 1979, p. 29.

[5] Id., p. 33.

[6] Id., p. 11.

[7] Id., p. 27.

[8] Id., pp. 24-25.

[9] Rollo, pp. 54-56.

[10] Penned by Judge Melencio A. Genato, Court of First Instance of Misamis Occidental, Branch II, Ozamiz City; Rollo, pp. 37-44.

[11] Rollo, pp. 112-116.

[12] Id., p. 15.

[13] Id., pp. 157-158.

[14] Rollo, pp. 49-50.

[15] TSN, 15 March 1979, pp. 10-11.

[16] Arevalo v. Dimayuga, 49 Phil. 894, 897 (1927).

[17] See Beam v. Yatco, 82 Phil. 30, 37-38 (1948).

[18] TSN, 15 March 1979, p. 34.

[19] Sec. 5, Rule 10, Rules of Court.

[20] Art. 1755, New Civil Code of the Philippines.

[21] L-21438, 28 September 1966, 18 SCRA 155, 167-168.

[22] Aboitiz Shipping Corporation v. Court of Appeals, G.R. No. 84458, 6 November 1989, 179 SCRA 95, 102.

[23] Rollo, p. 114.

[24] Exh. "7", Record of Exhibits, p. 13.

[25] TSN, 15 March 1979, pp. 21-22.

[26] Ibid. p. 23.

[27] Rollo, p. 114.

[28] TSN, 15 March 1979, pp. 7-10; See also Report dated 3 August 1979, *supra*.

[29] *De Leon v. Court of Appeals*, L-31931, 31 August 1988, 165 SCRA 166, 179.

[30] TSN, 15 March 1979, pp. 16-17.

[31] *Diokno v. Court of Appeals*, G.R. No. 55613, 10 December 1990, 192 SCRA 169, 176.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.