

PHILIPPINE AIR LINES, PETITIONER, VS. HON. COURT OF APPEALS AND ISIDRO CO., RESPONDENTS.

G.R. No. 92501. March 06, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This is a petition for review of the decision dated July 19, 1989 of the Court of Appeals affirming the decision of the Regional Trial Court of Pasay City which awarded P72,766.02 as damages and attorney's fees to private respondent Isidro Co for the loss of his checked-in baggage as a passenger of petitioner airline.

The findings of the trial court, which were adopted by the appellate court, are:

"At about 5:30 a.m. on April 17, 1985, plaintiff [Co], accompanied by his wife and son, arrived at the Manila International Airport aboard defendant airline's PAL Flight No. 107 from San Francisco, California, U.S.A. Soon after his enbarking (sic), plaintiff proceeded to the baggage retrieval area to claim his nine pieces of checked-in luggage with the corresponding claim checks in his possession. Plaintiff found eight of his luggage, but despite diligent search, he failed to locate the ninth luggage, with claim check number 729113 which is the one in question in this case.

"Plaintiff then immediately notified defendant company through its employee, Willy Guevarra, who was then in charge of the PAL claim counter at the airport. Willy Guevarra, who testified during the trial court on April 11, 1986, filled up a printed form known as a Property Irregularity Report (Exh. 'A'), acknowledging one of the plaintiff's luggages to be missing (Exh. 'A-1'), and signed it after asking plaintiff himself to sign the same document (Exh. 'A-2'). In accordance with his procedure in cases of this nature, Willy Guevarra asked plaintiff to surrender to him the nine claim checks corresponding to the nine luggages, i.e., including the one that was missing.

"The incontestable evidence further shows that plaintiff's lost luggage was a Samsonite suitcase measuring about 62 inches in length, worth about US\$200.00 and containing various personal effects purchased by plaintiff and his wife during their stay in the United States and similar other items sent by their friends abroad to be given as presents to relatives in the Philippines. Plaintiff's invoices evidencing their purchases show their missing personal effects to be worth US\$1,243.01, in addition to the presents entrusted to them by their friends which plaintiff testified to be worth about US \$500.00 to US\$600.00 (Exhs. 'D,' 'D-1,' to 'D-17;' tsn, p. 4, July 11, 1985; pp. 5-14, March 7, 1986).

"Plaintiff on several occasions unrelentingly called at defendant's office in order to pursue his complaint about his missing luggage but to no avail. Thus, on April 15, 1985, plaintiff through his lawyer wrote a demand letter to defendant company through Rebecca V. Santos, its manager, Central Baggage Services (Exhs. 'B' & 'B-1'). On April 17, 1985, Rebecca Santos replied to the demand letter (Exh. 'B') acknowledging 'that to date we have been unable to locate your client's (plaintiff's) baggage despite our careful search' and requesting plaintiff's counsel to 'please extend to him our sincere apologies for the inconvenience he was caused by this unfortunate incident'

(Exh. 'C'). Despite the letter (Exh. 'C'), however, defendants never found plaintiff's missing luggage or paid its corresponding value. Consequently, on May 3, 1985, plaintiff filed his present complaint against said defendants." (pp. 38-40, Rollo.)

Co sued the airline for damages. The Regional Trial Court of Pasay City found the defendant airline (now petitioner) liable, and rendered judgment on June 3, 1986, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered sentencing defendant Philippine Airlines, Inc. to pay plaintiff Isidro Co:

“1) P42,766.02 by way of actual damages;

“2) P20,000.00 by way of exemplary damages;

“3) P10,000.00 as attorney's fees;

all in addition to the costs of the suit.

"Defendants' counterclaim is hereby dismissed for lack of merit." (p. 40, Rollo.)

On appeal, the Court of Appeals affirmed in toto the trial court's award.

In his petition for review of the Court of Appeals's decision, petitioner alleges that the appellate court erred:

1. in affirming the conclusion of the trial court that petitioner's retrieval baggage report was a fabrication;
2. in not applying the limits of liability under the Warsaw Convention which limits the liability of an air carrier for loss, delay or damage to checked-in baggage to US\$20.00 based on weight; and
3. in awarding private respondent Isidro Co actual and exemplary damages, attorney's fees, and costs.

The first and third assignments of error raise purely factual issues which are not reviewable by this Court (Sec. 2, Rule 45, Rules of Court). The Court reviews only questions of law which must be distinctly set forth in the petition. (*Hodges vs. People*, 68 Phil. 178.) The probative value of petitioner's retrieval report was passed upon by the Regional Trial Court of Pasay City, whose finding was affirmed by the Court of Appeals as follows:

"In this respect, it is further argued that appellee should produce his claim tag if he had not surrendered it because there was no baggage received. It appeared, however, that appellee surrendered all the nine claim checks corresponding to the nine luggages, including the one that was missing, to the PAL officer after accomplishing the Property Irregularity Report. Therefore, it could not be possible for appellee to produce the same in court. It is now for appellant airlines to produce the veracity of their Baggage Retrieval Report by corroborating evidence other than testimonies of their employees. Such document is within the control of appellant and necessarily requires other corroborative evidence. Since there is no compelling reason to reverse the factual findings of the lower court, this Court resolves not to disturb the same." (p. 41, Rollo.)

Whether or not the lost luggage was ever retrieved by the passenger, and whether or not the actual and exemplary damages awarded by the court to him are reasonable, are factual issues which we may not pass upon in the absence of special circumstances requiring a review of the evidence.

In *Alitalia vs. IAC* (192 SCRA 9, 18, citing *Pan American World Airways, Inc. vs. IAC*, 164 SCRA 268), the Warsaw Convention limiting the carrier's liability was applied because of a simple loss of baggage without any improper conduct on the part of the officials or employees of the airline, or other special injury sustained by the passengers. The petitioner therein did not declare a higher value for his luggage, much less did he pay an additional transportation charge.

Petitioner contends that under the Warsaw Convention, its liability, if any, cannot exceed US \$20.00 based on weight as private respondent Co did not declare the contents of his baggage nor pay additional charges before the flight (p. 3, tsn, July 18, 1985).

We find no merit in that contention. In *Samar Mining Company, Inc. vs. Nordeutscher Lloyd* (132 SCRA 529), this Court ruled:

"The liability of the common carrier for the loss, destruction or deterioration of goods transported from a foreign country to the Philippines is governed primarily by the New Civil Code. In all matters not regulated by said Code, the rights and obligations of common carriers shall be governed by the Code of Commerce and by Special Laws."

The provisions of the New Civil Code on common carriers are Articles 1733, 1735 and 1753 which provide:

"Art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case."

"Art. 1735. In all cases other than those mentioned in Nos. 1, 2, 3, 4 and 5 of the preceding article if the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required in article 1733.

"Art. 1753. The law of the country to which the goods are to be transported shall govern the liability of the common carrier for their loss, destruction or deterioration."

Since the passenger's destination in this case was the Philippines, Philippine law governs the liability of the carrier for the loss of the passenger's luggage.

In this case, the petitioner failed to overcome, not only the presumption, but more importantly, the private respondent's evidence, proving that the carrier's negligence was the proximate cause of the loss of his baggage. Furthermore, petitioner acted in bad faith in faking a retrieval receipt to bail itself out of having to pay Co's claim.

The Court of Appeals therefore did not err in disregarding the limits of liability under the Warsaw Convention.

The award of exemplary damages and attorney's fees to the private respondent was justified. In the cases of *Imperial Insurance, Inc. vs. Simon*, 122 Phil. 189 and *Bert Osmeña and Associates vs. CA*, 120 SCRA 396, the appellant was awarded attorney's fees because of appellee's failure to satisfy the former's just and valid demandable claim which forced the appellant to litigate. Likewise, in the case of *Phil. Surety and Ins. Co., Inc. vs. Royal Oil Products*, 102 Phil. 326, this Court justified the grant of exemplary damages and attorney's fees for the petitioner's failure, even refusal, to pay the private respondent's valid claim.

WHEREFORE, the petition for review is DENIED for lack of merit. Costs against the petitioner.

SO ORDERED.

Narvasa, C.J., and Medialdea, J., concur.

Cruz, J., no part.

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