

DR. HERMAN ARMOVIT, DORA ARMOVIT AND JACQUELINE ARMOVIT, PETITIONERS, VS. COURT OF APPEALS, AND NORTHWEST AIRLINES, INC., RESPONDENTS.

G.R. NO. 88561. April 20, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is a case which involves a Filipino physician and his family residing in the United States who came home to the Philippines on a Christmas visit. They were bumped off at the Manila International Airport on their return flight to the U.S. because of an erroneous entry in their plane tickets relating to their time of departure.

In October 1981, the petitioners decided to spend their Christmas holidays with relatives and friends in the Philippines, so they purchased from private respondent, (Northwest Airlines, Inc.) three (3) round trip airline tickets from the U.S. to Manila and back, plus three (3) tickets for the rest of the children, though not involved in the suit. Each ticket of the petitioners which was in the handwriting of private respondent's tickets sales agent contains the following entry on the Manila to Tokyo portion of the return flight:

"from Manila to Tokyo, NW flight 002, date 17 January, time 10:30 A.M. Status, OK." [1]

On their return trip from Manila to the U.S. scheduled on January 17, 1982, petitioner arrived at the check-in counter of private respondent at the Manila International Airport at 9:15 in the morning, which is a good one (1) hour and fifteen (15) minutes ahead of the 10:30 A.M. scheduled flight time recited in their tickets. Petitioners were rudely informed that they cannot be accommodated inasmuch as Flight 002 scheduled at 9:15 a.m. was already taking off and the 10:30 A.M. flight time entered in their plane tickets was erroneous.

Previous to the said date of departure petitioners re-confirmed their reservations through their representative Ernesto Madriaga who personally presented the three (3) tickets at the private respondent's Roxas Boulevard office. [2] The departure time in the three (3) tickets of petitioners was not changed when re-confirmed. The names of petitioners appeared in the passenger manifest and confirmed as Passenger Nos. 306, 307, and 308, Flight 002. [3]

Herein petitioner Dr. Armovit protested in extreme agitation that because of the bump-off he will not be able to keep his appointments with his patients in the U.S. Petitioners suffered anguish, wounded feelings, and serious anxiety day and night of January 17th until the morning of January 18th when they were finally informed that seats will be available for them on the flight that day.

Because of the refusal of the private respondent to heed the repeated demands of the petitioners for compensatory damages arising from the aforesaid breach of their air-transport contracts, [4] petitioners were compelled to file an action for damages in the Regional Trial Court of Manila.

After trial on the merits, a decision was rendered on July 2, 1985, the dispositive part of which reads as follows:

"WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered ordering defendant to pay plaintiffs actual, moral, exemplary and nominal damages, plus attorney's fees, as follows:

- a) Actual damages in favor of Dr. Herman Armovit in the sum of P1,300.00, with interest at the legal rate from January 17, 1982;
 - b) Moral damages of P500,000.00, exemplary damages of P500,000.00, and nominal damages of P100,000.00 in favor of Dr. Herman Armovit;
 - c) Moral damages of P300,000.00, exemplary damages of P300,000.00, and nominal damages of P50,000.00 in favor of Mrs. Dora Armovit;
 - d) Moral damages of P300,000.00, exemplary damages of P300,000.00, and nominal damages of P50,000.00 in favor of Miss Jacqueline Armovit; and
 - e) Attorney's fees of 5% of the total awards under the above paragraphs.
- plus costs of suit."[5]

Not satisfied therewith, private respondent interposed an appeal to the Court of Appeals wherein in due course a decision was rendered on June 20, 1989, the relevant portion and dispositive part of which read as follows:

"Plaintiffs-appellees had complied with the "72-hour reconfirmation rule". They had obtained reconfirmation from defendant-appellant of the time and date of their flight, as indicated in their tickets. The trial court said so and We find nothing of significance to warrant a disturbance of such finding.

On the allowance of damages, the trial court has discretion to grant and fix the amounts to be paid the prevailing party. In this case, there was gross negligence on the part of defendant-appellant in reconfirming the time and date of departure of Flight No. 002 as indicated in the three (3) tickets (Exhibits A, A-1 and A-2). And, as admitted by defendant-appellant, plaintiffs-appellees had arrived at the airport at 9:15 A.M. or one (1) hour before departure time of 10:30 A.M.

Appellees' actual damages in the amount of P1,300.00 is maintained for being unrebutted by the Appellant.

However, We modify the allowance of the other awards made by the trial court.

The moral damages of P900,000.00 awarded to Appellees must be eliminated considering the following:

1. That the appellees did not take the witness stand to testify on their "social humiliation, wounded feelings and anxiety" and the breach of contract was not malicious or fraudulent. (Art. 2220, Civil Code). It has been held that:

'Nor was there error in the appealed decision in denying moral damages, not only on account of the plaintiff's failure to take the witness stand and testify to her social humiliation, wounded feelings, anxiety, etc., as the decision holds, but primarily because a breach of contract like that of defendant not being malicious or fraudulent, does not warrant the award of moral damages under Article 2220 of the Civil Code (Ventilla vs. Centeno, L-14333, 28 Jan. 1961; Fores vs. Miranda, L-12163; 4 March 1959; Francisco vs. GSIS, 7 SCRA 577).'

2. Furthermore, moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer (San Andres vs. Court of Appeals, 116 SCRA 85). In a later case, the Supreme Court held that moral damages are emphatically not intended to enrich a complainant at the expense of the defendant (R & B Surety vs. IAC, 129 SCRA 745) citing Grand Union Supermarket, Inc. vs. Espino, Jr. 94 SCRA 966).

However, there is no question that appellant acted with negligence in not informing appellees about the change

of hour of departure. To provide an example or correction for the public good, therefore, the award of exemplary damages is proper (Art. 2229 & 2231 Civil Code; *Lopez v. Pan American World Airways*, 16 SCRA 431; *Prudenciado vs. Alliance Transport*, 148 SCRA 440). Nonetheless, the awards granted by the trial court are far too exorbitant and excessive compared to the actual loss of P1,300.00. The authority of the Court of Appeals to modify or change the amounts of awards has been upheld in a long line of decisions. We reduce the award of exemplary damages from P500,000.00 to P100,000.00 in favor of Dr. Herman Armovit, from P500,000.00 to P50,000.00 in favor of Mrs. Dora Armovit; and from P300,000.00 to P20,000.00 in favor of Miss Jacqueline Armovit. (*Gellada vs. Warner Barnes*, 57 O.G. (4) 7347, *Sadie vs. Bachrach*, 57 O.G. (4) 636, *Prudenciado vs. Alliance Transport*, supra). The award of nominal damages has to be eliminated since we are already awarding actual loss. Nominal damages cannot co-exist with actual or compensatory damages (*Vda. de Medina, et al. v. Cresencia, et al.*, 99 Phil. 506).

The award of 5% of the total damages as attorney's fees is reasonable.

WHEREFORE, with the above modifications, the decision appealed from is hereby AFFIRMED in all other respects."[6]

A motion for reconsideration thereof filed by the petitioners was denied in a resolution dated May 29, 1989.[7]

Both petitioners and private respondent elevated the matter to this Court for review by certiorari.

The petition of private respondent was docketed as G.R. No. 86776. It was denied in a resolution of this Court dated July 10, 1989, and the motion for reconsideration thereof was denied in a resolution dated September 6, 1989. On October 12, 1989 this Court ordered the entry of judgment in this case and for the records to be remanded to the court of origin for prompt execution of the judgment.

In the herein petition for review on certiorari filed by petitioner they claim that the questioned decision and resolution of the Court of Appeals should be struck down as an unlawful, unjust and reasonless departure from the decisions of this Court as far as the award for moral damages and the drastic reduction of the exemplary damages are concerned.

The petition is impressed with merit.

The appellate court observed that private respondent was guilty of gross negligence not only in the issuance of the tickets by the erroneous entry of the date of departure and without changing or correcting the error when the said three (3) tickets were presented for re-confirmation. Nevertheless it deleted the award of moral damages on the ground that petitioners did not take the witness stand to testify on "their social humiliation, wounded feelings and anxiety, and that the breach of contract was not malicious or fraudulent." [8]

We disagree.

In *Air France vs. Carrascoso*, [9] *Lopez vs. Pan American World Airways*, [10] and *Zulueta vs. Pan American World Airways*, [11] this Court awarded damages for the gross negligence of the airline which amounted to malice and bad faith and which tainted the breach of air transportation contract.

Thus in *Air France*, this Court observed:

"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 traveling 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. Neglect or malfeasance of the carrier's employees, naturally, could give ground for an action for damages.

"Passengers do not contract merely for transportation. They have the right to be treated by the carrier's

employees with kindness, respect, courtesy and due consideration. They are entitled to be protected against personal misconduct, injurious language, indignities and abuses from such employees. So it is, that any rude or discourteous conduct on the part of employees towards a passenger gives the latter an action for damages against the carrier."[12]

The gross negligence committed by private respondent in the issuance of the tickets with entries as to the time of the flight, the failure to correct such erroneous entries and the manner by which petitioners were rudely informed that they were bumped off are clear indicia of such malice and bad faith and establish that private respondent committed a breach of contract which entitles petitioners to moral damages.

The appellate court observed that the petitioners failed to take the witness stand and testify on the matter. It overlooked however, that the failure of the petitioner to appear in court to testify was explained by them. The assassination of Senator Benigno Aquino, Jr. on August 21, 1983 following the year they were bumped off caused a turmoil in the country. This turmoil spilled over to the year 1984 when they were scheduled to testify. However, the violent demonstrations in the country were sensationalized in the U.S. media so petitioners were advised to refrain from returning to the Philippines at the time.

Nevertheless, Atty. Raymund Armovit, brother of petitioner Dr. Armovit, took the witness stand as he was with the petitioners from the time they checked in up to the time of their ultimate departure. He was a witness when the check-in officer rudely informed the petitioners that their flight had already taken off, while petitioner Dr. Armovit remonstrated that their tickets reflected their flight time to be 10:30 A.M.; that in anger and frustration, Dr. Armovit told the said check-in-officer that he had to be accommodated that morning so that he could attend to all his appointments in the U.S.; that petitioner Jacqueline Armovit also complained about not being able to report for work at the expiration of her leave of absence; that while petitioner had to accept private respondent's offer for hotel accommodations at the Philippine Village Hotel so that they could follow up and wait for their flight out of Manila the following day, petitioners did not use their meal coupons supplied because of the limitations thereon so they had to spend for lunch, dinner, and breakfast in the sum of P1,300.00 while waiting to be flown out of Manila; that Dr. Armovit had to forego the professional fees for the medical appointments he missed due to his inability to take the January 17 flight; that the petitioners were finally able to fly out of Manila on January 18, 1982, but were assured of this flight only on the very morning of that day, so that they experienced anxiety until they were assured seats for that flight.[13]

No doubt Atty. Raymund Armovit's testimony adequately and sufficiently established the serious anxiety, wounded feelings and social humiliation that petitioners suffered upon having been bumped off. However, considering the circumstances of this case whereby the private respondent attended to the plight of the petitioners, taking care of their accommodations while waiting and boarding them in the flight back to the U.S. the following day, the Court finds that the petitioners are entitled to moral damages in the amount of P100,000.00 each.

By the same token to provide an example for the public good, an award of exemplary damages is also proper.[14] The award of the appellate court is adequate.

Nevertheless, the deletion of the nominal damages by the appellate court is well-taken since there is an award of actual damages. Nominal damages cannot co-exist with actual or compensatory damages.[15]

WHEREFORE, the petition is GRANTED. The questioned judgment of the Court of Appeals is hereby modified such that private respondent shall pay the following:

(a) actual damages in favor of Dr. Armovit in the sum of P1,300.00 with interest at the legal rate from January 17, 1982;

- (b) moral damages at P100,000.00 and exemplary damages and P100,000.00 in favor of Dr. Armovit;
- (c) moral damages of P100,000.00 and exemplary damages of P50,000.00 in favor of Mrs. Dora Armovit;
- (d) moral damages of P100,000.00 and exemplary damages in the amount of P20,000.00 in favor of Miss Jacqueline Armovit; and
- (e) attorney's fees at 5% of the total awards under the above paragraphs, plus the cost of suit.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

- [1] Exhibits A, A-1 and A-2.
- [2] TSN, February 20, 1984, pages 2-25.
- [3] Exhibits B and B-1.
- [4] Exhibits C, D, and F.
- [5] Pages 34 to 35, Rollo.
- [6] Madame Justice Leonor Ines Luciano, ponente, concurred in by Justices Venancio D. Aldecoa, Jr. and Eduardo C. Abaya.
- [7] Mr. Justice Venancio D. Aldecoa, Jr., ponente, concurred in by Justices Gloria C. Paras and Regina G. Ordoñez-Benitez.
- [8] Pages 76 to 77, Rollo.

[9] 18 SCRA 155 (1966).

[10] 16 SCRA 431 (1966).

[11] 49 SCRA 1 (1973).

- [12] Supra, at 167 to 168.
- [13] Page 30, Rollo.
- [14] Articles 2229 and 2231, Civil Code; Lopez vs. Pan American World Airways, supra; Prudenciado vs. Alliance Transport System, Inc., 148 SCRA 440 (1987).
- [15] Vda. de Medina vs. Cresencia, 99 Phil. 506 (1956).

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