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FIRST DIVISION

[G.R. No. L-40597. June 29, 1979]

AUGUSTINO B. ONG YIU, *petitioner, vs.* **HONORABLE COURT OF APPEALS and PHILIPPINE AIR LINES, INC.,** *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; COMMON CARRIERS; CONTRACT OF CARRIAGE; NATURE THEREOF.**— While it may be true that petitioner had not signed the plane ticket, he is nevertheless bound by the provisions thereof. "Such provisions have been held to be a part of the contract of carriage, and valid and binding upon the passenger regardless of the latter's lack of knowledge or assent to the regulation." It is what is known as a contract of "adhesion," in regards which it has been said that contracts of adhesion wherein one party imposes a ready made form of contract on the other, as the plane ticket in the case at bar, are contracts 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.

2. **ID.; ID.; ID.; WHEN PETITIONER FAILED TO DECLARE A HIGHER VALUE OF HIS BAGGAGE, HE CANNOT RECOVER IN EXCESS OF WHAT IS STIPULATED IN THE CONTRACT; CASE AT BAR.**— Considering, therefore, that petitioner had failed to declare a higher value for his baggage, he cannot be permitted a recovery in excess of ₱100.00. Besides, passengers are advised not to place valuable items inside their baggage but "to avail of our V-cargo service." It is likewise to be noted that there is nothing in the evidence to show the actual value of the goods allegedly lost by petitioner.

D E C I S I O N

MELENCIO-HERRERA, *J.*:

In this Petition for Review by *Certiorari*, petitioner, a practicing lawyer and businessman, seeks a reversal of the Decision of the Court of Appeals in CA-G.R. No. 45005-R,

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which reduced his claim for damages for breach of contract of transportation.

The facts are as follows:

On August 26, 1967, petitioner was a fare paying passenger of respondent Philippine Air Lines, Inc. (PAL), on board Flight No. 463-R, from Mactan, Cebu, bound for Butuan City. He was scheduled to attend the trial of Civil Case No. 1005 and Spec. Procs. No. 1125 in the Court of First Instance, Branch II, thereat, set for hearing on August 28-31, 1967. As a passenger, he checked in one piece of luggage, a blue "*maleta*" for which he was issued Claim Check No. 2106-R (Exh. "A"). The plane left Mactan Airport, Cebu, at about 1:00 o'clock P.M., and arrived at Bancasi airport, Butuan City, at past 2:00 o'clock P.M., of the same day. Upon arrival, petitioner claimed his luggage but it could not be found. According to petitioner, it was only after reacting indignantly to the loss that the matter was attended to by the porter clerk, Maximo Gomez, which, however, the latter denies. At about 3:00 o'clock P.M., PAL, Butuan, sent a message to PAL, Cebu, inquiring about the missing luggage, which message was, in turn, relayed in full to the Mactan Airport teletype operator at 3:45 P.M. (Exh. "2") that same afternoon. It must have been transmitted to Manila immediately, for at 3:59 that same afternoon, PAL Manila wired PAL Cebu advising that the luggage had been overcarried to Manila aboard Flight No. 156 and that it would be forwarded to Cebu on Flight No. 345 of the same day. Instructions were also given that the luggage be immediately forwarded to Butuan City on the first available flight (Exh. "3"). At 5:00 P.M. of the same afternoon, PAL Cebu sent a message to PAL Butuan that the luggage would be forwarded on Flight No. 963 the following day, August 27, 1967. However, this message was not received by PAL Butuan as all the personnel had already left since there were no more incoming flights that afternoon.

In the meantime, petitioner was worried about the missing luggage because it contained vital documents needed for trial the next day. At 10:00 o'clock that evening, petitioner wired PAL Cebu demanding the delivery of his baggage before noon the next day, otherwise, he would hold PAL liable for damages,

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and stating that PAL's gross negligence had caused him undue inconvenience, worry, anxiety and extreme embarrassment (Exh. "B"). This telegram was received by the Cebu PAL supervisor but the latter felt no need to wire petitioner that his luggage had already been forwarded on the assumption that by the time the message reached Butuan City, the luggage would have arrived.

Early in the morning of the next day, August 27, 1967, petitioner went to the Bancasi Airport to inquire about his luggage. He did not wait, however, for the morning flight which arrived at 10:00 o'clock that morning. This flight carried the missing luggage. The porter clerk, Maximo Gomez, paged petitioner, but the latter had already left. A certain Emilio Dagorro, a driver of a "*colorum*" car, who also used to drive for petitioner, volunteered to take the luggage to petitioner. As Maximo Gomez knew Dagorro to be the same driver used by petitioner whenever the latter was in Butuan City, Gomez took the luggage and placed it on the counter. Dagorro examined the lock, pressed it, and it opened. After calling the attention of Maximo Gomez, the "*maleta*" was opened, Gomez took a look at its contents, but did not touch them. Dagorro then delivered the "*maleta*" to petitioner, with the information that the lock was open. Upon inspection, petitioner found that a folder containing certain exhibits, transcripts and private documents in Civil Case No. 1005 and Sp. Procs. No. 1126 were missing, aside from two gift items for his parents-in-law. Petitioner refused to accept the luggage. Dagorro returned it to the porter clerk, Maximo Gomez, who sealed it and forwarded the same to PAL Cebu.

Meanwhile, petitioner asked for postponement of the hearing of Civil Case No. 1005 due to loss of his documents, which was granted by the Court (Exhs. "C" and "C-1"). Petitioner returned to Cebu City on August 28, 1967. In a letter dated August 29, 1967 addressed to PAL, Cebu, petitioner called attention to his telegram (Exh. "D"), demanded that his luggage be produced intact, and that he be compensated in the sum of ₱250,000.00 for actual and moral damages within five days from receipt of the letter, otherwise, he would be left with no alternative but to file suit (Exh. "D").

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On August 31, 1967, Messrs. de Leon, Navarsi, and Agustin, all of PAL Cebu, went to petitioner's office to deliver the "*maleta.*" In the presence of Mr. Jose Yap and Atty. Manuel Maranga, the contents were listed and receipted for by petitioner (Exh. "E").

On September 5, 1967, petitioner sent a tracer letter to PAL Cebu inquiring about the results of the investigation which Messrs. de Leon, Navarsi and Agustin had promised to conduct to pinpoint responsibility for the unauthorized opening of the "*maleta*" (Exh. "F").

The following day, September 6, 1967, PAL sent its reply hereinunder quoted verbatim:

"Dear Atty. Ong Yiu:

"This is with reference to your September 5, 1967, letter to Mr. Ricardo G. Paloma, Acting Manager, Southern Philippines.

"First of all, may we apologize for the delay in informing you of the result of our investigation since we visited you in your office last August 31, 1967. Since there are stations other than Cebu which are involved in your case, we have to communicate and await replies from them. We regret to inform you that to date we have not found the supposedly lost folder of papers nor have we been able to pinpoint the personnel who allegedly pilferred your baggage.

"You must realize that no inventory was taken of the cargo upon loading them on any plane. Consequently, we have no way of knowing the real contents of your baggage when same was loaded.

"We realized the inconvenience you encountered of this incident but we trust that you will give us another opportunity to be of better service to you.

Very truly yours,

PHILIPPINE AIR LINES, INC.

(Sgd) JEREMIAS S. AGUSTIN
Branch Supervisor
Cebu"
(Exhibit G, Folder of Exhibits)"[1]

[1] pp. 47-48, *Rollo.*

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On September 13, 1967, petitioner filed a Complaint against PAL for damages for breach of contract of transportation with the Court of First Instance of Cebu, Branch V, docketed as Civil Case No. R-10188, which PAL traversed. After due trial, the lower Court found PAL to have acted in bad faith and with malice and declared petitioner entitled to moral damages in the sum of ₱80,000.00, exemplary damages of ₱30,000.00, attorney's fees of ₱5,000.00, and costs.

Both parties appealed to the Court of Appeals — petitioner in so far as he was awarded only the sum of ₱80,000.00 as moral damages; and defendant because of the unfavorable judgment rendered against it.

On August 22, 1974, the Court of Appeals,* finding that PAL was guilty only of simple negligence, reversed the judgment of the trial Court granting petitioner moral and exemplary damages, but ordered PAL to pay plaintiff the sum of ₱100.00, the baggage liability assumed by it under the condition of carriage printed at the back of the ticket.

Hence, this Petition for Review by *Certiorari*, filed on May 2, 1975, with petitioner making the following Assignments of Error:

"I. THE HONORABLE COURT OF APPEALS ERRED IN HOLDING RESPONDENT PAL GUILTY ONLY OF SIMPLE NEGLIGENCE AND NOT BAD FAITH IN THE BREACH OF ITS CONTRACT OF TRANSPORTATION WITH PETITIONER.

"II. THE HONORABLE COURT OF APPEALS MISCONSTRUED THE EVIDENCE AND THE LAW WHEN IT REVERSED THE DECISION OF THE LOWER COURT AWARDING TO PETITIONER MORAL DAMAGES IN THE AMOUNT OF ₱80,000.00, EXEMPLARY DAMAGES OF ₱30,000.00, AND ₱5,000.00 REPRESENTING ATTORNEY'S FEES, AND ORDERED RESPONDENT PAL TO COMPENSATE PLAINTIFF THE SUM OF ₱100.00 ONLY, CONTRARY TO THE EXPLICIT PROVISIONS OF ARTICLES 2220, 2229, 2232 AND 2234 OF THE CIVIL CODE OF THE PHILIPPINES.

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* Decision penned by Justice Jose Leuterio, with Justice Roseller Lim and Francisco Tantuico, Jr., concurring.

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On July 16, 1975, this Court gave due course to the Petition.

There is no dispute that PAL incurred in delay in the delivery of petitioner's luggage. The question is the correctness of respondent Court's conclusion that there was no gross negligence on the part of PAL and that it had not acted fraudulently or in bad faith as to entitle petitioner to an award of moral and exemplary damages.

From the facts of the case, we agree with respondent Court that PAL had not acted in bad faith. Bad faith means a breach of a known duty through some motive of interest or ill will.[2] It was the duty of PAL to look for petitioner's luggage which had been miscarried. PAL exerted due diligence in complying with such duty.

As aptly stated by the appellate Court:

"We do not find any evidence of bad faith in this. On the contrary, We find that the defendant had exerted diligent effort to locate plaintiff's baggage. The trial court saw evidence of bad faith because PAL sent the telegraphic message to Mactan only at 3:00 o'clock that same afternoon, despite plaintiff's indignation for the non-arrival of his baggage. The message was sent within less than one hour after plaintiff's luggage could not be located. Efforts had to be exerted to locate plaintiff's *maleta*. Then the Bancasi airport had to attend to other incoming passengers and to the outgoing passengers. Certainly, no evidence of bad faith can be inferred from these facts. Cebu office immediately wired Manila inquiring about the missing baggage of the plaintiff. At 3:59 P.M., Manila station agent at the domestic airport wired Cebu that the baggage was overcarried to Manila. And this message was received in Cebu one minute thereafter, or at 4:00 P.M. The baggage was in fact sent back to Cebu City that same afternoon. His Honor stated that the fact that the message was sent at 3:59 P.M. from Manila and completely relayed to Mactan at 4:00 P.M., or within one minute, made the message appear spurious. This is a forced reasoning. A radio message of about 50 words can be completely transmitted in even less than one minute, depending upon atmospheric conditions. Even if the message was sent from

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[2] *Air France vs. Carrascoso*, 18 SCRA 166 (1966); *Lopez vs. Pan American World Airways*, 16 SCRA 431 (1966).

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Manila or other distant places, the message can be received within a minute. That is a scientific fact which cannot be questioned."[3]

Neither was the failure of PAL Cebu to reply to petitioner's rush telegram indicative of bad faith. The telegram (Exh. B) was dispatched by petitioner at around 10:00 P.M. of August 26, 1967. The PAL supervisor at Mactan Airport was notified of it only in the morning of the following day. At that time the luggage was already to be forwarded to Butuan City. There was no bad faith, therefore, in the assumption made by said supervisor that the plane carrying the bag would arrive at Butuan earlier than a reply telegram. Had petitioner waited or caused someone to wait at the Bancasi airport for the arrival of the morning flight, he would have been able to retrieve his luggage sooner.

In the absence of a wrongful act or omission or of fraud or bad faith, petitioner is not entitled to moral damages.

"Art. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act of omission."

"Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith."

Petitioner is neither entitled to exemplary damages. In contracts, as provided for in Article 2232 of the Civil Code, exemplary damages can be granted if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner, which has not been proven in this case.

Petitioner further contends that respondent Court committed grave error when it limited PAL's carriage liability to the amount

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[3] pp. 12-13, Decision, on pp. 53-54, *Rollo*.

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of ₱100.00 as stipulated at the back of the ticket. In this connection, respondent Court opined:

"As a general proposition, the plaintiff's *maleta* having been pilfered while in the custody of the defendant, it is presumed that the defendant had been negligent. The liability, however, of PAL for the loss, in accordance with the stipulation written on the back of the ticket, Exhibit 12, is limited to ₱100.00 per baggage, plaintiff not having declared a greater value, and not having called the attention of the defendant on its true value and paid the tariff therefor. The validity of this stipulation is not questioned by the plaintiff. They are printed in reasonably and fairly big letters, and are easily readable. Moreover, plaintiff had been a frequent passenger of PAL from Cebu to Butuan City and back, and he, being a lawyer and businessman, must be fully aware of these conditions."[4]

We agree with the foregoing finding. The pertinent Condition of Carriage printed at the back of the plane ticket reads:

"8. BAGGAGE LIABILITY . . . The total liability of the Carrier for lost or damaged baggage of the passenger is LIMITED TO ₱100.00 for each ticket unless a passenger declares a higher valuation in excess of ₱100.00, but not in excess, however, of a total valuation of ₱1,000.00 and additional charges are paid pursuant to Carrier's tariffs."

There is no dispute that petitioner did not declare any higher value for his luggage, much less did he pay any additional transportation charge.

But petitioner argues that there is nothing in the evidence to show that he had actually entered into a contract with PAL limiting the latter's liability for loss or delay of the baggage of its passengers, and that Article 1750* of the Civil Code has not been complied with.

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[4] pp. 8-9. Decision on pp. 27-28. *Rollo.*

* "A contract fixing the sum that may be recovered by the owner or shipper for the loss, destruction, or deterioration of the goods is valid, if it is reasonable and just under the circumstances, and has been fairly and freely agreed upon."

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While it may be true that petitioner had not signed the plane ticket (Exh. "12"), he is nevertheless bound by the provisions thereof. "Such provisions have been held to be a part of the contract of carriage, and valid and binding upon the passenger regardless of the latter's lack of knowledge or assent to the regulation."[5] It is what is known as a contract of "adhesion," in regards which it has been said that contracts of adhesion wherein one party imposes a ready made form of contract on the other, as the plane ticket in the case at bar, are contracts 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.[6] And as held in *Randolph v. American Airlines*, 103 Ohio App. 172, 144 N.E. 2d 878; *Rosenchein vs. Trans World Airlines, Inc.*, 349 S.W. 2d 483, "a contract limiting liability upon an agreed valuation does not offend against the policy of the law forbidding one from contracting against his own negligence."

Considering, therefore, that petitioner had failed to declare a higher value for his baggage, he cannot be permitted a recovery in excess of ₱100.00. Besides, passengers are advised not to place valuable items inside their baggage but "to avail of our V-cargo service" (Exh. "1"). It is likewise to be noted that there is nothing in the evidence to show the actual value of the goods allegedly lost by petitioner.

There is another matter involved, raised as an error by PAL — the fact that on October 24, 1974 or two months after the promulgation of the Decision of the appellate Court, petitioner's widow filed a Motion for Substitution claiming that petitioner died on January 6, 1974 and that she only came to know of the adverse Decision on October 23, 1974 when petitioner's law partner informed her that he received copy of the Decision on

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[5] *Tannebaum v. National Airline, Inc.* 13 Misc. 2d 450, 176 N.Y.S. 2d 400; *Lichten vs. Eastern Airlines*, 87 Fed. Supp. 691; *Migoski v. Eastern Air Lines, Inc.*, Fla. 63 So. 2d 634.

[6] Tolentino, *Civil Code*, Vol. IV, 1962 ed., p. 462, citing Mr. Justice J.B.L. Reyes, Lawyer's Journal, Jan. 31, 1951, p. 49.

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August 28, 1974. Attached to her Motion was an Affidavit of petitioner's law partner reciting facts constitutive of excusable negligence. The appellate Court noting that all pleadings had been signed by petitioner himself allowed the widow "to take such steps as she or counsel may deem necessary." She then filed a Motion for Reconsideration over the opposition of PAL which alleged that the Court of Appeals Decision, promulgated on August 22, 1974, had already become final and executory since no appeal had been interposed therefrom within the reglementary period.

Under the circumstances, considering the demise of petitioner himself, who acted as his own counsel, it is best that technicality yields to the interests of substantial justice. Besides, in the last analysis, no serious prejudice has been caused respondent PAL.

In fine, we hold that the conclusions drawn by respondent Court from the evidence on record are not erroneous.

WHEREFORE, for lack of merit, the instant Petition is hereby denied, and the judgment sought to be reviewed hereby affirmed *in toto*.

No costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, Guerrero, and *De Castro, JJ.*, concur.