

ANICETO G. SALUDO, JR., MARIA SALVACION SALUDO, LEOPOLDO G. SALUDO AND SATURNINO G. SALUDO, PETITIONERS, VS. HON. COURT OF APPEALS, TRANS WORLD AIRLINES, INC., AND PHILIPPINE AI...

G.R. No. 95536. March 23, 1992

Ponente: REGALADO, J.

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REGALADO, J.:

Assailed in this petition for review on certiorari is the decision in CA-G.R. CV No. 20951 of respondent Court of Appeals[1] which affirmed the decision of the trial court[2] dismissing for lack of evidence herein petitioners' complaint in Civil Case No. R-2101 of the then Court of First Instance of Southern Leyte, Branch I.

The facts, as recounted by the court a quo and adopted by respondent court after "considering the evidence on record," are as follows:

"After the death of plaintiffs' mother, Crispina Galdo Saludo, in Chicago, Illinois, (on) October 23, 1976 (Exh. A), Pomierski and Son Funeral Home of Chicago, made the necessary preparations and arrangements for the shipment of the remains from Chicago to the Philippines. The funeral home had the remains embalmed (Exh. D) and secured a permit for the disposition of dead human body on October 25, 1976 (Exh. C). Philippine Vice Consul in Chicago, Illinois, Bienvenido M. Llaneta, at 3:00 p.m. on October 26, 1976 at the Pomierski & Son Funeral Home, sealed the shipping case containing a hermetically sealed casket that is airtight and waterproof wherein was contained the remains of Crispina Saludo Galdo (sic) (Exh. B). On the same date, October 26, 1976, Pomierski brought the remains to C.M.A.S. (Continental Mortuary Air Services) at the airport (Chicago) which made the necessary arrangements such as flights, transfers, etc.; C.M.A.S. is a national service used by undertakers throughout the nation (U.S.A.), they furnish the air pouch which the casket is enclosed in, and they see that the remains are taken to the proper air freight terminal (Exh. 6-TWA). C.M.A.S. booked the shipment with PAL thru the carrier's agent Air Care International, with Pomierski F.H. as the shipper and Mario (Maria) Saludo as the consignee. PAL, Airway Bill No. 079-01180454 Ordinary was issued wherein the requested routing was from Chicago to San Francisco on board TWA Flight 131 of October 27, 1976, and from San Francisco to Manila on board PAL Flight No. 107 of the same date, and from Manila to Cebu on board PAL Flight 149 of October 29, 1976 (See Exh. E, also Exh. 1-PAL).

"In the meantime, plaintiffs Maria Salvacion Saludo and Saturnino Saludo, thru a travel agent, were booked with United Airlines from Chicago to California, and with PAL from California to Manila. She then went to the funeral director of Pomierski Funeral Home who had her mother's remains and she told the director that they were booked with United Airlines. But the director told her that the remains were booked with TWA flight to California. This upset her, and she and her brother had to change reservations from UA to the TWA flight after she confirmed by phone that her mother's remains would be on that TWA flight. They went to the airport and watched from the look-out area. She saw no body being brought. So, she went to the TWA counter again, and she was told there was no body on that flight. Reluctantly, they took the TWA flight upon assurance of her cousin, Ani Bantug, that he would look into the matter and inform her about it on the plane or have it

radioed to her. But no confirmation from her cousin reached her that her mother was on the West Coast.

"Upon arrival at San Francisco at about 5:00 p.m., she went to the TWA counter there to inquire about her mother's remains. She was told they did not know anything about it.

"She then called Pomierski that her mother's remains were not at the West Coast terminal, and Pomierski immediately called C.M.A.S., which in a matter of 10 minutes informed him that the remains were on a plane to Mexico City, that there were two bodies at the terminal, and somehow they were switched; he relayed this information to Miss Saluda in California; later C.M.A.S. called and told him they were sending the remains back to California via Texas (see Exh. 6-TWA).

"It turned out that TWA had carried a shipment under PAL Airway Bill No. 079-ORD-01180454 on TWA Flight 603 of October 27, 1976, a flight earlier than TWA Flight 131 of the same date. TWA delivered or transferred the said shipment said to contain human remains to PAL at 1400H or 2:00 p.m. of the same date, October 27, 1976 (See Exh. 1-TWA). 'Due to a switch(ing) in Chicago', this shipment was withdrawn from PAL by CMAS at 1805H (or 6:05 p.m.) of the same date, October 27 (Exh. 3-PAL, see Exh. 3-a-PAL).

"What transpired at the Chicago (A)irport is explained in a memo or incident report by Pomierski (Exh. 6-TWA) to Pomierski's lawyers who in turn referred to said memo and enclosed it in their (Pomierski's lawyers) answer dated July 18, 1981 to herein plaintiff's counsel (See Exh. 5-TWA). In that memo or incident report (Exh. 6-TWA), it is stated that the remains (of Crispina Saludo) were taken to CMAS at the airport; that there were two bodies at the (Chicago Airport) terminal, and somehow they were switched, that the remains (of Crispina Saludo) were on a plane to Mexico City; that CMAS is a national service used by undertakers throughout the nation (U.S.A.), makes all the necessary arrangements, such as flights, transfers, etc., and see(s) to it that the remains are taken to the proper air freight terminal.

"The following day October 28, 1976, the shipment or remains of Crispina Saludo arrived (in) San Francisco from Mexico on board American Airlines. This shipment was transferred to or received by PAL at 1945H or 7:45 p.m. (Exh. 2-PAL, Exh. 2-a-PAL). This casket bearing the remains of Crispina Saludo, which was mistakenly sent to Mexico and was opened (there), was resealed by Crispin F. Padagas for shipment to the Philippines (See Exh. B-1). The shipment was immediately loaded on PAL flight for Manila that same evening and arrived (in) Manila on October 30, 1976, a day after its expected arrival on October 29, 1976." [3]

In a letter dated December 15, 1976,[4] petitioners' counsel informed private respondent Trans World Airlines (TWA) of the misshipment and eventual delay in the delivery of the cargo containing the remains of the late Crispina Saludo, and of the discourtesy of its employees to petitioners Maria Salvacion Saludo and Saturnino Saludo. In a separate letter on June 10, 1977 addressed to co-respondent Philippine Airlines (PAL),[5] petitioners stated that they were holding PAL liable for said delay in delivery and would commence judicial action should no favorable explanation be given.

Both private respondents denied liability. Thus, a damage suit[6] was filed by petitioners before the then Court of First Instance, Branch III, Leyte, praying for the award of actual damages of P50,000.00, moral damages of P1,000,000.00, exemplary damages, attorney's fees and costs of suit.

As earlier stated, the court below absolved the two respondent airline companies of liability. The Court of Appeals affirmed the decision of the lower court in toto, and in a subsequent resolution,[7] denied herein petitioners' motion for reconsideration for lack of merit.

In predictable disagreement and dissatisfaction with the conclusions reached by respondent appellate court, petitioners now urge this Court to review the appealed decision and to resolve whether or not (1) the delay in the delivery of the casketed remains of petitioners' mother was due to the fault of respondent airline companies, (2) the one-day delay in the delivery of the same constitutes contractual breach as would entitle petitioners to

damages, (3) damages are recoverable by petitioners for the humiliating, arrogant and indifferent acts of the employees of TWA and PAL, and (4) private respondents should be held liable for actual, moral and exemplary damages, aside from attorney's fees and litigation expenses.[8]

At the outset and in view of the spirited exchanges of the parties on this aspect, it is to be stressed that only questions of law may be raised in a petition filed in this Court to review on certiorari the decision of the Court of Appeals.[9] This being so, the factual findings of the Court of Appeals are final and conclusive and cannot be reviewed by the Supreme Court. The rule, however, admits of established exceptions, to wit: (a) where there is grave abuse of discretion; (b) when the finding is grounded entirely on speculations, surmises or conjectures; (c) when the inference made is manifestly mistaken, absurd or impossible; (d) when the judgment of the Court of Appeals was based on a misapprehension of facts; (e) when the factual findings are conflicting; (f) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee;[10] (g) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion;[11] and (h) where the findings of fact of the Court of Appeals are contrary to those of the trial court, or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by the respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[12]

To distinguish, a question of law is one which involves a doubt or controversy on what the law is on a certain state of facts; and, a question of fact, contrarily, is one in which there is a doubt or difference as to the truth or falsehood of the alleged facts.[13] One test, it has been held, is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case it is a question of law, otherwise it will be a question of fact.[14]

Respondent airline companies object to the present recourse of petitioners on the ground that this petition raises only factual questions.[15] Petitioners maintain otherwise or, alternatively, they are of the position that, assuming that the petition raises factual questions, the same are within the recognized exceptions to the general rule as would render the petition cognizable and worthy of review by the Court.[16]

Since it is precisely the soundness of the inferences or conclusions that may be drawn from the factual issues which are here being assayed, we find that the issues raised in the instant petition indeed warrant a second look if this litigation is to come to a reasonable denouement. A discussion seriatim of said issues will further reveal that the sequence of the events involved is in effect disputed. Likewise to be settled is whether or not the conclusions of the Court of Appeals subject of this review indeed find evidentiary and legal support.

I. Petitioners fault respondent court for "not finding that private respondents failed to exercise extra?ordinary diligence required by law which resulted in the switching and/or misdelivery of the remains of Crispina Saludo to Mexico causing gross delay in its shipment to the Philippines, and consequently, damages to petitioners." [17]

Petitioners allege that private respondents received the casketed remains of petitioners' mother on October 26, 1976, as evidenced by the issuance of PAL Air Way-bill No. 079-01180454[18] by Air Care International as carrier's agent; and from said date, private respondents were charged with the responsibility to exercise extraordinary diligence so much so that for the alleged switching of the caskets on October 27, 1976, or one day after private respondents received the cargo, the latter must necessarily be liable.

To support their assertion, petitioners rely on the jurisprudential dictum, both under American and Philippine law, that "(t)he issuance of a bill of lading carries the presumption that the goods were delivered to the carrier issuing the bill, for immediate shipment, and it is nowhere questioned that a bill of lading is prima facie evidence of the

receipt of the goods by the carrier. x x x In the absence of convincing testimony establishing mistake, recitals in the bill of lading showing that the carrier received the goods for shipment on a specified date control (13 C.J.S. 235)."[19]

A bill of lading is a written acknowledgment of the receipt of the goods and an agreement to transport and deliver them at a specified place to a person named or on his order. Such instrument may be called a shipping receipt, forwarder's receipt and receipt for transportation.[20] The designation, however, is immaterial. It has been held that freight tickets for bus companies as well as receipts for cargo transported by all forms of transportation, whether by sea or land, fall within the definition. Under the Tariff and Customs Code, a bill of lading includes airway bills of lading.[21] The two-fold character of a bill of lading is all too familiar: it is a receipt as to the quantity and description of the goods shipped and a contract to transport the goods to the consignee or other person therein designated, on the terms specified in such instrument.[22]

Logically, since a bill of lading acknowledges receipt of goods to be transported, delivery of the goods to the carrier normally precedes the issuance of the bill; or, to some extent, delivery of the goods and issuance of the bill are regarded in commercial practice as simultaneous acts.[23] However, except as may be prohibited by law, there is nothing to prevent an inverse order of events, that is, the execution of the bill of lading even prior to actual possession and control by the carrier of the cargo to be transported. There is no law which requires that the delivery of the goods for carriage and the issuance of the covering bill of lading must coincide in point of time or, for that matter, that the former should precede the latter.

Ordinarily, a receipt is not essential to a complete delivery of goods to the carrier for transportation but, when issued, is competent and prima facie, but not conclusive, evidence of delivery to the carrier. A bill of lading, when properly executed and delivered to a shipper, is evidence that the carrier has received the goods described therein for shipment. Except as modified by statute, it is a general rule as to the parties to a contract of carriage of goods in connection with which a bill of lading is issued reciting that goods have been received for transportation, that the recital being in essence a receipt alone, is not conclusive, but may be explained, varied or contradicted by parole or other evidence.[24]

While we agree with petitioners' statement that "an airway bill estops the carrier from denying receipt of goods of the quantity and quality described in the bill," a further reading and a more faithful quotation of the authority cited would reveal that "(a) bill of lading may contain constituent elements of estoppel and thus become something more than a contract between the shipper and the carrier. x x x (However), as between the shipper and the carrier, when no goods have been delivered for shipment no recitals in the bill can estop the carrier from showing the true facts x x x. Between the consignor of goods and a receiving carrier, recitals in a bill of lading as to the goods shipped raise only a rebuttable presumption that such goods were delivered for shipment. As between the consignor and a receiving carrier, the fact must outweigh the recital." [25] (Emphasis supplied.)

For this reason, we must perforce allow explanation by private respondents why, despite the issuance of the airway bill and the date thereof, they deny having received the remains of Crispina Saludo on October 26, 1976 as alleged by petitioners.

The findings of the trial court, as favorably adopted by the Court of Appeals and which we have earlier quoted, provide us with the explanation that sufficiently overcomes the presumption relied on by petitioners in insisting that the remains of their mother were delivered to and received by private respondents on October 26, 1976. Thus

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"x x x Philippine Vice Consul in Chicago, Illinois, Bienvenido M. Llaneta, at 3:00 p.m. on October 26, 1976 at the Pomierski & Son Funeral Home, sealed the shipping case containing a hermetically sealed casket that is

airtight and waterproof wherein was contained the remains of Crispina Saludo Galdo (sic) (Exh. B). On the same date October 26, 1976, Pomierski brought the remains to C.M.A.S. (Continental Mortuary Air Services) at the airport (Chicago) which made the necessary arrangements such as flights, transfers, etc; C.M.A.S. is a national service used by undertakers throughout the nation (U.S.A.), they furnish the air pouch which the casket is enclosed in, and they see that the remains are taken to the proper air freight terminal (Exh. G-TWA). C.M.A.S. booked the shipment with PAL thru the carrier's agent Air Care International, with Pomierski F.H. as the shipper and Mario (Maria) Saludo as the consignee. PAL Airway Bill No. 079--01180454 Ordinary was issued wherein the requested routing was from Chicago to San Francisco on board TWA Flight 131 of October 27, 1976, and from San Francisco to Manila on board PAL Flight No. 107 of the same date, and from Manila to Cebu on board PAL Flight 149 of October 29, 1976 (See Exh. E, also Exh. 1-PAL)."[26] (Emphasis ours.)

Moreover, we are persuaded to believe private respondent PAL's account as to what transpired on October 26, 1976:

"x x x Pursuant thereto, on 26 October 1976, CMAS acting upon the instruction of Pomierski, F.H., the shipper requested booking of the casketed remains of Mrs. Cristina (sic) Saludo on board PAL's San Francisco-Manila Flight No. PR 107 on October 27, 1976.

"2. To signify acceptance and confirmation of said booking, PAL issued to said Pomierski F.H., PAL Airway Bill No. 079-01180454 dated October 27, 1976 (sic, '10/26/76'). PAL confirmed the booking and transporting of the shipment on board of its Flight PR 107 on October 27, 1976 on the basis of the representation of the shipper and/or CMAS that the said cargo would arrive in San Francisco from Chicago on board United Airlines Flight US 121 on 27 October 1976."[27]

In other words, on October 26, 1976 the cargo containing the casketed remains of Crispina Saludo was booked for PAL Flight Number PR-107 leaving San Francisco for Manila on October 27, 1976. PAL Airway Bill No. 079-01180454 was issued, not as evidence of receipt of delivery of the cargo on October 26, 1976, but merely as a confirmation of the booking thus made for the San Francisco-Manila flight scheduled on October 27, 1976. Actually, it was not until October 28, 1976 that PAL received physical delivery of the body at San Francisco, as duly evidenced by the Interline Freight Transfer Manifest of the American Airline Freight System and signed for by Virgilio Rosales at 1945H, or 7:45 P.M. on said date.[28]

Explicit is the rule under Article 1736 of the Civil Code that the extraordinary responsibility of the common carrier begins from the time the goods are delivered to the carrier. This responsibility remains in full force and effect even when they are temporarily unloaded or stored in transit, unless the shipper or owner exercises the right of stoppage in transitu,[29] and terminates only after the lapse of a reasonable time for the acceptance of the goods by the consignee or such other person entitled to receive them.[30] And, there is delivery to the carrier when the goods are ready for and have been placed in the exclusive possession, custody and control of the carrier for the purpose of their immediate transportation and the carrier has accepted them.[31] Where such a delivery has thus been accepted by the carrier, the liability of the common carrier commences eo instanti.[32]

Hence, while we agree with petitioners that the extraordinary diligence statutorily required to be observed by the carrier instantaneously commences upon delivery of the goods thereto, for such duty to commence there must in fact have been delivery of the cargo subject of the contract of carriage. Only when such fact of delivery has been unequivocally established can the liability for loss, destruction or deterioration of goods in the custody of the carrier, absent the excepting causes under Article 1734, attach and the presumption of fault of the carrier under Article 1735 be invoked.

As already demonstrated, the facts in the case at bar belie the averment that there was delivery of the cargo to the carrier on October 26, 1976. Rather, as earlier explained, the body intended to be shipped as agreed upon was

really placed in the possession and control of PAL on October 28, 1976 and it was from that date that private respondents became responsible for the agreed cargo under their undertakings in PAL Airway Bill No. 079--01180454. Consequently, for the switching of caskets prior thereto which was not caused by them, and subsequent events caused thereby, private respondents cannot be held liable.

Petitioners, proceeding on the premise that there was delivery of the cargo to private respondents on October 26, 1976 and that the latter's extraordinary responsibility had by then become operative, insist on foisting the blame on private respondents for the switching of the two caskets which occurred on October 27, 1976. It is argued that since there is no clear evidence establishing the fault of Continental Mortuary Air Services (CMAS) for the mix-up, private respondents are presumably negligent pursuant to Article 1735 of the Civil Code and, for failure to rebut such presumption, they must necessarily be held liable; or, assuming that CMAS was at fault, the same does not absolve private respondents of liability because whoever brought the cargo to the airport or loaded it on the plane did so as agent of private respondents.

This contention is without merit. As pithily explained by the Court of Appeals:

"The airway bill expressly provides that 'Carrier certifies goods described below were received for carriage', and said cargo was 'casketed human remains of Crispina Saludo', with 'Maria Saludo as Consignee; Pomierski F.H. as Shipper; Air Care International as carrier's agent.' On the face of the said airway bill, the specific flight numbers, specific routes of shipment and dates of departure and arrival were typewritten, to wit: Chicago TWA Flight 131/27 to San Francisco and from San Francisco by PAL 107 on October 27, 1976 to Philippines and to Cebu via PAL Flight 149 on October 29, 1976. The airway bill also contains the following typewritten words, as follows: all documents have been examined (sic). Human remains of Crispina Saludo. Please return back (sic) first available flight to SFO.

"But, as it turned out and was discovered later the casketed human remains which was issued PAL Airway Bill #079-1180454 was not the remains of Crispina Saludo, the casket containing her remains having been shipped to Mexico City.

"However, it should be noted that, Pomierski F.H., the shipper of Mrs. Saludo's remains, hired Continental Mortuary Services (hereafter referred to as C.M.A.S.), which is engaged in the business of transporting and forwarding human remains. Thus, C.M.A.S. made all the necessary arrangements - such as flights, transfers, etc. - for shipment of the remains of Crispina Saludo.

"The remains were taken on October 26th, 1976, to C.M.A.S. at the airport. These people made all the necessary arrangements, such as flights, transfers, etc. This is a national service used by undertakers throughout the nation. They furnished the air pouch which the casket is enclosed in, and they see that the remains are taken to the proper air freight terminal. I was very surprised when Miss Saludo called me to say that the remains were not at the west coast terminal. I immediately called C.M.A.S. They called me back in a matter of ten minutes to inform me that the remains were on a plane to Mexico City. The man said that there were two bodies at the terminal, and somehow they were switched. x x x (Exh. 6-'TWA', which is the memo or incident report enclosed in the stationery of Walter Pomierski & Sons Ltd.)"

"Consequently, when the cargo was received from C.M.A.S. at the Chicago airport terminal for shipment, which was supposed to contain the remains of Crispina Saludo, Air Care International and/or TWA, had no way of determining its actual contents, since the casket was hermetically sealed by the Philippine Vice-Consul in Chicago and in an air pouch of C.M.A.S., to the effect that Air Care International and/or TWA had to rely on the information furnished by the shipper regarding the cargo's content. Neither could Air Care International and/or TWA open the casket for further verification, since they were not only without authority to do so, but even prohibited.

"Thus, under said circumstances, no fault and/or negligence can be attributed to PAL (even if Air Care International should be considered as an agent of PAL) and/or TWA, the entire fault or negligence being exclusively with C.M.A.S."[33] (Emphasis supplied.)

It can correctly and logically be concluded, therefore that the switching occurred or, more accurately, was discovered on October 27, 1976; and based on the above findings of the Court of Appeals, it happened while the cargo was still with CMAS, well before the same was placed in the custody of private respondents.

Thus, while the Air Cargo Transfer Manifest of TWA of October 27, 1976[34] was signed by Garry Marcial of PAL at 1400H, or 2:00 P.M., on the same date, thereby indicating acknowledgment by PAL of the transfer to them by TWA of what was in truth the erroneous cargo, said misshipped cargo was in fact withdrawn by CMAS from PAL as shown by the notation on another copy of said manifest[35] stating "Received by CMAS - Due to switch in Chicago 10/27-1805H," the authenticity of which was never challenged. This shows that said misshipped cargo was in fact withdrawn by CMAS from PAL and the correct shipment containing the body of Crispina Saludo was received by PAL only on October 28, 1976, at 1945H, or 7:45 P.M., per American Airlines Interline Freight Transfer Manifest No. AA204312.[36]

Witness the deposition of TWA's ramp serviceman, Michael Giosso, on this matter:

"ATTY. JUAN COLLAS, JR.:

On that date, do (sic) you have occasion to handle or deal with the transfer of cargo from TWA Flight No. 603 to PAL San Francisco?

MICHAEL GIOSSO:

Yes, I did.

ATTY. JUAN COLLAS, JR.:

What was your participation with the transfer of the cargo?

MICHAEL GIOSSO:

I manifested the freight on a transfer manifest and physically moved it to PAL and concluded the transfer by signing it off.

ATTY. JUAN COLLAS, JR.:

You brought it there yourself?

MICHAEL GIOSSO:

Yes sir.

ATTY. JUAN COLLAS, JR.:

Do you have anything to show that PAL received the cargo from TWA on October 27, 1976?

MICHAEL GIOSSO:

Yes, I do.

(Witness presenting a document)

ATTY. JUAN COLLAS, JR.:

For purposes of clarity, Exhibit I is designated as Exhibit I-TWA.

x x x

ATTY. JUAN COLLAS, JR.:

This Exhibit I-TWA, could you tell what it is what it shows?

MICHAEL GIOSSO:

It shows transfer of manifest on 10-27-76 to PAL at 1400 and verified with two signatures as it completed the transfer.

ATTY. JUAN COLLAS, JR.:

Very good. Who was the PAL employee who received the cargo?

MICHAEL GIOSSO:

The name is Garry Marcial."[37]

The deposition of Alberto A. Lim, PAL's cargo supervisor at San Francisco, as deponent-witness for PAL, makes this further clarification:

"ATTY. CESAR P. MANALAYSAY:

You mentioned Airway Bill, Mr. Lim. I am showing to you a PAL Airway Bill Number 01180454 which for purposes of evidence, I would like to request that the same be marked as evidence Exhibit I for PAL.

x x x

In what circumstances did you encounter Exhibit I-PAL?

ALBERTO A. LIM:

If I recall correctly, I was queried by Manila, our Manila office with regard to a certain complaint that a consignee filed that this shipment did not arrive on the day that the consignee expects the shipment to arrive.

ATTY. CESAR P. MANALAYSAY:

Okay. Now, upon receipt of that query from your Manila office, did you conduct any investigation to pinpoint the possible causes of mishandling?

ALBERTO A. LIM:

Yes.

x x x

ATTY. CESAR P. MANALAYSAY:

What is the result of your investigation?

ALBERTO A. LIM:

In the course of my investigation. I found that we received the body on October 28, 1976, from American Airlines.

ATTY. CESAR P. MANALAYSAY:

What body are you referring to?

x x x

ALBERTO A. LIM:

The remains of Mrs. Cristina (sic) Saludo.

ATTY. CESAR P. MANALAYSAY:

Is that the same body mentioned in this Airway Bill?

ALBERTO A. LIM:

Yes.

ATTY. CESAR P. MANALAYSAY:

What time did you receive said body on October 28, 1976?

ALBERTO A. LIM:

If I recall correctly, approximately 7:45 of October 28, 1976.

ATTY. CESAR P. MANALAYSAY:

Do you have any proof with you to back the statement?

ALBERTO A. LIM:

Yes. We have on our records a Transfer Manifest from American Airlines Number 204312 showing that we received a human remains shipment belong to Mrs. Cristina (sic) Saludo or the human remains of Mrs. Cristina (sic) Saludo.

ATTY. CESAR P. MANALAYSAY:

At this juncture, may I request that the Transfer Manifest referred to by the witness be marked as an evidence as Exhibit II-PAL.

x x x

Mr. Lim, yesterday your co-defendant TWA presented as their Exhibit I evidence tending to show that on October 27, 1976 at about 2:00 in the afternoon they delivered to you a cargo bearing human remains. Could you go over this Exhibit I and please give us your comments as to that exhibit?

ATTY. ALBERTO C. MENDOZA:

That is a vague question. I would rather request that counsel propound specific questions rather than asking for comments on Exhibit I-TWA.

ATTY. CESAR P. MANALAYSAY:

In that case, I will reform my question. Could you tell us whether TWA in fact delivered to you the human remains as indicated in that Transfer Manifest?

ALBERTO A. LIM:

Yes, they did.

ATTY. CESAR P. MANALAYSAY:

I noticed that the Transfer Manifest of TWA Marked as Exhibit I-TWA bears the same numbers or the same

entries as the Airway Bill marked as Exhibit I-A PAL tending to show that this is the human remains of Mrs Cristina (sic) Saludo. Could you tell us whether this is true?

ALBERTO A. LIM:

It is true that we received human remains shipment from TWA as indicated on this Transfer Manifest. But in the course of investigation, it was found out that the human remains transferred to us is not the remains of Mrs. Cristina (sic) Saludo which is the reason why we did not board it on our flight."[38]

Petitioners consider TWA's statement that "it had to rely on the information furnished by the shipper" a lame excuse and that its failure to prove that its personnel verified and identified the contents of the casket before loading the same constituted negligence on the part of TWA.[39]

We uphold the favorable consideration by the Court of Appeals of the following findings of the trial court:

"It was not (to) TWA, but to C.M.A.S. that the Pomierski & Son Funeral Home delivered the casket containing the remains of Crispina Saludo. TWA would have no knowledge therefore that the remains of Crispina Saludo were not the ones inside the casket that was being presented to it for shipment. TWA would have to rely on the representations of C.M.A.S. The casket was hermetically sealed and also sealed by the Philippine Vice Consul in Chicago. TWA or any airline for that matter would not have opened such a sealed casket just for the purpose of ascertaining whose body was inside and to make sure that the remains inside were those of the particular person indicated to be by C.M.A.S. TWA had to accept whatever information was being furnished by the shipper or by the one presenting the casket for shipment. And so as a matter of fact, TWA carried to San Francisco and transferred to defendant PAL a shipment covered by or under PAL Airway Bill No. 079-ORD-01180454, the airway bill for the shipment of the casketed remains of Crispina Saludo. Only, it turned out later, while the casket was already with PAL, that what was inside the casket was not the body of Crispina Saludo so much so that it had to be withdrawn by C.M.A.S. from PAL. The body of Crispina Saludo had been shipped to Mexico. The casket containing the remains of Crispina Saludo, was transshipped from Mexico and arrived in San Francisco the following day on board American Airlines. It was immediately loaded by PAL on its flight for Manila.

"The foregoing points at C.M.A.S., not defendant TWA much less defendant PAL, as the ONE responsible for the switching or mix-up of the two bodies at the Chicago Airport terminal, and started a chain reaction of the misshipment of the body of Crispina Saludo and a one-day delay in the delivery thereof to its destination.[40]

Verily, no amount of inspection by respondent airline companies could have guarded against the switching that had already taken place. Or, granting that they could have opened the casket to inspect its contents, private respondents had no means of ascertaining whether the body therein contained was indeed that of Crispina Saludo except, possibly, if the body was that of a male person and such fact was visually apparent upon opening the casket. However, to repeat, private respondents had no authority to unseal and open the same nor did they have any reason or justification to resort thereto.

It is the right of the carrier to require good faith on the part of those persons who deliver goods to be carried, or enter into contracts with it, and inasmuch as the freight may depend on the value of the article to be carried, the carrier ordinarily has the right to inquire as to its value. Ordinarily, too, it is the duty of the carrier to make inquiry as to the general nature of the articles shipped and of their value before it consents to carry them; and its failure to do so cannot defeat the shipper's right to recovery of the full value of the package if lost, in the absence of showing of fraud or deceit on the part of the shipper. In the absence of more definite information, the carrier has the right to accept shipper's marks as to the contents of the package offered for transportation and is not bound to inquire particularly about them in order to take advantage of a false classification and where a shipper expressly represents the contents of a package to be of a designated character, it is not the duty of the carrier to ask for a

repetition of the statement nor disbelieve it and open the box and see for itself.[41] However, where a common carrier has reasonable ground to suspect that the offered goods are of a dangerous or illegal character, the carrier has the right to know the character of such goods and to insist on an inspection, if reasonable and practical under the circumstances, as a condition of receiving and transporting such goods.[42]

It can safely be said then that a common carrier is entitled to fair representation of the nature and value of the goods to be carried, with the concomitant right to rely thereon, and further noting at this juncture that a carrier has no obligation to inquire into the correctness or sufficiency of such information.[43] The consequent duty to conduct an inspection thereof arises in the event that there should be reason to doubt the veracity of such representations. Therefore, to be subjected to unusual search, other than the routinary inspection procedure customarily undertaken, there must exist proof that would justify cause for apprehension that the baggage is dangerous as to warrant exhaustive inspection, or even refusal to accept carriage of the same; and it is the failure of the carrier to act accordingly in the face of such proof that constitutes the basis of the common carrier's liability.[44]

In the case at bar, private respondents had no reason whatsoever to doubt the truth of the shipper's representations. The airway bill expressly providing that "carrier certifies goods received below were received for carriage," and that the cargo contained "casketed human remains of Crispina Saludo," was issued on the basis of such representations. The reliance thereon by private respondents was reasonable and, for so doing, they cannot be said to have acted negligently. Likewise, no evidence was adduced to suggest even an iota of suspicion that the cargo presented for transportation was anything other than what it was declared to be, as would require more than routine inspection or call for the carrier to insist that the same be opened for scrutiny of its contents per declaration.

Neither can private respondents be held accountable on the basis of petitioners' preposterous proposition that whoever brought the cargo to the airport or loaded it on the airplane did so as agent of private respondents, so that even if CMAS whose services were engaged for the transit arrangements for the remains was indeed at fault, the liability therefor would supposedly still be attributable to private respondents.

While we agree that the actual participation of CMAS has been sufficiently and correctly established, to hold that it acted as agent for private respondents would be both an inaccurate appraisal and an unwarranted categorization of the legal position it held in the entire transaction.

It bears repeating that CMAS was hired to handle all the necessary shipping arrangements for the transportation of the human remains of Crispina Saludo to Manila. Hence, it was to CMAS that, the Pomierski & Son Funeral Home, as shipper, brought the remains of petitioners' mother for shipment, with Maria Saludo as consignee. Thereafter, CMAS booked the shipment with PAL through the carrier's agent, Air Care International.[45] With its aforesaid functions, CMAS may accordingly be classified as a forwarder which, by accepted commercial practice, is regarded as an agent of the shipper and not of the carrier. As such, it merely contracts for the transportation of goods by carriers, and has no interest in the freight but receives compensation from the shipper as his agent.[46]

At this point, it can be categorically stated that, as culled from the findings of both the trial court and appellate courts, the entire chain of events which culminated in the present controversy was not due to the fault or negligence of private respondents. Rather, the facts of the case would point to CMAS as the culprit. Equally telling of the more likely possibility of CMAS' liability is petitioners' letter to and demanding an explanation from CMAS regarding the statement of private respondents laying the blame on CMAS for the incident, portions of which, reading as follows:

"x x x we were informed that the unfortunate a mix-up occurred due to your negligence. x x x.

"Likewise, the two airlines pinpoint the responsibility upon your agents. Evidence were presented to prove that allegation.

"On the face of this overwhelming evidence we could and should have filed a case against you. x x x."[47]

clearly allude to CMAS as the party at fault. This is tantamount to an admission by petitioners that they consider private respondents without fault, or is at the very least indicative of the fact that petitioners entertained serious doubts as to whether herein private respondents were responsible for the unfortunate turn of events.

Undeniably, petitioners' grief over the death of their mother was aggravated by the unnecessary inconvenience and anxiety that attended their efforts to bring her body home for a decent burial. This is unfortunate and calls for sincere commiseration with petitioners. But, much as we would like to give them consolation for their undeserved distress, we are barred by the inequity of allowing recovery of the damages prayed for by them at the expense of private respondents whose fault or negligence in the very acts imputed to them has not been convincingly and legally demonstrated.

Neither are we prepared to delve into, much less definitively rule on, the possible liability of CMAS as the evaluation and adjudication of the same is not what is presently at issue here and is best deferred to another time and addressed to another forum.

II. Petitioners further fault the Court of Appeals for ruling that there was no contractual breach on the part of private respondents as would entitle petitioners to damages.

Petitioners hold that respondent TWA, by agreeing to transport the remains of petitioners' mother on its Flight 131 from Chicago to San Francisco on October 27, 1976, made itself a party to the contract of carriage and, therefore, was bound by the terms of the issued airway bill. When TWA undertook to ship the remains on its Flight 603, ten hours earlier than scheduled, it supposedly violated the express agreement embodied in the airway bill. It was allegedly this breach of obligation which compounded, if not directly caused, the switching of the caskets.

In addition, petitioners maintain that since there is no evidence as to who placed the body on board Flight 603, or that CMAS actually put the cargo on that flight, or that the two caskets at the Chicago airport were to be transported by the same airline, or that they came from the same funeral home, or that both caskets were received by CMAS, then the employees or agents of TWA presumably caused the mix-up by loading the wrong casket on the plane. For said error, they contend, TWA must necessarily be presumed negligent and this presumption of negligence stands undisturbed unless rebutting evidence is presented to show that the switching or misdelivery was due to circumstances that would exempt the carrier from liability.

Private respondent TWA professes otherwise. Having duly delivered or transferred the cargo to its co-respondent PAL on October 27, 1976 at 2:00 P.M., as supported by the TWA Transfer Manifest, TWA faithfully complied with its obligation under the airway bill. Said faithful compliance was not affected by the fact that the remains were shipped on an earlier flight as there was no fixed time for completion of carriage stipulated on. Moreover, the carrier did not undertake to carry the cargo aboard any specified aircraft, in view of the condition on the back of the airway bill which provides:

"CONDITIONS OF CONTRACT

x x x

"It is agreed that no time is fixed for the completion of carriage hereunder and that Carrier may without notice substitute alternate carriers or aircraft. Carrier assumes no obligation to carry the goods by any specified

aircraft or over any particular route or routes or to make connection at any point according to any particular schedule, and Carrier is hereby authorized to select, or deviate from the route or routes of shipment, notwithstanding that the same may be stated on the face hereof. The shipper guarantees payment of all charges and advances."[48]

Hence, when respondent TWA shipped the body on an earlier flight and on a different aircraft, it was acting well within its rights. We find this argument tenable.

The contention that there was contractual breach on the part of private respondents is founded on the postulation that there was ambiguity in the terms of the airway bill, hence petitioners' insistence on the application of the rules on interpretation of contracts and documents. We find no such ambiguity. The terms are clear enough as to preclude the necessity to probe beyond the apparent intendment of the contractual provisions.

The hornbook rule on interpretation of contracts consecrates the primacy of the intention of the parties, the same having the force of law between them. When the terms of the agreement are clear and explicit, that they do not justify an attempt to read into any alleged intention of the parties, the terms are to be understood literally just as they appear on the face of the contract.[49] The various stipulations of a contract shall be interpreted together[50] and such a construction is to be adopted as will give effect to all provisions thereof.[51] A contract cannot be construed by parts, but its clauses should be interpreted in relation to one another. The whole contract must be interpreted or read together in order to arrive at its true meaning. Certain stipulations cannot be segregated and then made to control; neither do particular words or phrases necessarily determine the character of a contract. The legal effect of the contract is not to be determined alone by any particular provision disconnected from all others, but in the ruling intention of the parties as gathered from all the language they have used and from their contemporaneous and subsequent acts.[52]

Turning to the terms of the contract at hand, as presented by PAL Air Waybill No. 079-01180454, respondent court approvingly quoted the trial court's disquisition on the aforequoted condition appearing on the reverse side of the airway bill and its disposition of this particular assigned error:

"The foregoing stipulation fully answers plaintiffs' objections to the one-day delay and the shipping of the remains in TWA Flight 603 instead of TWA Flight 131. Under the stipulation, parties agreed that no time was fixed to complete the contract of carriage and that the carrier may, without notice, substitute alternate carriers or aircraft. The carrier did not assume the obligation to carry the shipment on any specified aircraft.

x x x

"Furthermore, contrary to the claim of plaintiffs-appellants, the conditions of the Air Waybill are big enough, to be read and noticed. Also, the mere fact that the cargo in question was shipped in TWA Flight 603, a flight earlier on the same day than TWA Flight 131, did not in any way cause or add to the one-day delay complained of and/or the switching or mix-up of the bodies."[53]

Indubitably, that private respondent can use substitute aircraft even without notice and without the assumption of any obligation whatsoever to carry the goods on any specified aircraft is clearly sanctioned by the contract of carriage as specifically provided for under the conditions thereof.

Petitioners' invocation of the interpretative rule in the Rules of Court that written words control printed words in documents,[54] to bolster their assertion that the typewritten provisions regarding the routing and flight schedule prevail over the printed conditions, is tenuous. Said rule may be considered only when there is inconsistency between the written and printed words of the contract.

As previously stated, we find no ambiguity in the contract subject of this case that would call for the application

of said rule. In any event, the contract has provided for such a situation by explicitly stating that the above condition remains effective "notwithstanding that the same (fixed time for completion of carriage, specified aircraft, or any particular route or schedule) may be stated on the face hereof." While petitioners hinge private respondents' culpability on the fact that the carrier "certifies goods described below were received for carriage," they may have overlooked that the statement on the face of the airway bill properly and completely reads -

"Carrier certifies goods described below were received for carriage subject to the Conditions on the reverse hereof the goods then being in apparent good order and condition except as noted hereon." [55] (Emphasis ours.)

Private respondents further aptly observe that the carrier's certification regarding receipt of the goods for carriage "was of a smaller print than the condition of the Air Waybill, including Condition No. 5 - and thus if plaintiffs-appellants had recognized the former, then with more reason they were aware of the latter." [56]

In the same vein, it would also be incorrect to accede to the suggestion of petitioners that the typewritten specifications of the flight, routes and dates of departures and arrivals on the face of the airway bill constitute a special contract which modifies the printed conditions at the back thereof. We reiterate that typewritten provisions of the contract are to be read and understood subject to and in view of the printed conditions, fully reconciling and giving effect to the manifest intention of the parties to the agreement.

The oft-repeated rule regarding a carrier's liability for delay is that in the absence of a special contract, a carrier is not an insurer against delay in transportation of goods. When a common carrier undertakes to convey goods, the law implies a contract that they shall be delivered at destination within a reasonable time, in the absence of any agreement as to the time of delivery. [57] But where a carrier has made an express contract to transport and deliver property within a specified time, it is bound to fulfill its contract and is liable for any delay, no matter from what cause it may have arisen. [58] This result logically follows from the well-settled rule that where the law creates a duty or charge, and the party is disabled from performing it without any default in himself, and has no remedy over, then the law will excuse him, but where the party by his own contract creates a duty or charge upon himself, he is bound to make it good notwithstanding any accident or delay by inevitable necessity because he might have provided against it by contract. Whether or not there has been such an undertaking on the part of the carrier is to be determined from the circumstances surrounding the case and by application of the ordinary rules for the interpretation of contracts. [59]

Echoing the findings of the trial court, the respondent court correctly declared that ?

"In a similar case of delayed delivery of air cargo under a very similar stipulation contained in the airway bill which reads: 'The carrier does not obligate itself to carry the goods by any specified aircraft or on a specified time. Said carrier being hereby authorized to deviate from the route of the shipment without any liability therefor', our Supreme Court ruled that common carriers are not obligated by law to carry and to deliver merchandise, and persons are not vested with the right to prompt delivery, unless such common carriers previously assume the obligation. Said rights and obligations are created by a specific contract entered into by the parties (Mendoza vs. PAL, 90 Phil. 836).

"There is no showing by plaintiffs that such a special or specific contract had been entered into between them and the defendant airline companies.

"And this special contract for prompt delivery should call the attention of the carrier to the circumstances surrounding the case and the approximate amount of damages to be suffered in case of delay (See Mendoza vs. PAL, supra). There was no such contract entered into in the instant case." [60]

Also, the theory of petitioners that the specification of the flights and dates of departures and arrivals constitute a

special contract that could prevail over the printed stipulations at the back of the airway bill is vacuous. To countenance such a postulate would unduly burden the common carrier for that would have the effect of unilaterally transforming every single bill of lading or trip ticket into a special contract by the simple expedient of filling it up with the particulars of the flight, trip or voyage, and thereby imposing upon the carrier duties and/or obligations which it may not have been ready or willing to assume had it been timely advised thereof.

Neither does the fact that the challenged condition No. 5 was printed at the back of the airway bill militate against its binding effect on petitioners as parties to the contract, for there were sufficient indications on the face of said bill that would alert them to the presence of such additional condition to put them on their guard. Ordinary prudence on the part of any person entering or contemplating to enter into a contract would prompt even a cursory examination of any such conditions, terms and/or stipulations.

There is a holding in most jurisdictions that the acceptance of a bill of lading without dissent raises a presumption that all terms therein were brought to the knowledge of the shipper and agreed to by him, and in the absence of fraud or mistake, he is estopped from thereafter denying that he assented to such terms. This rule applies with particular force where a shipper accepts a bill of lading with full knowledge of its contents, and acceptance under such circumstances makes it a binding contract. In order that any presumption of assent to a stipulation in a bill of lading limiting the liability of a carrier may arise, it must appear that the clause containing this exemption from liability plainly formed a part of the contract contained in the bill of lading. A stipulation printed on the back of a receipt or bill of lading or on papers attached to such receipt will be quite as effective as if printed on its face, if it is shown that the consignor knew of its terms. Thus, where a shipper accepts a receipt which states that its conditions are to be found on the back, such receipt comes within the general rule, and the shipper is held to have accepted and to be bound by the conditions there to be found.[61]

Granting arguendo that Condition No. 5 partakes of the nature of a contract of adhesion and as such must be construed strictly against the party who drafted the same or gave rise to any ambiguity therein, it should be borne in mind that a contract of adhesion may be struck down as void and unenforceable, for being subversive of public policy, only when the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to bargain on equal footing.[62] However, *Ong Yiu vs. Court of Appeals, et al.*[63] instructs us that contracts of adhesion are not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his consent. Accordingly, petitioners, far from being the weaker party in this situation, duly signified their presumed assent to all terms of the contract through their acceptance of the airway bill and are consequently bound thereby. It cannot be gainsaid that petitioners were not without several choices as to carriers in Chicago with its numerous airways and airlines servicing the same.

We wish to allay petitioners' apprehension that Condition No. 5 of the airway bill is productive of mischief as it would validate delay in delivery, sanction violations of contractual obligations with impunity or put a premium on breaches of contract.

Just because we have said that Condition No. 5 of the airway bill is binding upon the parties to and fully operative in this transaction, it does not mean, and let this serve as fair warning to respondent carriers, that they can at all times whimsically seek refuge from liability in the exculpatory sanctuary of said Condition No. 5 or arbitrarily vary routes, flights and schedules to the prejudice of their customers. This condition only serves to insulate the carrier from liability in those instances when changes in routes, flights and schedules are clearly justified by the peculiar circumstances of a particular case, or by general transportation practices, customs and usages, or by contingencies or emergencies in aviation such as weather turbulence, mechanical failure, requirements of national security and the like. And even as it is conceded that specific routing and other navigational arrangements for a

trip, flight or voyage, or variations therein, generally lie within the discretion of the carrier in the absence of specific routing instructions or directions by the shipper, it is plainly incumbent upon the carrier to exercise its rights with due deference to the rights, interests and convenience of its customers.

A common carrier undertaking to transport property has the implicit duty to carry and deliver it within a reasonable time, absent any particular stipulation regarding time of delivery, and to guard against delay. In case of any unreasonable delay, the carrier shall be liable for damages immediately and proximately resulting from such neglect of duty.[64] As found by the trial court, the delay in the delivery of the remains of Crispina Saludo, undeniable and regrettable as it was, cannot be attributed to the fault, negligence or malice of private respondents,[65] a conclusion concurred in by respondent court and which we are not inclined to disturb.

We are further convinced that when TWA opted to ship the remains of Crispina Saludo on an earlier flight, it did so in the exercise of sound discretion and with reasonable prudence, as shown by the explanation of its counsel in his letter of February 19, 1977 in response to petitioners' demand letter:

"Investigation of TWA's handling of this matter reveals that although the shipment was scheduled on TWA Flight 131 of October 27, 1976, it was actually boarded on TWA Flight 603 of the same day, approximately 10 hours earlier, in order to assure that the shipment would be received in San Francisco in sufficient time for transfer to PAL. This transfer was effected in San Francisco at 2:00 P.M. on October 27, 1976.[66]

Precisely, private respondent TWA knew of the urgency of the shipment by reason of this notation on the lower portion of the airway bill: "All documents have been certified. Human remains of Cristina (sic) Saludo. Please return bag first available flight to SFO." Accordingly, TWA took it upon itself to carry the remains of Crispina Saludo on an earlier flight, which we emphasize it could do under the terms of the airway bill, to make sure that there would be enough time for loading said remains on the transfer flight on board PAL.

III. Petitioners challenge the validity of respondent court's finding that private respondents are not liable for tort on account of the humiliating, arrogant and indifferent acts of their officers and personnel. They posit that since their mother's remains were transported ten hours earlier than originally scheduled, there was no reason for private respondents' personnel to disclaim knowledge of the arrival or whereabouts of the same other than their sheer arrogance, indifference and extreme insensitivity to the feelings of petitioners. Moreover, being passengers and not merely consignors of goods, petitioners had the right to be treated with courtesy, respect, kindness and due consideration.

In riposte, TWA claims that its employees have always dealt politely with all clients, customers and the public in general. PAL, on the other hand, declares that in the performance of its obligation to the riding public, other customers and clients, it has always acted with justice, honesty, courtesy and good faith.

Respondent appellate court found merit in and reproduced the trial court's refutation of this assigned error:

"About the only evidence of plaintiffs that may have reference to the manner with which the personnel of defendants treated the two plaintiffs at the San Francisco Airport are the following pertinent portions of Maria Saludo's testimony:

'Q - When you arrived there, what did you do, if any?

A - I immediately went to the TWA counter and I inquired about whether my mother was there or if they knew anything about it.

Q - What was the answer?

A - They said they do not know. So, we waited.

Q - About what time was that when you reached San Francisco from Chicago?

A - I think 5 o'clock. Somewhere around that in the afternoon.

Q - You made inquiry it was immediately thereafter?

A - Right after we got off the plane.

Q - Up to what time did you stay in the airport to wait until the TWA people could tell you the whereabouts?

A - Sorry, Sir, but the TWA did not tell us anything We stayed there until about 9 o'clock. They have not heard anything about it. They did not say anything.

Q - Do you want to convey to the Court that from 5 up to 9 o'clock in the evening you yourself went back to the TWA and they could not tell you where the remains of your mother were?

A - Yes sir.

Q - And after nine o'clock, what did you do?

A - I told my brother my Mom was supposed to be on the Philippine Airlines flight. 'Why don't we check with PAL instead to see if she was there?' We tried to comfort each other. I told him anyway that was a shortest flight from Chicago to California. We will be with our mother on this longer flight. So, we checked with the PAL.

Q - What did you find?

A - We learned, Yes, my Mom would be on the flight.

Q - Who was that brother?

A - Saturnino Saludo.

Q - And did you find what was your flight from San Francisco to the Philippines?

A - I do not know the number. It was the evening flight of the Philippine Airline(s) from San Francisco to Manila.

Q - You took that flight with your mother?

A - We were scheduled to, Sir.

Q - Now, you could not locate the remains of your mother in San Francisco could you tell us what did you feel?

A - After we were told that my mother was not there?

Q - After you learned that your mother could not fly with you from Chicago to California?

A - Well, I was very upset. Of course, I wanted the confirmation that my mother was in the West Coast. The flight was about 5 hours from Chicago to California. We waited anxiously all that time on the plane. I wanted to be assured about my mother's remains. But there was nothing and we could not get any assurance from anyone about it.

Q - Your feeling when you reached San Francisco and you could not find out from the TWA the whereabouts of the remains, what did you feel?

A - Something nobody would be able to describe unless he experiences it himself. It is a kind of panic. I think it's a feeling you are about to go crazy. It is something I do not want to live through again.' (Inting, t.s.n., Aug.

9, 1983, pp. 14-18).'

"The foregoing does not show any humiliating or arrogant manner with which the personnel of both defendants treated the two plaintiffs. Even their alleged indifference is not clearly established. The initial answer of the TWA personnel at the counter that they did not know anything about the remains, and later, their answer that they have not heard anything about the remains, and the inability of the TWA counter personnel to inform the two plaintiffs of the whereabouts of the remains, cannot be said to be total or complete indifference to the said plaintiffs. At any rate, it is any rude or discourteous conduct, malfeasance or neglect, the use of abusive or insulting language calculated to humiliate and shame passenger or bad faith by or on the part of the employees of the carrier that gives the passenger an action for damages against the carrier (*Zulueta vs. Pan American World Airways*, 43 SCRA 397; *Air France vs. Carrasco*, et al., 18 SCRA 155; *Lopez, et al. vs. Pan American World Airways*, 16 SCRA 431; *Northwest Airlines, Inc. vs. Cuenca*, 14 SCRA 1063), and none of the above is obtaining in the instant case." [67]

We stand by respondent court's findings on this point, but only to the extent where it holds that the manner in which private respondent TWA's employees dealt with petitioners was not grossly humiliating, arrogant or indifferent as would assume the proportions of malice or bad faith and lay the basis for an award of the damages claimed. It must however, be pointed out that the lamentable actuations of respondent TWA's employees leave much to be desired, particularly so in the face of petitioners' grief over the death of their mother, exacerbated by the tension and anxiety wrought by the impasse and confusion over the failure to ascertain over an appreciable period of time what happened to her remains.

Airline companies are hereby sternly admonished that it is their duty not only to cursorily instruct but to strictly require their personnel to be more accommodating towards customers, passengers and the general public. After all, common carriers such as airline companies are in the business of rendering public service, which is the primary reason for their enfranchisement and recognition in our law. Because the passengers in a contract of carriage do not contract merely for transportation, they have a right to be treated with kindness, respect, courtesy and consideration. [68] A contract to transport passengers is quite different in kind and degree from any other contractual relation, and generates a relation attended with public duty. The operation of a common carrier is a business affected with public interest and must be directed to serve the comfort and convenience of passengers. [69] Passengers are human beings with human feelings and emotions; they should not be treated as mere numbers or statistics for revenue.

The records reveal that petitioners, particularly Maria and Saturnino Saludo, agonized for nearly five hours, over the possibility of losing their mother's mortal remains, unattended to and without any assurance from the employees of TWA that they were doing anything about the situation. This is not to say that petitioners were to be regaled with extra special attention. They were, however, entitled to the understanding and humane consideration called for by and commensurate with the extraordinary diligence required of common carriers, and not the cold insensitivity to their predicament. It is hard to believe that the airline's counter personnel were totally helpless about the situation. Common sense could and should have dictated that they exert a little extra effort in making a more extensive inquiry, by themselves or through their superiors, rather than just shrug off the problem with a callous and uncaring remark that they had no knowledge about it. With all the modern communications equipment readily available to them, which could have easily facilitated said inquiry and which are used as a matter of course by airline companies in their daily operations, their apathetic stance while not legally reprehensible is morally deplorable.

Losing a loved one, especially one's parent, is a painful experience. Our culture accords the tenderest human feelings toward and in reverence to the dead. That the remains of the deceased were subsequently delivered, albeit belatedly, and eventually laid in her final resting place is of little consolation. The imperviousness displayed by

the airline's personnel, even for just that fraction of time, was especially condemnable particularly in the hour of bereavement of the family of Crispina Saludo, intensified by anguish due to the uncertainty of the whereabouts of their mother's remains. Hence, it is quite apparent that private respondents' personnel were remiss in the observance of that genuine human concern and professional attentiveness required and expected of them.

The foregoing observations, however, do not appear to be applicable or imputable to respondent PAL or its employees. No attribution of discourtesy or indifference has been made against PAL, by petitioners and, in fact, petitioner Maria Saludo testified that it was to PAL, that they repaired after failing to receive proper attention from TWA. It was from PAL that they received confirmation that their mother's remains would be on the same flight to Manila with them.

We find the following substantiation on this particular episode from the deposition of Alberto A. Lim, PAL's cargo supervisor earlier adverted to, regarding their investigation of and the action taken on learning of petitioner's problem:

"ATTY. ALBERTO C. MENDOZA:

Yes.

Mr. Lim, what exactly was your procedure adopted in your so called investigation?

ALBERTO A. LIM:

I called the lead agent on duty at that time and requested for a copy of airway bill, transfer manifest and other documents concerning the shipment.

ATTY ALBERTO C. MENDOZA:

Then, what?

ALBERTO A. LIM:

They proceeded to analyze exactly where PAL failed, if any, in forwarding the human remains of Mrs. Cristina (sic) Saludo. And I found out that there was not (sic) delay in shipping the remains of Mrs. Saludo to Manila. Since we received the body from American Airlines on 28 October at 7:45 and we expedited the shipment so that it could have been loaded on our flight leaving at 9:00 in the evening or just barely one hour and 15 minutes prior to the departure of the aircraft. That is so (sic) being the case, I reported to Manila these circumstances." [70]

IV. Finally, petitioners insist, as a consequence of the delay in the shipment of their mother's remains allegedly caused by wilful contractual breach, on their entitlement to actual, moral and exemplary damages as well as attorney's fees, litigation expenses, and legal interest.

The uniform decisional tenet in our jurisdiction holds that moral damages may be awarded for wilful or fraudulent breach of contract [71] or when such breach is attended by malice or bad faith. [72] However, in the absence of strong and positive evidence of fraud, malice or bad faith, said damages cannot be awarded. [73] Neither can there be an award of exemplary damages [74] nor of attorney's fees [75] as an item of damages in the absence of proof that defendant acted with malice, fraud or bad faith.

The censurable conduct of TWA's employees cannot, however, be said to have approximated the dimensions of fraud, malice or bad faith. It can be said to be more of a lethargic reaction produced and engrained in some people by the mechanically routine nature of their work and a racial or societal culture which stultifies what would have been their accustomed human response to a human need under a former and different ambience.

Nonetheless, the facts show that petitioners' right to be treated with due courtesy in accordance with the degree of diligence required by law to be exercised by every common carrier was violated by TWA and this entitles them, at least, to nominal damages from TWA alone. Articles 2221 and 2222 of the Civil Code make it clear that nominal damages are not intended for indemnification of loss suffered but for the vindication or recognition of a right violated or invaded. They are recoverable where some injury has been done but the amount of which the evidence fails to show, the assessment of damages being left to the discretion of the court according to the circumstances of the case.[76] In the exercise of our discretion, we find an award of P40,000.00 as nominal damages in favor of petitioners to be a reasonable amount under the circumstances of this case.

WHEREFORE, with the modification that an award of P40,000.00 as and by way of nominal damages is hereby granted in favor of petitioners to be paid by respondent Trans World Airlines, the appealed decision is AFFIRMED in all other respects.

SO ORDERED.

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

[1] Justice Jorge S. Imperial, ponente, with Justices File-mon D. Mendoza and Artemon D. Luna, concurring; Petition, Annex C; Rollo, 154.

[2] Penned by Judge Lucio F. Saavedra; Petition, Annex A; Rollo, 51.

[3] Rollo, 159-163.

[4] Exhibit G, Bill of Exhibits, 7.

[5] Exhibit H, *ibid.*, 9.

[6] Original, Record, 1

[7] Petition, Annex E; Rollo, 200.

[8] Rollo, 16-17.

[9] Section 2, Rule 45, Rules of Court.

[10] Ramos, et al. vs. Pepsi Cola Bottling Co. of the P.I., et al., 19 SCRA 289 (1967); Malaysian Airline System Bernad vs. Court of Appeals, et al., 156 SCRA 321 (1987).

[11] Abellana, et al. vs. Dosdos, etc., et al., 13 SCRA 244 (1965); Uytiepo, et al. vs. Aggabao, et al., 35 SCRA 186 (1970); Carolina Industries, Inc. vs. CMS Stock Brokerage, Inc., et al., 97 SCRA 734 (1980).

[12] Garcia vs. Court of Appeals, et al., 33 SCRA 622 (1970); Sacay vs. Sandiganbayan, 142 SCRA 593 (1986); Manlapaz vs. Court of Appeals, et al., 147 SCRA 236 (1987).

[13] Pilar Development Corporation vs. Intermediate Appellate Court, et al., 146 SCRA 215 (1986).

[14] Vda. de Arroyo vs. El Beaterio del Santissimo Rosario de Molo, et al, 23 SCRA 525 (1968).

[15] Comment of Respondent TWA, 5; Rollo, 206; Comment of Respondent PAL, 10-11; Rollo, 213.

[16] Consolidated Reply, *ibid.*, 229.

[17] Rollo, 17-26.

- [18] Exhibit E, Bill of Exhibits, 5; Exhibit 1-PAL, Bill of Exhibits, 32.
- [19] Rollo, 20.
- [20] 13 Am. Jur. 2d, Carriers 771.
- [21] 4 Alcantara, Commercial Laws of the Philippines, 118 (1987).
- [22] 13 C.J.S., Carriers, 233.
- [23] 13 Am. Jur. 2d, Carriers 775.
- [24] 13 C.J.S., Carriers 232.
- [25] Op. cit., 240-243.
- [26] Rollo, 160.
- [27] Memorandum for Private Respondent PAL, 1-2.
- [28] Exhibits 2 and 2-A-PAL; Bill of Exhibits, 31.
- [29] Article 1737, Civil Code.
- [30] Article 1738, id.
- [31] 13 Am. Jur. 2d, Carriers 763-764. .
- [32] Op. cit., 762-763.
- [33] Rollo, 163-165.
- [34] Exhibit 1-TWA, Bill of Exhibits, 33.
- [35] Exhibit 3-PAL, ibid., 30.
- [36] Exhibit 2-PAL, ibid., 101.
- [37] Exhibit 5-PAL, ibid., 39-41.
- [38] Exhibit 5-PAL, ibid., 58-63, 71-73.
- [39] Rollo, 229-230.
- [40] Ibid., 166-167.
- [41] 13 C.J.S., Carriers 148.
- [42] 13 Am. Jur. 2d, Carriers 751.
- [43] Manuel A. Barcelona, Liabilities of Carriers: Airline Practices and Procedures, in CURRENT ISSUES AFFECTING AIRLINES IN THE PHILIPPINES, 103 (1989).
- [44] Nocum vs. Laguna Tayabas Bus Co., 30 SCRA 69 (1969).
- [45] Rollo, 160.
- [46] 13 C.J.S., Carriers 41; 13 Am. Jur. 2d, Carriers 572.
- [47] Annex 2, Opposition to Joint Motion to Dismiss, 1-2, Original Record, 253-254; Memorandum of Private

Respondent TWA, 250.

[48] Exhibit 2-A-TWA, Bill of Exhibits, 26.

[49] Article 1370, Civil Code; Philippine Airlines vs. Philippine Airlines Employees Association, 70 SCRA 180 (1976); Government Service Insurance System vs. Court of Appeals, et al., 145 SCRA 311 (1986); Honrado, Jr. vs. Court of Appeals, et al., 198 SCRA 326 (1991).

[50] Article 1374, Civil Code.

[51] See Section 9, Rule 130, Rules of Court.

[52] Ruiz, et al. vs. Sheriff, et al., 34 SCRA 83 (1970); National Union Fire Insurance Company of Pittsburg, et al. vs. Stolt-Nielsen Philippines, Inc., et al., 184 SCRA 682 (1990).

[53] Rollo, 168-169.

[54] Section 13, Rule 130, Rules of Court.

[55] Exhibit E, Bill of Exhibits, 5.

[56] Comment of Private Respondent PAL, 9; Rollo, 221.

[57] 13 C.J.S., Carriers 390, 392; Mason vs. Chicago & N.W. Ry. Co., 262 Ill. App 580.

[58] 13 Am. Jur. 2d, Carriers 854; Chicago & A.R. Co. vs. Kirby, 225 US 155, 56 Led 1033, 32 Sct 648; Harmony vs. Bingham, 12 NY 99.

[59] 13 C.J.S., Carriers 395; Frey vs. New York Cent., etc., R. Co., 100 N.Y.S. 225, 114 App. Div. 747.

[60] Rollo, 168-169.

[61] 13 Am. Jur. 2d, Carriers 778-779; See Ong Yiu vs. Court of Appeals, et al., 91 SCRA 223 (1979) and Pan American World Airways, Inc. vs. Intermediate Appellate Court, et al., 164 SCRA 268 (1988).

[62] Qua Chee Gan vs. Law Union and Rock Insurance Co., Ltd., etc., 98 Phil. 85 (1955); Fieldman's Insurance Co., Inc. vs. Vda. de Songco, 25 SCRA 70 (1968); Sweet Lines, Inc. vs. Teves, 83 SCRA 361 (1978).

[63] Supra, Fn. 61.

[64] Chicago & A.R. Co. vs. Kirby, supra; Warren vs. Portland Terminal Co., 121 Me 157, 116 A 411, 26 ALR 304.

[65] Petition, Annex A; Rollo, 79.

[66] Exhibit F and Exhibit 4-TWA, Bill of Exhibits, 6.

[67] Petition, Annex C; Rollo, 169-172.

[68] Alitalia Airways vs. Court of Appeals, et al., 187 SCRA 763 (1990); cf. Air France vs. Carrascoso, et al., 18 SCRA 168 (1966).

[69] See Philippine Airlines, Inc. vs. Court of Appeals, et al., 188 SCRA 461 (1990).

[70] Exhibit 5-PAL, 50-51; Bill of Exhibits, 83-84.

[71] Article 2220, Civil Code; Tamayo vs. Aquino, et al., 105 Phil. 949 (1959); China Airlines Ltd. vs. Court of Appeals, et al., 169 SCRA 226 (1989).

[72] *Perez vs. Court of Appeals, et al.*, 13 SCRA 137 (1965); *Sabena Belgian World Airlines vs. Court of Appeals, et al.*, 171 SCRA 620 (1989).

[73] *Coscolluela vs. Valderrama*, 2 SCRA 1095 (1961); *Pan American World Airways, Inc. vs. Intermediate Appellate Court, et al.*, 186 SCRA 687 (1990).

[74] Article 2232, Civil Code; *Davila, et al. vs. Philippine Airlines*, 49 SCRA 497 (1973); *Philippine National Bank vs. Court of Appeals, et al.*, 159 SCRA 433 (1988); *Esguerra vs. Court of Appeals, et al.*, 173 SCRA 1 (1989).

[75] Article 2208, Civil Code; *Federation of United NAMARCO Distributors, Inc. et al. vs. National Marketing Corporation*, 4 SCRA 867 (1962); *Songcuan vs. Intermediate Appellate Court, et al.*, 191 SCRA 28 (1990).

[76] See *Northwest Airlines, Inc. vs. Cuenca, et al.*, 14 SCRA 1063 (1965); *Robes-Francisco Realty & Development Corporation vs. Court of First Instance of Rizal (Branch XXXIV), et al.*, 84 SCRA 59 (1978); *Alitalia vs. Intermediate Appellate Court, et al.*, 192 SCRA 9 (1990).

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