

**RUFINO Y. LUNA, RODOLFO J. ALONSO AND PORFIRIO RODRIGUEZ,
PETITIONERS, VS. HON. COURT OF APPEALS, HON. CRISTINA M.
ESTRADA IN HER CAPACITY AS PRESIDING JUDGE, RTC-PASIG, BR.
69,...**

G.R. Nos. 100374-75. November 27, 1992

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This joint petition for review on certiorari originated from two (2) separate complaints arising from an airline's delay in the delivery of the luggage of its passengers at their destination which respondent courts dismissed for lack of cause of action. The resulting issue is whether the application of the Warsaw Convention operates to exclude the application of the provisions of the New Civil Code and other pertinent statutes.

Briefly, the facts: On 19 May 1989, at around 8:00 in the morning, petitioners Rufino Luna, Rodolfo Alonso and Porfirio Rodriguez boarded Flight 020 of private respondent Northwest Airlines bound for Seoul, South Korea, to attend the four-day Rotary International Convention from the 21st to the 24th of May 1992. They checked in one (1) piece of luggage each. After boarding, however, due to engine trouble, they were asked to disembark and transfer to a Korean Airlines plane scheduled to depart four (4) hours later. They were assured that their baggage would be with them in the same flight.

When petitioners arrived in Seoul, they discovered that their personal belongings were nowhere to be found; instead, they were allegedly flown to Seattle, U.S.A. It was not until four (4) days later, and only after repeated representations with Northwest Airlines personnel at the airport in Korea were petitioners able to retrieve their luggage. By then the Convention, which they were hardly able to attend, was almost over.

Petitioners Rufino Y. Luna and Rodolfo J. Alonso assert that on 6 June 1989, or thirteen (13) days after they recovered their luggage, they sent a written claim to private respondent's office along Roxas Blvd., Ermita, Manila. Petitioner Porfirio Rodriguez, on his part, asseverates that he filed his claim on 13 June 1989. However, private respondent, in a letter of 21 June 1989, disowned any liability for the delay and averred that it exerted "its best efforts to carry the passenger and baggage with reasonable dispatch." [1]

Thus, on 14 July 1989, petitioners Luna and Alonso jointly filed a complaint for breach of contract with damages before the Regional Trial Court of Pasig, Metro Manila, docketed as Civil Case No. 58390, subsequently raffled to Br. 69,[2] while petitioner Rodriguez filed his own complaint with the Regional Trial Court of Valenzuela, Metro Manila, docketed as Civil Case No. 3194-V-89, assigned to Br. 172.[3] However, upon motion of private respondent, both complaints were dismissed[4] for lack of cause of action due to petitioners' failure to state in their respective complaints that they filed a prior claim with private respondent within the prescribed period.

Petitioners Luna and Alonso then filed a petition for certiorari before the Court of Appeals to set aside the order of respondent Judge Cristina M. Estrada granting private respondent's motion to dismiss, while petitioner Rodriguez

proceeded directly to this Court on certiorari for the same purpose. However, in Our resolution of 26 February 1990, We referred his petition to the Court of Appeals.

On 26 March 1991, the Third Division of respondent Court of Appeals, applying the provisions of the Warsaw Convention and ruling that certiorari was not a substitute for a lost appeal, dismissed the petition of Luna and Alonso,[5] and on 7 June 1991 denied their motion for reconsideration.[6] Meanwhile, on 28 February 1991 the Seventh Division of respondent Court of Appeals, ruling that the questioned order of the trial court had already become final, similarly rejected the petition of Rodriguez, and on 6 June 1991 denied his motion for reconsideration.[7] Hence, this present recourse by petitioners Luna, Alonso and Rodriguez.

Four (4) grounds are relied upon by petitioners which, nevertheless, may be reduced to three, namely: (a) that respondent appellate court disregarded Our ruling in *Alitalia v. CA*[8] where We said that "[t]he Convention does not thus operate as an exclusive enumeration of the instances of an airline's liability, or as an absolute limit of the extent of that liability;"[9] (b) that "petitions to revoke orders and decisions may be entertained even after the time to appeal had elapsed, in cases wherein the jurisdiction of the court had been exceeded;"[10] and, (c) that Art. 26 of the Warsaw Convention which prescribes the reglementary period within which to file a claim cannot be invoked if damage is caused by the carrier's willful misconduct, as provided by Art. 25 of the same Warsaw Convention.

Private respondent, on the other hand, argues that the dismissal orders of respondent courts had already become final after petitioners failed to either move for reconsideration or appeal from the orders within the reglementary period, hence, certiorari is no substitute for a lost appeal.

Private respondent also maintains that it did not receive any demand letter from petitioners within the 21-day reglementary period, as provided in par. 7 of the Conditions of Contract appearing in the plane ticket. Since Art. 26, par. (4), of the Warsaw Convention provides that "[f]ailing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part," the carrier consequently cannot be held liable for the delay in the delivery of the baggage. In other words, non-observance of the prescribed period to file a claim bars claimant's action in court for recovery.

Private respondent, citing foreign jurisprudence,[11] likewise submits that Art. 25, par. (1), of the Warsaw Convention which excludes or limits liability of common carriers if the damage is caused by its willful misconduct, refers only to the monetary ceiling on damages found in Art. 22.

We find the appeal impressed with merit.

From the facts, it appears that private respondent Northwest Airlines indeed failed to deliver petitioners' baggage at the designated time and place. For this, all that respondent carrier could say was that "[w]e exerted all efforts to comply with this condition of the contract." [12] Hence, it is evident that petitioners suffered some special specie of injury for which they should rightly be compensated. Private respondent cannot be allowed to escape liability by seeking refuge in the argument that the trial courts' orders have attained finality due to petitioners' failure to move for reconsideration or to file a timely appeal therefrom. Technicalities should be disregarded if only to render to the respective parties that which is their due. Thus, although We have said that certiorari cannot be a substitute for a lapsed appeal, We have, time and again, likewise held that where a rigid application of that rule will result in a manifest failure or miscarriage of justice, the rule may be relaxed.[13] Hence, considering the broader and primordial interests of justice, particularly when there is grave abuse of discretion, thus impelling occasional departure from the general rule that the extraordinary writ of certiorari cannot substitute for a lost appeal, respondent appellate court may legally entertain the special civil action for certiorari.[14]

Previously, We ruled that the Warsaw Convention was a treaty commitment voluntarily assumed by the Philippine government; consequently, it has the force and effect of law in this country.[15] But, in the same token, We are also aware of jurisprudence that the Warsaw Convention does not operate as an exclusive enumeration of the instances for declaring an airline liable for breach of contract of carriage or as an absolute limit of the extent of that liability.[16] The Convention merely declares the carrier liable for damages in the enumerated cases, if the conditions therein specified are present.[17] For sure, it does not regulate the liability, much less exempt, the carrier for violating the rights of others which must simply be respected in accordance with their contracts of carriage. The application of the Convention must not therefore be construed to preclude the operation of the Civil Code and other pertinent laws. In fact, in *Alitalia v. IAC*,[18] We awarded Dr. Felipa Pablo nominal damages, the provisions of the Convention notwithstanding.

Hence, petitioners' alleged failure to file a claim with the common carrier as mandated by the provisions of the Warsaw Convention should not be a ground for the summary dismissal of their complaints since private respondent may still be held liable for breach of other relevant laws which may provide a different period or procedure for filing a claim. Considering that petitioners indeed filed a claim which private respondent admitted having received on 21 June 1989, their demand may have very well been filed within the period prescribed by those applicable laws. Consequently, respondent trial courts, as well as respondent appellate court, were in error when they limited themselves to the provisions of the Warsaw Convention and disregarding completely the provisions of the Civil Code.

We are unable to agree however with petitioners that Art. 25 of the Convention operates to exclude the other provisions of the Convention if damage is caused by the common carrier's willful misconduct. As correctly pointed out by private respondent, Art. 25 refers only to the monetary ceiling on damages found in Art. 22 should damage be caused by the carrier's willful misconduct. Hence, only the provisions of Art. 22 limiting the carrier's liability and imposing a monetary ceiling in case of willful misconduct on its part that the carrier cannot invoke.[19] This issue however has become academic in the light of our ruling that the trial courts erred in dismissing petitioners' respective complaints.

We are not prepared to subscribe to petitioners' argument that the failure of private respondent to deliver their luggage at the designated time and place amounted ipso facto to willful misconduct. For willful misconduct to exist, there must be a showing that the acts complained of were impelled by an intention to violate the law, or were in persistent disregard of one's rights. It must be evidenced by a flagrantly or shamefully wrong or improper conduct.

WHEREFORE, the assailed decisions and resolutions of respondent Court of Appeals are REVERSED and SET ASIDE. The complaints for breach of contract of carriage with damages in Civil Case No. 3194-V-89 and Civil Case No. 58390 dismissed by respondent Judges Teresita D. Capulong and Cristina M. Estrada, respectively, are ordered REINSTATED and given due course until terminated. No costs.

SO ORDERED.

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

[1] Letter of B.L. Barnhill, Manager (Philippines), Northwest Airlines, Inc.; Rollo, pp. 43-44.

[2] Presided by then Judge Jainal D. Rasul, now Justice of the Court of Appeals, succeeded by Judge Cristina M. Estrada who issued the assailed Order.

[3] Presided by Judge Teresita D. Capulong.

[4] The Complaints of petitioners Luna and Alonso were dismissed on 18 September 1990, while that of petitioner Rodriguez, on 8 November 1989.

[5] Rollo, pp. 23-37.

[6] Id, p. 38.

[7] Rollo, pp. 15-22.

[8] G.R. No. 71929, 4 December 1990; 192 SCRA 9, then Senior Associate Justice now Chief Justice Andres R. Narvasa, ponente.

[9] Id, p. 17.

[10] Petition, p. 10; Rollo, p. 11.

[11] *Magnus v. Royal Bank*, 19 Avi. 17,944, 17,948; *Highlands Ins. v. Trinidad and Tobago*, 739 F.2d 536, 539, among many other cases with similar implications.

[12] See Note 1.

[13] *Goldloop Properties, Inc. v. CA*, G.R. No. 99431, 11 August 1992, citing *Legarda v. CA*, G.R. No. 94457, 18 March 1991, 195 SCRA 418.

[14] *Aranda v. CA*, G.R. No. 63188, 13 June 1990, 186 SCRA 456, and the cases cited therein.

[15] *Santos III v. Northwest Orient Airlines*, G.R. No. 101538, 23 June 1992, Justice Isagani A. Cruz, ponente.

[16] *Northwest Airlines, Inc. v. Cuenca*, No. L-22425, 31 August 1965; *Alitalia v. IAC*, see Notes 10 and 11; *Lufthansa German Airlines v. IAC*, G.R. No. 71238, 19 March 1992.

[17] "Article 17. The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

"Article 18 (1) The carrier shall be liable for damage sustained in the event of the destruction or loss of, or of damage to, any checked baggage, or any goods, if the occurrence which caused the damage so sustained took place during the transportation by air.

"(2) The transportation by air within the meaning of the preceding paragraph shall comprise the period during which the baggage or goods are in charge of the carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever.

"(3) The period of the transportation by air shall not extend to any transportation by land, by sea, or by river performed outside an airport. If, however, such transportation takes place in the performance of a contract for transportation by air, for the purpose of loading, delivery, or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the transportation by air.

"Article 19. The carrier shall be liable for damage occasioned by delay in the transportation by air of passengers, baggage, or goods."

[18] See Notes 10 and 11.

[19] See Note 17.

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