

## SECOND DIVISION

[ G.R. No. 156654, November 20, 2008 ]

**PHILIPPINE AIRLINES, INC., PETITIONER, VS. VICENTE LOPEZ, JR., RESPONDENT.**

### RESOLUTION

**QUISUMBING, J.:**

This petition for review assails the Decision<sup>[1]</sup> dated June 20, 2002 and the Resolution<sup>[2]</sup> dated December 10, 2002 of the Court of Appeals in CA-G.R. CV No. 53360 which affirmed *in toto* the Decision<sup>[3]</sup> dated April 19, 1995 of the Regional Trial Court (RTC) of Manila, Branch 24 in Civil Case No. 92-60199. The RTC had ordered petitioner Philippine Airlines, Inc. (PAL) to pay respondent Vicente Lopez, Jr. P100,000 moral damages, P20,000 exemplary damages and P30,000 attorney's fees plus costs of suit.

The antecedent facts are as follows:

In a Complaint<sup>[4]</sup> dated February 11, 1992, filed with the RTC of Manila, Branch 24, Lopez claimed that PAL had unjustifiably downgraded his seat from business to economy class in his return flight from Bangkok to Manila last November 30, 1991, and that, in view thereof, PAL should be directed to pay him moral damages of at least P100,000, exemplary damages of at least P20,000, attorney's fees in the sum of P30,000, as well as the costs of suit.

To support his claim, Lopez averred that he purchased a Manila-Hongkong-Bangkok-Manila PAL business class ticket and that his return flight to Manila was confirmed by PAL's booking personnel in Bangkok on November 26, 1991. He also mentioned that he was surprised to learn during his check-in for the said return flight that his status as business class passenger was changed to economy class, and that PAL was not able to offer any valid explanation for the sudden change when he protested the change. Lopez added that although aggrieved, he nevertheless took the said flight as an economy class passenger because he had important appointments in Manila.

For its part, PAL denied any liability and claimed that whatever damage Lopez had suffered was due to his own fault. PAL explained that the terms and conditions of the contract of carriage required Lopez to reconfirm his booking for the Bangkok-to-Manila leg of his trip, and that he did not protest the economy seat given to him when the change in his accommodations was read to him by the person who received his phone reconfirmation. PAL also asserted that Lopez did not complain against his economy seat during the check-in and that he raised the issue only after the flight was over.<sup>[5]</sup> Thus, PAL prayed that the case be dismissed for lack of merit.

<sup>[6]</sup>

In its Decision dated April 19, 1995, the trial court held PAL liable for damages. It said that PAL's contention that Lopez might have thought that he was holding an economy class ticket or that he waived his right to have a business class seat is untenable, considering that Lopez is an experienced businessman and a Bachelor of Science degree holder.

It also noted that the following showed that PAL's employees had been negligent in booking and confirming Lopez's travel accommodations from Bangkok to Manila: (1) the admission of PAL's booking personnel<sup>[7]</sup> that she affixed the validation sticker on Lopez's ticket on the basis of the passenger's name list showing that his reservation was for an economy class seat *without examining or checking* the latter's ticket during his booking validation; and (2) the admission of PAL's check-in clerk<sup>[8]</sup> at the Bangkok Airport that when Lopez checked-in for his return trip to Manila, she similarly gave Lopez an economy boarding pass based on the information found in the coupon of the ticket and the passenger manifest *without checking* the latter's ticket. The trial court said that had PAL's employees examined his ticket in those instances, the error or oversight which might have resulted from the phoned-in booking could have been easily rectified.<sup>[9]</sup>

Thus, citing Articles 1733<sup>[10]</sup> and 2220<sup>[11]</sup> of the Civil Code and the case of *Ortigas, Jr. v. Lufthansa German Airlines*,<sup>[12]</sup> the trial court held that the inattention and lack of care on the part of the common carrier, in this case PAL, resulting in the failure of the passenger to be accommodated in the class contracted for amounts to bad faith or fraud, making it liable for damages.<sup>[13]</sup> The trial court likewise awarded attorney's fees in favor of Lopez after noting that Lopez was forced to litigate in order to assert his rights.<sup>[14]</sup>

The dispositive portion of the trial court's decision reads:

Based on all the foregoing therefore, the Court finds in favor of the plaintiff and against the defendant and orders defendant to pay plaintiff, as prayed for in the complaint, the following amounts: P100,000.00 for moral damages; P20,000.00 for exemplary damages and P30,000.00 for attorney's fees and also to pay for the cost of suit. All amounts awarded to bear legal interest from date of this decision.

SO ORDERED.<sup>[15]</sup>

On appeal, the Court of Appeals affirmed *in toto* the trial court's decision after having been fully convinced of the negligence of PAL's employees and after finding PAL's defenses to be unworthy of belief and contrary to common observation and experience.

PAL moved for reconsideration but it was denied. Hence, this petition.

In our Resolution<sup>[16]</sup> dated September 26, 2007, we suspended the proceedings of this case and directed PAL to submit a status report on its then ongoing corporate rehabilitation. Pursuant to our directive, PAL submitted a Manifestation/Compliance<sup>[17]</sup> dated October 22, 2007, informing us of the Securities and Exchange Commission Order<sup>[18]</sup> dated September 28, 2007, which granted its

request to exit from corporate rehabilitation. Thus, we now resolve the instant petition.

Petitioner contends that:

I.

THE COURT OF APPEALS ERRED IN NOT RULING THAT IN AN OPEN-DATED CONTRACT OF CARRIAGE, THE PARTIES ARE FREE TO AGREE ON THE TERMS THEREOF ON THE DATE LEFT OPEN.

II.

THE COURT OF APPEALS ERRED IN NOT RULING THAT RESPONDENT'S CONTRIBUTORY NEGLIGENCE PREVENTS HIM FROM RECOVERING DAMAGES FROM PETITIONER.

III.

THE COURT OF APPEALS ERRED IN NOT RULING THAT IN MORAL DAMAGES RECOVERABLE IN BREACHES OF CONTRACTS, THE TERMS "FRAUD" AND "BAD FAITH" HAVE REFERENCE TO WANTON, RECKLESS, OPPRESSIVE, OR MALEVOLENT CONDUCT.

IV.

THE COURT OF APPEALS ERRED IN NOT RULING THAT EXEMPLARY DAMAGES ARE NOT RECOVERABLE IN THE ABSENCE OF FRAUD OR BAD FAITH.

V.

THE COURT OF APPEALS ERRED IN NOT RULING THAT AWARD OF ATTORNEY'S FEES IS NOT PROPER IN THE ABSENCE OF GROSS AND EVIDENT BAD FAITH ON THE PART OF PETITIONER.<sup>[19]</sup>

Simply put, the issues are: (1) Did the Court of Appeals err in not ruling that Lopez agreed or allowed his business class seat to be downgraded to economy class? (2) Did the Court of Appeals err in not ruling that Lopez's alleged contributory negligence was the proximate cause of the downgrading of his seat? and (3) Did the Court of Appeals err in awarding moral damages, exemplary damages and attorney's fees in favor of Lopez in view of the alleged absence of fraud or bad faith of PAL?

A perusal of the aforesaid issues readily shows that the same are questions of facts since its resolution would entail a re-evaluation of the evidence presented before the trial court.<sup>[20]</sup> Thus, we could not take cognizance of such issues considering the settled rule that our review under Rule 45 is confined to questions of law. It is true that there are several exceptions<sup>[21]</sup> to the said rule; however, none finds application in this case.

Moreover, we had already specifically held that issues on the existence of negligence, fraud and bad faith are questions of fact.<sup>[22]</sup>