

## THIRD DIVISION

**[ G.R. No. 121824, January 29, 1998 ]**

**BRITISH AIRWAYS, PETITIONER, VS. COURT OF APPEALS, GOP MAHTANI, AND PHILIPPINE AIRLINES, RESPONDENTS.**

### D E C I S I O N

**ROMERO, J.:**

In this appeal by certiorari, petitioner British Airways (BA) seeks to set aside the decision of respondent Court of Appeals<sup>[1]</sup> promulgated on September 7, 1995, which affirmed the award of damages and attorney's fees made by the Regional Trial Court of Cebu, 7th Judicial Region, Branch 17, in favor of private respondent GOP Mahtani as well as the dismissal of its third-party complaint against Philippine Airlines (PAL).<sup>[2]</sup>

The material and relevant facts are as follows:

On April 16, 1989, Mahtani decided to visit his relatives in Bombay, India. In anticipation of his visit, he obtained the services of a certain Mr. Gumar to prepare his travel plans. The latter, in turn, purchased a ticket from BA where the following itinerary was indicated:<sup>[3]</sup>

	<u>CARRIER</u>	<u>FLIGHT</u>	<u>DATE</u>	<u>TIME</u>	<u>STATUS</u>
"MANILA	MNL	PR 310Y	16 APR	1730	OK
HONGKONG	HKG	BA 20 M	16 APR	2100	OK
BOMBAY	BOM	BA 19 M	23 APR	0840	OK
MANILA"	MNL"				

Since BA had no direct flights from Manila to Bombay, Mahtani had to take a flight to Hongkong via PAL, and upon arrival in Hongkong he had to take a connecting flight to Bombay on board BA.

Prior to his departure, Mahtani checked in at the PAL counter in Manila his two pieces of luggage containing his clothings and personal effects, confident that upon reaching Hongkong, the same would be transferred to the BA flight bound for Bombay.

Unfortunately, when Mahtani arrived in Bombay he discovered that his luggage was missing and that upon inquiry from the BA representatives, he was told that the same might have been diverted to London. After patiently waiting for his luggage for one week, BA finally advised him to file a claim by accomplishing the "Property Irregularity Report."<sup>[4]</sup>

Back in the Philippines, specifically on June 11, 1990, Mahtani filed his complaint for damages and attorney's fees<sup>[5]</sup> against BA and Mr. Kumar before the trial court, docketed as Civil Case No. CEB-9076.

On September 4, 1990, BA filed its answer with counter claim<sup>[6]</sup> to the complaint raising, as special and affirmative defenses, that Mahtani did not have a cause of action against it. Likewise, on November 9, 1990, BA filed a third-party complaint<sup>[7]</sup> against PAL alleging that the reason for the non-transfer of the luggage was due to the latter's late arrival in Hongkong, thus leaving hardly any time for the proper transfer of Mahtani's luggage to the BA aircraft bound for Bombay.

On February 25, 1991, PAL filed its answer to the third-party complaint, wherein it disclaimed any liability, arguing that there was, in fact, adequate time to transfer the luggage to BA facilities in Hongkong. Furthermore, the transfer of the luggage to Hongkong authorities should be considered as transfer to BA.<sup>[8]</sup>

After appropriate proceedings and trial, on March 4, 1993, the trial court rendered its decision in favor of Mahtani,<sup>[9]</sup> the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, judgment is rendered for the plaintiff and against the defendant for which defendant is ordered to pay plaintiff the sum of Seven Thousand (P7,000.00) Pesos for the value of the two (2) suit cases; Four Hundred U.S. (\$400.00) Dollars representing the value of the contents of plaintiff's luggage; Fifty Thousand (P50,000.00) Pesos for moral and actual damages and twenty percent (20%) of the total amount imposed against the defendant for attorney's fees and costs of this action.

The Third-Party Complaint against third-party defendant Philippine Airlines is DISMISSED for lack of cause of action.

SO ORDERED."

Dissatisfied, BA appealed to the Court of Appeals, which however, affirmed the trial court's findings. Thus:

"WHEREFORE, in view of all the foregoing considerations, finding the Decision appealed from to be in accordance with law and evidence, the same is hereby AFFIRMED in toto, with costs against defendant-appellant.

SO ORDERED."<sup>[10]</sup>

BA is now before us seeking the reversal of the Court of Appeals' decision.

In essence, BA assails the award of compensatory damages and attorney's fees, as well as the dismissal of its third-party complaint against PAL.<sup>[11]</sup>

Regarding the first assigned issue, BA asserts that the award of compensatory damages in the separate sum of P7,000.00 for the loss of Mahtani's two pieces of

luggage was without basis since Mahtani in his complaint<sup>[12]</sup> stated the following as the value of his personal belongings:

“8. On said travel, plaintiff took with him the following items and its corresponding value, to wit:

1. personal belonging - - - - - P10,000.00
2. gifts for his parents and relatives - - - - - \$5,000.00”

Moreover, he failed to declare a higher valuation with respect to his luggage, a condition provided for in the ticket, which reads:<sup>[13]</sup>

“Liability for loss, delay, or damage to baggage is limited unless a higher value is declared in advance and additional charges are paid:

1. For most international travel (including domestic corporations of international journeys) the liability limit is approximately U.S. \$9.07 per pound (U.S. \$20.00) per kilo for checked baggage and U.S. \$400 per passenger for unchecked baggage.”

Before we resolve the issues raised by BA, it is needful to state that the nature of an airline’s contract of carriage partakes of two types, namely: a contract to deliver a cargo or merchandise to its destination and a contract to transport passengers to their destination. A business intended to serve the travelling public primarily, it is imbued with public interest, hence, the law governing common carriers imposes an exacting standard.<sup>[14]</sup> Neglect or malfeasance by the carrier’s employees could predictably furnish bases for an action for damages.<sup>[15]</sup>

In the instant case, it is apparent that the contract of carriage was between Mahtani and BA. Moreover, it is indubitable that his luggage never arrived in Bombay on time. Therefore, as in a number of cases<sup>[16]</sup> we have assessed the airlines’ culpability in the form of damages for breach of contract involving misplaced luggage.

In determining the amount of compensatory damages in this kind of cases, it is vital that the claimant satisfactorily prove during the trial the existence of the factual basis of the damages and its causal connection to defendant’s acts.<sup>[17]</sup>

In this regard, the trial court granted the following award as compensatory damages:

“Since plaintiff did not declare the value of the contents in his luggage and even failed to show receipts of the alleged gifts for the members of his family in Bombay, the most that can be expected for compensation of his lost luggage (2 suit cases) is Twenty U.S. Dollars (\$20.00) per kilo, or a combined value of Four Hundred (\$400.00) U.S. Dollars for Twenty kilos representing the contents plus Seven Thousand (P7,000.00) Pesos representing the purchase price of the two (2) suit cases.”

However, as earlier stated, it is the position of BA that there should have been no separate award for the luggage and the contents thereof since Mahtani failed to declare a separate higher valuation for the luggage,<sup>[18]</sup> and therefore, its liability is

limited, at most, only to the amount stated in the ticket.

Considering the facts of the case, we cannot assent to such specious argument.

Admittedly, in a contract of air carriage a declaration by the passenger of a higher value is needed to recover a greater amount. Article 22(1) of the Warsaw Convention,<sup>[19]</sup> provides as follows:

"x x x            x x x            x x x

(2) In the transportation of checked baggage and goods, the liability of the carrier shall be limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the actual value to the consignor at delivery."

American jurisprudence provides that an air carrier is not liable for the loss of baggage in an amount in excess of the limits specified in the tariff which was filed with the proper authorities, such tariff being binding on the passenger regardless of the passenger's lack of knowledge thereof or assent thereto.<sup>[20]</sup> This doctrine is recognized in this jurisdiction.<sup>[21]</sup>

Notwithstanding the foregoing, we have, nevertheless, ruled against blind reliance on adhesion contracts where the facts and circumstances justify that they should be disregarded.<sup>[22]</sup>

In addition, we have held that benefits of limited liability are subject to waiver such as when the air carrier failed to raise timely objections during the trial when questions and answers regarding the actual claims and damages sustained by the passenger were asked.<sup>[23]</sup>

Given the foregoing postulates, the inescapable conclusion is that BA had waived the defense of limited liability when it allowed Mahtani to testify as to the actual damages he incurred due to the misplacement of his luggage, without any objection. In this regard, we quote the pertinent transcript of stenographic notes of Mahtani's direct testimony:<sup>[24]</sup>

Q	-	How much are you going to ask from this court?
A	-	P100,000.00.
Q	-	What else?
A	-	Exemplary damages.
Q	-	How much?
A	-	P100,000.00.

- Q - What else?
- A - The things I lost, \$5,000.00 for the gifts I lost and my personal belongings, P10,000.00.
- Q - What about the filing of this case?
- A - The court expenses and attorney's fees is 30%."

Indeed, it is a well-settled doctrine that where the proponent offers evidence deemed by counsel of the adverse party to be inadmissible for any reason, the latter has the right to object. However, such right is a mere privilege which can be waived. Necessarily, the objection must be made at the earliest opportunity, lest silence when there is opportunity to speak may operate as a waiver of objections.<sup>[25]</sup> BA has precisely failed in this regard.

To compound matters for BA, its counsel failed, not only to interpose a timely objection, but even conducted his own cross-examination as well.<sup>[26]</sup> In the early case of Abrenica v. Gonda,<sup>[27]</sup> we ruled that:

"x x x (I)t has been repeatedly laid down as a rule of evidence that a protest or objection against the admission of any evidence must be made at the proper time, and that if not so made it will be understood to have been waived. The proper time to make a protest or objection is when, from the question addressed to the witness, or from the answer thereto, or from the presentation of proof, the inadmissibility of evidence is, or may be inferred."

Needless to say, factual findings of the trial court, as affirmed by the Court of Appeals, are entitled to great respect.<sup>[28]</sup> Since the actual value of the luggage involved appreciation of evidence, a task within the competence of the Court of Appeals, its ruling regarding the amount is assuredly a question of fact, thus, a finding not reviewable by this Court.<sup>[29]</sup>

As to the issue of the dismissal of BA's third-party complaint against PAL, the Court of Appeals justified its ruling in this wise, and we quote:<sup>[30]</sup>

"Lastly, we sustain the trial court's ruling dismissing appellant's third-party complaint against PAL.

The contract of air transportation in this case pursuant to the ticket issued by appellant to plaintiff-appellee was exclusively between the plaintiff Mahtani and defendant-appellant BA. When plaintiff boarded the PAL plane from Manila to Hongkong, PAL was merely acting as a subcontractor or agent of BA. This is shown by the fact that in the ticket issued by appellant to plaintiff-appellee, it is specifically provided on the "Conditions of Contract," paragraph 4 thereof that:

4. x x x carriage to be performed hereunder by several successive carriers is regarded as a single operation.