

[SYLLABUS]

[G.R. No. 104685, March 14, 1996]

**SABENA BELGIAN WORLD AIRLINES, PETITIONER, VS. HON.
COURT OF APPEALS AND MA. PAULA SAN AGUSTIN,
RESPONDENTS.**

D E C I S I O N

VITUG, J.:

The appeal before the Court involves the issue of an airline's liability for lost luggage. The petition for review assails the decision of the Court Appeals,^[1] dated 27 February 1992, affirming an award of damages made by the trial court in a complaint filed by private respondent against petitioner.

The factual background of the case, narrated by the trial court and reproduced at length by the appellate court, is hereunder quoted:

"On August 21, 1987, plaintiff was a passenger on board Flight SN 284 of defendant airline originating from Casablanca to Brussels, Belgium on her way back to Manila. Plaintiff checked in her luggage which contained her valuables, namely: jewelries valued at \$2,350.00; clothes \$1,500.00; shoes/bag \$150; accessories \$75; luggage itself \$10.00; or a total of \$4,265.00, for which she was issued Tag No. 71423. She stayed overnight in Brussels and her luggage was left on board Flight SN 284.

"Plaintiff arrived at Manila International Airport on September 2, 1987 and immediately submitted her Tag No. 71423 to facilitate the release of her luggage but the luggage was missing. She was advised to accomplish and submit a property Irregularity Report which she submitted and filed on the same day.

"She followed up her claim on September 14, 1987 but the luggage remained to be missing.

"On September 15, 1987, she filed her formal complaint with the office of Ferge Massed, defendant's Local Manager, demanding immediate attention (Exh. 'A').

"On September 30, 1987, on the occasion of plaintiff's following up of her luggage claim, she was furnished copies of defendant's telexes with an information that the Brussel's Office of defendant found the luggage and that they have broken the locks for identification (Exhibit 'B'). Plaintiff was assured by the defendant that it has notified its Manila Office that the luggage will be shipped to Manila on October 27, 1987. But unfortunately plaintiff was informed that the luggage was lost for the

second time (Exhibits 'C' and 'C-1').

"At the time of the filling of the complaint, the luggage with its content has not been found.

"Plaintiff demanded from the defendant the money value of the luggage and its contents amounting to \$4,265.00 or its exchange value, but defendant refused to settle the claim.

"Defendant asserts in its Answer and its evidence tend to show that while it admits that the plaintiff was a passenger on board Flight No. SN 284 with a piece of checked in luggage bearing Tag No. 71423, the loss of the luggage was due to plaintiff's sole if not contributory negligence; that she did not declare the valuable items in her checked-in luggage at the flight counter when she checked in for her flight from Casablanca to Brussels so that either the representative of the defendant at the counter would have advised her to secure an insurance on the alleged valuable items and required her to pay additional charges, or would have refused acceptance of her baggage as required by the generally accepted practices of international carriers; that Section 9(a), Article IX of General Conditions of carriage requiring passengers to collect their checked baggage at the place of stopover, plaintiff neglected to claim her baggage at the Brussels Airport; that plaintiff should have retrieved her undeclared valuables from her baggage at the Brussels Airport since her flight from Brussels to Manila will still have to visit for confirmation inasmuch as only her flight from Casablanca to Brussels was confirmed; that defendant incorporated in all Sabena Plane Tickets, including Sabena Ticket No. 082422-72502241 issued to plaintiff in Manila on August 21, 1987, a warning that 'Items of value should be carried on your person' and that some carriers assume no liability for fragile, valuable or perishable articles and that further information may be obtained from the carrier for guidance'; that granting without conceding that defendant is liable, its liability is limited only to US \$20.00 per kilo due to plaintiff's failure to declare a higher value on the contents of her checked in luggage and pay additional charges thereon."^[2]

The trial court rendered judgment ordering petitioner Sabena Belgian World Airlines to pay private respondent Ma. Paula San Agustin –

"(a) x x x US\$4,265.00 or its legal exchange in Philippine pesos;

"(b) x x x P30,000.00 as moral damages;

"(c) x x x P10,000.00 as exemplary damages;

"(d) x x x P10,000.00 attorney's fees; and

"(e) (t)he costs of the suit."^[3]

Sabena appealed the decision of the Regional Trial Court to the Court of Appeals. The appellate court, in its decision of 27 February 1992, affirmed in toto the trial court's judgment.

Petitioner airline company, in contending that the alleged negligence of private respondent should be considered the primary cause for the loss of her luggage, avers that, despite her awareness that the flight ticket had been confirmed only for Casablanca and Brussels, and that her flight from Brussels to Manila had yet to be confirmed, she did not retrieve the luggage upon arrival in Brussels. Petitioner insists that private respondent, being a seasoned international traveler, must have likewise been familiar with the standard provisions contained in her flight ticket that items of value are required to be hand-carried by the passenger and that the liability of the airline or loss, delay or damage to baggage would be limited, in any event, to only US\$20.00 per kilo unless a higher value is declared in advance and corresponding additional charges are paid thereon. At the Casablanca International Airport, private respondent, in checking in her luggage, evidently did not declare its contents or value. Petitioner cites Section 5(c), Article IX, of the General Conditions of Carriage, signed at Warsaw, Poland, on 02 October 1929, as amended by the Hague Protocol of 1955, generally observed by International carriers, stating, among other things, that:

"Passengers shall not include in his checked baggage, and the carrier may refuse to carry as checked baggage, fragile or perishable articles, money, jewelry, precious metals, negotiable papers, securities or other valuables."^[4]

Fault or negligence consists in the omission of that diligence which is demanded by the nature of an obligation and corresponds with the circumstances of the person, of the time, and of the place. When the source of an obligation is derived from a contract, the mere breach or non-fulfillment of the prestation gives rise to the presumption of fault on the part of the obligor. This rule is not different in the case of common carriers in the carriage of goods which, indeed, are bound to observe not just the due diligence of a good father of a family but that of "extraordinary" care in the vigilance over the goods. The appellate court has aptly observed:

"x x x Art. 1733 of the [Civil] Code provides that from the very nature of their business and by reasons of public policy, common carriers are bound to observe extraordinary diligence in the vigilance over the goods transported by them. This extraordinary responsibility, according to Art. 1736, lasts from the time the goods are unconditionally placed in the possession of and received by the carrier until they are delivered actually or constructively to the consignee or person who has the right to receive them. Art. 1737 states that the common carrier's duty to observe extraordinary diligence in the vigilance over the goods transported by them 'remains in full force and effect even when they are temporarily unloaded or stored in transit.' And Art. 1735 establishes the presumption that if the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they had observed extraordinary diligence as required in Article 1733.

"The only exceptions to the foregoing extraordinary responsibility of the common carrier is when the loss, destruction, or deterioration of the goods is due to any of the following causes: