

FIRST DIVISION

[G.R. No. 119995, November 18, 1997]

**CARLOS SINGSON, PETITIONER, VS. COURT OF APPEALS AND
CATHAY PACIFIC AIRWAYS, INC., RESPONDENTS.**

DECISION

BELLOSILLO, J.:

A contract of air carriage is a peculiar one. Imbued with public interest, common carriers are required by law to carry passengers safely as far as human care and foresight can provide, using the utmost diligence of a very cautious person, with due regard for all the circumstances.^[1] A contract to transport passengers is quite different in kind and degree from any other contractual relation. And this because its business is mainly with the traveling public. It invites people to avail of the comforts and advantages it offers. The contract of carriage, therefore, generates a relation attended with a public duty.^[2] Failure of the carrier to observe this high degree of care and extraordinary diligence renders it liable for any damage that may be sustained by its passengers.

The instant case is an illustration of the exacting standard demanded by the law of common carriers: On 24 May 1988 CARLOS SINGSON and his cousin Crescentino Tiongson bought from Cathay Pacific Airways, Ltd. (CATHAY), at its Metro Manila ticket outlet two (2) open-dated, identically routed, round trip plane tickets for the purpose of spending their vacation in the United States. Each ticket consisted of six (6) flight coupons corresponding to this itinerary: flight coupon no. 1 - Manila to Hongkong; flight coupon no. 2 - Hongkong to San Francisco; flight coupon no. 3 - San Francisco to Los Angeles; flight coupon no. 4 - Los Angeles back to San Francisco; flight coupon no. 5 - San Francisco to Hongkong; and, finally, flight coupon no. 6 - Hongkong to Manila. The procedure was that at the start of each leg of the trip a flight coupon corresponding to the particular sector of the travel would be removed from the ticket booklet so that at the end of the trip no more coupon would be left in the ticket booklet.

On 6 June 1988 CARLOS SINGSON and Crescentino Tiongson left Manila on board CATHAY's Flight No. 902. They arrived safely in Los Angeles and after staying there for about three (3) weeks they decided to return to the Philippines. On 30 June 1988 they arranged for their return flight at CATHAY's Los Angeles Office and chose 1 July 1988, a Friday, for their departure. While Tiongson easily got a booking for the flight, SINGSON was not as lucky. It was discovered that his ticket booklet did not have flight coupon no. 5 corresponding to the San Francisco-Hongkong leg of the trip. Instead, what was in his ticket was flight coupon no. 3 - San Francisco to Los Angeles - which was supposed to have been used and removed from the ticket booklet. It was not until 6 July 1988 that CATHAY was finally able to arrange for his return flight to Manila.

On 26 August 1988 SINGSON commenced an action for damages against CATHAY before the Regional Trial Court of Vigan, Ilocos Sur.^[3] He claimed that he insisted on CATHAY's confirmation of his return flight reservation because of very important and urgent business engagements in the Philippines. But CATHAY allegedly shrugged off his protestations and arrogantly directed him to go to San Francisco himself and do some investigations on the matter or purchase a new ticket subject to refund if it turned out that the missing coupon was still unused or subsisting. He remonstrated that it was the airline's agent/representative who must have committed the mistake of tearing off the wrong flight coupon; that he did not have enough money to buy new tickets; and, CATHAY could conclude the investigation in a matter of minutes because of its facilities. CATHAY, allegedly in scornful insolence, simply dismissed him like an impertinent "brown pest." Thus he and his cousin Tionson, who deferred his own flight to accompany him, were forced to leave for San Francisco on the night of 1 July 1988 to verify the missing ticket.

CATHAY denied these allegations and averred that since petitioner was holding an "open-dated" ticket, which meant that he was not booked on a specific flight on a particular date, there was no contract of carriage yet existing such that CATHAY's refusal to immediately book him could not be construed as breach of contract of carriage. Moreover, the coupon had been missing for almost a month hence CATHAY must first verify its status, i.e., whether the ticket was still valid and outstanding, before it could issue a replacement ticket to petitioner. For that purpose, it sent a request by telex on the same day, 1 July 1988, to its Hongkong Headquarters where such information could be retrieved.^[4] However, due to the time difference between Los Angeles and Hongkong, no response from the Hongkong office was immediately received. Besides, since 2 and 3 July 1988 were a Saturday and a Sunday, respectively, and 4 July 1988 was an official holiday being U.S. Independence Day, the telex response of CATHAY Hongkong was not read until 5 July 1988. Lastly, CATHAY denied having required SINGSON to make a trip back to San Francisco; on the other hand, it was the latter who informed CATHAY that he was making a side trip to San Francisco. Hence, CATHAY advised him that the response of Hongkong would be copied in San Francisco so that he could conveniently verify thereat should he wish to.

The trial court rendered a decision in favor of petitioner herein holding that CATHAY was guilty of gross negligence amounting to malice and bad faith for which it was adjudged to pay petitioner P20,000.00 for actual damages with interest at the legal rate of twelve percent (12%) per annum from 26 August 1988 when the complaint was filed until fully paid, P500,000.00 for moral damages, P400,000.00 for exemplary damages, P100,000.00 for attorney's fees, and, to pay the costs.

On appeal by CATHAY, the Court of Appeals reversed the trial court's finding that there was gross negligence amounting to bad faith or fraud and, accordingly, modified its judgment by deleting the awards for moral and exemplary damages, and the attorney's fees as well. Reproduced hereunder are the pertinent portions of the decision of the appellate court^[5] -

There is enough merit in this appeal to strike down the trial court's award of moral and exemplary damages and attorney's fees x x x In this material respect, the appellant correctly underscores the fact that the

appellee held an open dated ticket for his return flight from San Francisco to Manila via Hongkong and that, as a consequence, the latter was not actually confirmed on the July 1, 1988 flight or, for that matter, any of the appellant's flights x x x x The appellant certainly committed no breach of contract of carriage when it refused the appellee the booking he requested on the said July 1, 1988 flight. As a "chance passenger," the latter had no automatic right to fly on that flight and on that date.

Even assuming arguendo that a breach of contract of carriage may be attributed the appellant, the appellee's travails were directly traceable to the mistake in detaching the San Francisco-Hongkong flight coupon of his plane ticket which led to the appellant's refusal to honor his plane ticket. While that may constitute negligence on the part of the air carrier, the same cannot serve as basis for an award of moral damages. The rule is that moral damages are recoverable in a damage suit predicated upon a breach of contract of carriage only where (a) the mishap results in the death of a passenger and (b) it is proved that the carrier was guilty of fraud and bad faith even if death does not result x x x x In disallowing the trial court's award of moral damages, the Court takes appropriate note of the necessity for the appellant's verification of the status of the missing flight coupon as well as the justifiable delay thereto attendant x x x x Contrary to the appellee's allegation that he was peremptorily refused confirmation of his flight, and arrogantly told to verify the missing flight coupon on his own, the record shows that the appellant adopted such measures as were reasonably required under the circumstances. Even the testimonies offered by the appellee and his witnesses collectively show no trace of fraud or bad faith as would justify the trial court's award of moral damages.

The basis for the award of moral damages discounted, there exists little or no reason to allow the exemplary damages and attorney's fees adjudicated in favor of the appellee.

Petitioner's subsequent motion for reconsideration having been denied for lack of merit and for being pro forma he came to us for review. He claims that the trial court found CATHAY guilty of gross negligence amounting to malice and bad faith in: (a) detaching the wrong coupon; (b) using that error to deny confirmation of his return flight; and, (c) directing petitioner to prematurely return to San Francisco to verify his missing coupon. He also underscores the scornful and demeaning posture of CATHAY's employees toward him. He argues that since findings of fact of the trial court are entitled to the highest degree of respect from the appellate courts, especially when they were supported by evidence, it was erroneous for the Court of Appeals to strike out the award of moral and exemplary damages as well as attorney's fees allegedly for lack of basis.

In its Comment, CATHAY firmly maintains that it did not breach its contract of carriage with petitioner. It argues that it is only when a passenger is confirmed on a particular flight and on a particular date specifically stated in his ticket that its refusal to board the passenger will result in a breach of contract. And even assuming that there was breach of contract, there was no fraud or bad faith on the

part of CATHAY as to justify the award of moral and exemplary damages plus attorney's fees in favor of petitioner.

There are two (2) main issues that confront the Court: first, whether a breach of contract was committed by CATHAY when it failed to confirm the booking of petitioner for its 1 July 1988 flight; and, second, whether the carrier was liable not only for actual damages but also for moral and exemplary damages, and attorney's fees for failing to book petitioner on his return flight to the Philippines.

We find merit in the petition. CATHAY undoubtedly committed a breach of contract when it refused to confirm petitioner's flight reservation back to the Philippines on account of his missing flight coupon. Its contention that there was no contract of carriage that was breached because petitioner's ticket was open-dated is untenable. To begin with, the round trip ticket issued by the carrier to the passenger was in itself a complete written contract by and between the carrier and the passenger. It had all the elements of a complete written contract, to wit: (a) the consent of the contracting parties manifested by the fact that the passenger agreed to be transported by the carrier to and from Los Angeles via San Francisco and Hongkong back to the Philippines, and the carrier's acceptance to bring him to his destination and then back home; (b) cause or consideration, which was the fare paid by the passenger as stated in his ticket; and, (c) object, which was the transportation of the passenger from the place of departure to the place of destination and back, which are also stated in his ticket.^[6] In fact, the contract of carriage in the instant case was already partially executed as the carrier complied with its obligation to transport the passenger to his destination, i.e., Los Angeles. Only the performance of the other half of the contract - which was to transport the passenger back to the Philippines - was left to be done. Moreover, Timothy Remedios, CATHAY's reservation and ticketing agent, unequivocally testified that petitioner indeed had reservations booked for travel -

Q: Were you able to grant what they wanted, if not, please state why?

A: I was able to obtain a record of Mr. Singson's computer profile from my flight reservations computer. I verified that Mr. Singson did indeed have reservations booked for travel: Los Angeles to San Francisco, San Francisco to Hongkong to Manila. I then proceeded to revalidate their tickets but was surprised to observe that Mr. Singson's ticket did not contain a flight coupon for San Francisco to Hongkong. His ticket did, however, contain a flight coupon for San Francisco to Los Angeles which was supposed to have been utilized already, that is, supposed to have been removed by U.S. Air when he checked in San Francisco for his flight from San Francisco to Los Angeles^[7] (underscoring supplied).

Clearly therefore petitioner was not a mere "chance passenger with no superior right to be boarded on a specific flight," as erroneously claimed by CATHAY and sustained by the appellate court.

Interestingly, it appears that CATHAY was responsible for the loss of the ticket. One of two (2) things may be surmised from the circumstances of this case: first, US Air