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SECOND DIVISION

[G.R. No. 119706, March 14, 1996]

PHILIPPINE AIRLINES, INC., PETITIONER, VS. COURT OF APPEALS AND GILDA C. MEJIA, RESPONDENTS.

D E C I S I O N

REGALADO, J.:

This is definitely not a case of first impression. The incident which eventuated in the present controversy is a drama of common contentious occurrence between passengers and carriers whenever loss is sustained by the former. Withal, the exposition of the factual ambience and the legal precepts in this adjudication may hopefully channel the assertiveness of passengers and the intransigence of carriers into the realization that at times a bad extrajudicial compromise could be better than a good judicial victory.

Assailed in this petition for review is the decision of respondent Court of Appeals in CA-G.R. CV No. 42744[1] which affirmed the decision of the lower court[2] finding petitioner Philippine Air Lines, Inc. (PAL) liable as follows:

> "ACCORDINGLY, judgment is hereby rendered ordering defendant Philippine Air Lines, Inc., to pay plaintiff Gilda C. Mejia:
>
> (1) P30,000.00 by way of actual damages of the microwave oven;
>
> (2) P10,000.00 by way of moral damages;
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> (3) P20,000.00 by way of exemplary damages;
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> (4) P10,000.00 as attorney's fee;
>
> all in addition to the costs of the suit.
>
> Defendant's counterclaim is hereby dismissed for lack of merit."[3]

The facts as found by respondent Court of Appeals are as follows:

> "On January 27, 1990, plaintiff Gilda C. Mejia shipped thru defendant, Philippine Airlines, one (1) unit microwave oven, with a gross weight of 33 kilograms from San Francisco, U.S.A. to Manila, Philippines. Upon arrival, however, of said article in Manila, Philippines, plaintiff discovered that its front glass door was broken and the damage rendered it unserviceable. Demands both oral and written were made by plaintiff against the defendant for the reimbursement of the value of the damaged microwave oven, and transportation charges paid by plaintiff to defendant company. But these demands fell on deaf ears.

"On September 25, 1990, plaintiff Gilda C. Mejia filed the instant action for damages against defendant in the lower court.

"In its answer, defendant Airlines alleged inter alia, by way of special and affirmative defenses, that the court has no jurisdiction over the case; that plaintiff has no valid cause of action against defendant since it acted only in good faith and in compliance with the requirements of the law, regulations, conventions and contractual commitments; and that defendant had always exercised the required diligence in the selection, hiring and supervision of its employees."[4]

What had theretofore transpired at the trial in the court a quo is narrated as follows:

"Plaintiff Gilda Mejia testified that sometime on January 27, 1990, she took defendant's plane from San Francisco, U.S.A. for Manila, Philippines (Exh. 'F'). Amongst her baggages (sic) was a slightly used microwave oven with the brand name 'Sharp' under PAL Air Waybill No. 0-79-1013008-3 (Exh. 'A'). When shipped, defendant's office at San Francisco inspected it. It was in good condition with its front glass intact. She did not declare its value upon the advice of defendant's personnel at San Francisco.

"When she arrived in Manila, she gave her sister Concepcion C. Diño authority to claim her baggag(e) (Exh. 'G') and took a connecting flight for Bacolod City.

"When Concepcion C. Dino claimed the baggag(e) (Exh. 'B') with defendant, then with the Bureau of Customs, the front glass of the microwave oven was already broken and cannot be repaired because of the danger of radiation. They demanded from defendant thru Atty. Paco P30,000.00 for the damages although a brand new one costs P40,000.00, but defendant refused to pay.

"Hence, plaintiff engaged the services of counsel. Despite demand (Exh. 'E') by counsel, defendant still refused to pay.

"The damaged oven is still with defendant. Plaintiff is engaged in (the) catering and restaurant business. Hence, the necessity of the oven. Plaintiff suffered sleepless nights when defendant refused to pay her (for) the broken oven and claims P 10,000.00 moral damages, P20,000.00 exemplary damages, P10,000.00 attorney's fees plus P300.00 per court appearance and P15,000.00 monthly loss of income in her business beginning February, 1990.

"Defendant Philippine Airlines thru its employees Rodolfo Pandes and Vicente Villaruz posited that plaintiff's claim was not investigated until after the filing of the formal claim on August 13, 1990 (Exh. '6' also Exh. 'E'). During the investigations, plaintiff failed to submit positive proof of the value of the cargo. Hence her claim was denied.

"Also plaintiff's claim was filed out of time under paragraph 12, a(1) of the Air Waybill (Exh. 'A', also Exh. '1') which provides: '(a) the person

> entitled to delivery must make a complaint to the carrier in writing in case: (1) of visible damage to the goods, immediately after discovery of the damage and at the latest within 14 days from the receipt of the goods."[5]

As stated at the outset, respondent Court of Appeals similarly ruled in favor of private respondent by affirming in full the trial court's judgment in Civil Case No. 6210, with costs against petitioner.[6] Consequently, petitioner now impugns respondent appellate court's ruling insofar as it agrees with (1) the conclusions of the trial court that since the air waybill is a contract of adhesion, its provisions should be strictly construed against herein petitioner; (2) the finding of the trial court that herein petitioner's liability is not limited by the provisions of the air waybill; and (3) the award by the trial court to private respondent of moral and exemplary damages, attorney's fees and litigation expenses.

The trial court relied on the ruling in the case of *Fieldmen's Insurance Co., Inc. vs. Vda. De Songco, et al.*[7] in finding that the provisions of the air waybill should be strictly construed against petitioner. More particularly, the court below stated its findings thus:

> "In this case, it is seriously doubted whether plaintiff had read the printed conditions at the back of the Air Waybill (Exh. '1'), or even if she had, if she was given a chance to negotiate on the conditions for loading her microwave oven. Instead she was advised by defendant's employee at San Francisco, U.S.A., that there is no need to declare the value of her oven since it is not brand new. Further, plaintiff testified that she immediately submitted a formal claim for P30,000.00 with defendant. But their claim was referred from one employee to another th(e)n told to come back the next day, and the next day, until she was referred to a certain Atty. Paco. When they got tired and frustrated of coming without a settlement of their claim in sight, they consulted a lawyer who demanded from defendant on August 13, 1990 (Exh. 'E', an[d] Exh. '6').
>
> "The conclusion that inescapably emerges from the above findings of fact is to concede it with credence. x x x."[8]

Respondent appellate court approved said findings of the trial court in this manner:

> "We cannot agree with defendant-appellant's above contention. Under our jurisprudence, the Air Waybill is a contract of adhesion considering that all the provisions thereof are prepared and drafted only by the carrier (Sweet Lines v. Teves, 83 SCRA 361). The only participation left of the other party is to affix his signature thereto (BPI Credit Corporation vs. Court of Appeals, 204 SCRA 601; Saludo, Jr. vs. C.A., 207 SCRA 498; Maersk vs. Court of Appeals, 222 SCRA 108, among the recent cases). In the earlier case of Angeles v. Calasanz, 135 SCRA 323, the Supreme Court ruled that 'the terms of a contract (of adhesion) must be interpreted against the party who drafted the same.' x x x."[9]

Petitioner airlines argues that the legal principle enunciated in *Fieldmen's Insurance* does not apply to the present case because the provisions of the contract involved here are neither ambiguous nor obscure. The front portion of the air waybill

contains a simple warning that the shipment is subject to the conditions of the contract on the dorsal portion thereof regarding the limited liability of the carrier unless a higher valuation is declared, as well as the reglementary period within which to submit a written claim to the carrier in case of damage or loss to the cargo. Granting that the air waybill is a contract of adhesion, it has been ruled by the Court that such contracts are not entirely prohibited and are in fact binding regardless of whether or not respondent herein read the provisions thereof. Having contracted the services of petitioner carrier instead of other airlines, private respondent in effect negotiated the terms of the contract and thus became bound thereby.[10]

Counsel for private respondent refutes these arguments by saying that due to her eagerness to ship the microwave oven to Manila, private respondent assented to the terms and conditions of the contract without any opportunity to question or change its terms which are practically on a "take-it-or-leave-it" basis, her only participation therein being the affixation of her signature. Further, reliance on the *Fieldmen's Insurance* case is misplaced since it is not the ambiguity or obscurity of the stipulation that renders necessary the strict interpretation of a contract of adhesion against the drafter, but the peculiarity of the transaction wherein one party, normally a corporation, drafts all the provisions of the contract without any participation whatsoever on the part of the other party other than affixment of signature.[11]

A review of jurisprudence on the matter reveals the consistent holding of the Court that contracts of adhesion are not invalid per se and that it has on numerous occasions upheld the binding effect thereof.[12] As explained in *Ong Yiu vs. Court of Appeals, et al., supra:*

> "x x x. 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. x x x, 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."

As rationalized in *Saludo, Jr. vs. Court of Appeals, et al., supra:*

> "x x x, it should be borne in mind that a contract of adhesion may be struck down as void and unenforceable, for being subversive of public policy, only when the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to bargain on equal footing. x x x."

but subject to the caveat that --

> "x x x. Just because we have said that Condition No. 5 of the airway bill is binding upon the parties to and fully operative in this transaction, it does not mean, and let this serve as fair warning to respondent carriers,

> that they can at all times whimsically seek refuge from liability in the exculpatory sanctuary of said Condition No. 5 x x x."

The peculiar nature of such contracts behooves the Court to closely scrutinize the factual milieu to which the provisions are intended to apply. Thus, just as consistently and unhesitatingly, but without categorically invalidating such contracts, the Court has construed obscurities and ambiguities in the restrictive provisions of contracts of adhesion strictly albeit not unreasonably against the drafter thereof when justified in light of the operative facts and surrounding circumstances.[13]

We find nothing objectionable about the lower court's reliance upon the *Fieldmen's Insurance* case, the principles wherein squarely apply to the present petition. The parallelism between the aforementioned case and this one is readily apparent for, just as in the instant case, it is the binding effect of the provisions in a contract of adhesion (an insurance policy in *Fieldmen's Insurance*) that is put to test.

A judicious reading of the case reveals that what was pivotal in the judgment of liability against petitioner insurance company therein, and necessarily interpreting the provisions of the insurance policy as ineffective, was the finding that the representations made by the agent of the insurance company rendered it impossible to comply with the conditions of the contract in question, rather than the mere ambiguity of its terms. The extended pronouncements regarding strict construction of ambiguous provisions in an adhesion contract against its drafter, which although made by the Court as an aside but has perforce evolved into a judicial tenet over time, was actually an incidental statement intended to emphasize the duty of the court to protect the weaker, as against the more dominant, party to a contract, as well as to prevent the iniquitous situation wherein the will of one party is imposed upon the other in the course of negotiation.

Thus, there can be no further question as to the validity of the terms of the air waybill, even if the same constitutes a contract of adhesion. Whether or not the provisions thereof particularly on the limited liability of the carrier are binding on private respondent in this instance must be determined from the facts and circumstances involved vis-a-vis the nature of the provisions sought to be enforced, taking care that equity and fair play should characterize the transaction under review.

On petitioner's insistence that its liability for the damage to private respondent's microwave oven, if any, should be limited by the provisions of the air waybill, the lower court had this to say:

> "By and large, defendant's evidence is anchored principally on plaintiff's alleged failure to comply with paragraph 12, a(1) (Exh. '1-C-2') of the Air waybill (Exh. 'A,' also Exh. '1'), by filing a formal claim immediately after discovery of the damage. Plaintiff filed her formal claim only on August 13, 1990 (Exh. '6', also Exh. 'E'). And, failed to present positive proof on the value of the damaged microwave oven. Hence, the denial of her claim.
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> "This Court has misgivings about these pretensions of defendant.