

THIRD DIVISION

[G.R. No. 170141, April 22, 2008]

**JAPAN AIRLINES, PETITIONER, VS. JESUS SIMANGAN,
RESPONDENT.**

D E C I S I O N

REYES, R.T., J.:

WHEN an airline issues a ticket to a passenger confirmed on a particular flight on a certain date, a contract of carriage arises, and the passenger has every right to expect that he would fly on that flight and on that date. If he does not, then the carrier opens itself to a suit for breach of contract of carriage.^[1]

The power to admit or not an alien into the country is a sovereign act which cannot be interfered with even by Japan Airlines (JAL).^[2]

In this petition for review on *certiorari*,^[3] petitioner JAL appeals the: (1) Decision^[4] dated May 31, 2005 of the Court of Appeals (CA) ordering it to pay respondent Jesus Simangan moral and exemplary damages; and (2) Resolution^[5] of the same court dated September 28, 2005 denying JAL's motion for reconsideration.

The Facts

In 1991, respondent Jesus Simangan decided to donate a kidney to his ailing cousin, Loreto Simangan, in UCLA School of Medicine in Los Angeles, California, U.S.A. Upon request of UCLA, respondent undertook a series of laboratory tests at the National Kidney Institute in Quezon City to verify whether his blood and tissue type are compatible with Loreto's.^[6] Fortunately, said tests proved that respondent's blood and tissue type were well-matched with Loreto's.^[7]

Respondent needed to go to the United States to complete his preliminary work-up and donation surgery. Hence, to facilitate respondent's travel to the United States, UCLA wrote a letter to the American Consulate in Manila to arrange for his visa. In due time, respondent was issued an emergency U.S. visa by the American Embassy in Manila.^[8]

Having obtained an emergency U.S. visa, respondent purchased a round trip plane ticket from petitioner JAL for US\$1,485.00 and was issued the corresponding boarding pass.^[9] He was scheduled to a particular flight bound for Los Angeles, California, U.S.A. via Narita, Japan.^[10]

On July 29, 1992, the date of his flight, respondent went to Ninoy Aquino International Airport in the company of several relatives and friends.^[11] He was

allowed to check-in at JAL's counter.^[12] His plane ticket, boarding pass, travel authority and personal articles were subjected to rigid immigration and security routines.^[13] After passing through said immigration and security procedures, respondent was allowed by JAL to enter its airplane.^[14]

While inside the airplane, JAL's airline crew suspected respondent of carrying a falsified travel document and imputed that he would only use the trip to the United States as a pretext to stay and work in Japan.^[15] The stewardess asked respondent to show his travel documents. Shortly after, the stewardess along with a Japanese and a Filipino haughtily ordered him to stand up and leave the plane.^[16] Respondent protested, explaining that he was issued a U.S. visa. Just to allow him to board the plane, he pleaded with JAL to closely monitor his movements when the aircraft stops over in Narita.^[17] His pleas were ignored. He was then constrained to go out of the plane.^[18] In a nutshell, respondent was bumped off the flight.

Respondent went to JAL's ground office and waited there for three hours. Meanwhile, the plane took off and he was left behind.^[19] Afterwards, he was informed that his travel documents were, indeed, in order.^[20] Respondent was refunded the cost of his plane ticket less the sum of US\$500.00 which was deducted by JAL.^[21] Subsequently, respondent's U.S. visa was cancelled.^[22]

Displeased by the turn of events, respondent filed an action for damages against JAL with the Regional Trial Court (RTC) in Valenzuela City, docketed as Civil Case No. 4195-V-93. He claimed he was not able to donate his kidney to Loreto; and that he suffered terrible embarrassment and mental anguish.^[23] He prayed that he be awarded P3 million as moral damages, P1.5 million as exemplary damages and P500,000.00 as attorney's fees.^[24]

JAL denied the material allegations of the complaint. It argued, among others, that its failure to allow respondent to fly on his scheduled departure was due to "a need for his travel documents to be authenticated by the United States Embassy"^[25] because no one from JAL's airport staff had encountered a parole visa before.^[26] It posited that the authentication required additional time; that respondent was advised to take the flight the following day, July 30, 1992. JAL alleged that respondent agreed to be rebooked on July 30, 1992.^[27]

JAL also lodged a counterclaim anchored on respondent's alleged wrongful institution of the complaint. It prayed for litigation expenses, exemplary damages and attorney's fees.^[28]

On September 21, 2000, the RTC presided by Judge Floro P. Alejo rendered its decision in favor of respondent (plaintiff), disposing as follows:

WHEREFORE, judgment is hereby rendered ordering the defendant to pay the plaintiff the amount of P1,000,000.00 as moral damages, the amount of P500,000.00 as exemplary damages and the amount of P250,000.00 as attorney's fees, plus the cost of suit.^[29]

The RTC explained:

In summarily and insolently ordering the plaintiff to disembark while the latter was already settled in his assigned seat, the defendant violated the contract of carriage; that when the plaintiff was ordered out of the plane under the pretext that the genuineness of his travel documents would be verified it had caused him embarrassment and besmirched reputation; and that when the plaintiff was finally not allowed to take the flight, he suffered more wounded feelings and social humiliation for which the plaintiff was asking to be awarded moral and exemplary damages as well as attorney's fees.

The reason given by the defendant that what prompted them to investigate the genuineness of the travel documents of the plaintiff was that the plaintiff was not then carrying a regular visa but just a letter does not appear satisfactory. The defendant is engaged in transporting passengers by plane from country to country and is therefore conversant with the travel documents. The defendant should not be allowed to pretend, to the prejudice of the plaintiff not to know that the travel documents of the plaintiff are valid documents to allow him entry in the United States.

The foregoing act of the defendant in ordering the plaintiff to deplane while already settled in his assigned seat clearly demonstrated that the defendant breached its contract of carriage with the plaintiff as passenger in bad faith and as such the plaintiff is entitled to moral and exemplary damages as well as to an award of attorney's fees.^[30]

Disagreeing with the RTC judgment, JAL appealed to the CA contending that it is not guilty of breach of contract of carriage, hence, not liable for damages.^[31] It posited that it is the one entitled to recover on its counterclaim.^[32]

CA Ruling

In a Decision^[33] dated May 31, 2005, the CA affirmed the decision of the RTC with modification in that it lowered the amount of moral and exemplary damages and deleted the award of attorney's fees. The *fallo* of the CA decision reads:

WHEREFORE, the appealed Decision is AFFIRMED with MODIFICATION. Appellant JAPAN AIR LINES is ordered to pay appellee JESUS SIMANGAN the reduced sums, as follows: Five Hundred Thousand Pesos (P500,000.00) as moral damages, and Two Hundred Fifty Thousand Pesos (P250,000.00) as exemplary damages. The award of attorney's fees is hereby DELETED.^[34]

The CA elucidated that since JAL issued to respondent a round trip plane ticket for a lawful consideration, "there arose a perfected contract between them."^[35] It found that respondent was "haughtily ejected"^[36] by JAL and that "he was certainly embarrassed and humiliated"^[37] when, in the presence of other passengers, JAL's airline staff "shouted at him to stand up and arrogantly asked him to produce his travel papers, without the least courtesy every human being is entitled to";^[38] and that "he was compelled to deplane on the grounds that his papers were fake."^[39]

The CA ratiocinated:

While the protection of passengers must take precedence over convenience, the implementation of security measures must be attended by basic courtesies.

In fact, breach of the contract of carriage creates against the carrier a presumption of liability, by a simple proof of injury, relieving the injured passenger of the duty to establish the fault of the carrier or of his employees; and placing on the carrier the burden to prove that it was due to an unforeseen event or to *force majeure*.

That appellee possessed bogus travel documents and that he might stay illegally in Japan are allegations without substantiation. Also, appellant's attempt to rebook appellee the following day was too late and did not relieve it from liability. The damage had been done. Besides, its belated theory of novation, i.e., that appellant's original obligation to carry appellee to Narita and Los Angeles on July 29, 1992 was extinguished by novation when appellant and appellant agreed that appellee will instead take appellant's flight to Narita on the following day, July 30, 1992, deserves little attention. It is inappropriate at bar. Questions not taken up during the trial cannot be raised for the first time on appeal.^[40] (Underscoring ours and citations were omitted)

Citing *Ortigas, Jr. v. Lufthansa German Airlines*,^[41] the CA declared that "(i)n contracts of common carriage, inattention and lack of care on the part of the carrier resulting in the failure of the passenger to be accommodated in the class contracted for amounts to bad faith or fraud which entitles the passengers to the award of moral damages in accordance with Article 2220 of the Civil Code."^[42]

Nevertheless, the CA modified the damages awarded by the RTC. It explained:

Fundamental in the law on damages is that one injured by a breach of a contract, or by a wrongful or negligent act or omission shall have a fair and just compensation commensurate to the loss sustained as consequence of the defendant's act. Being discretionary on the court, the amount, however, should not be palpably and scandalously excessive.

Here, the trial court's award of P1,000,000.00 as moral damages appears to be overblown. No other proof of appellee's social standing, profession, financial capabilities was presented except that he was single and a businessman. To Us, the sum of 500,000.00 is just and fair. For, moral damages are emphatically not intended to enrich a complainant at the expense of the defendant. They are awarded only to enable the injured party to obtain means, diversion or amusements that will serve to alleviate the moral suffering he has undergone, by reason of the defendant's culpable action.

Moreover, the grant of P500,000.00 as exemplary damages needs to be reduced to a reasonable level. The award of exemplary damages is designed to permit the courts to mould behavior that has socially

deleterious consequences and its imposition is required by public policy to suppress the wanton acts of the offender. Hence, the sum of P250,000.00 is adequate under the circumstances.

The award of P250,000.00 as attorney's fees lacks factual basis. Appellee was definitely compelled to litigate in protecting his rights and in seeking relief from appellant's misdeeds. Yet, the record is devoid of evidence to show the cost of the services of his counsel and/or the actual expenses incurred in prosecuting his action.^[43] (Citations were omitted)

When JAL's motion for reconsideration was denied, it resorted to the petition at bar.

Issues

JAL poses the following issues -

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT WAS ENTITLED TO MORAL DAMAGES, CONSIDERING THAT:

A. JAL WAS NOT GUILTY OF BREACH OF CONTRACT.

B. MORAL DAMAGES MAY BE AWARDED IN BREACH OF CONTRACT CASES ONLY WHEN THE BREACH IS ATTENDED BY FRAUD OR BAD FAITH. ASSUMING *ARGUENDO* THAT JAL WAS GUILTY OF BREACH, JAL DID NOT ACT FRAUDULENTLY OR IN BAD FAITH AS TO ENTITLE RESPONDENT TO MORAL DAMAGES.

C. THE LAW DISTINGUISHES A CONTRACTUAL BREACH EFFECTED IN GOOD FAITH FROM ONE ATTENDED BY BAD FAITH.

II.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT WAS ENTITLED TO EXEMPLARY DAMAGES CONSIDERING THAT:

A. EXEMPLARY DAMAGES ARE NOT RECOVERABLE IN BREACH OF CONTRACT OF CARRIAGE UNLESS THE CARRIER IS GUILTY OF WANTON, FRAUDULENT, RECKLESS, OPPRESSIVE OR MALEVOLENT CONDUCT.

B. ASSUMING *ARGUENDO* THAT JAL WAS GUILTY OF BREACH, JAL DID NOT ACT IN A WANTON FRAUDULENT, RECKLESS, OPPRESSIVE OR MALEVOLENT MANNER AS TO ENTITLE RESPONDENT TO EXEMPLARY DAMAGES.

III.