

## FIRST DIVISION

[ G.R. No. 138334, August 25, 2003 ]

**ESTELA L. CRISOSTOMO, PETITIONER, VS. THE COURT OF  
APPEALS AND CARAVAN TRAVEL TOURS INTERNATIONAL, INC.,  
RESPONDENTS.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

In May 1991, petitioner Estela L. Crisostomo contracted the services of respondent Caravan Travel and Tours International, Inc. to arrange and facilitate her booking, ticketing and accommodation in a tour dubbed "Jewels of Europe". The package tour included the countries of England, Holland, Germany, Austria, Liechtenstein, Switzerland and France at a total cost of P74,322.70. Petitioner was given a 5% discount on the amount, which included airfare, and the booking fee was also waived because petitioner's niece, Meriam Menor, was respondent company's ticketing manager.

Pursuant to said contract, Menor went to her aunt's residence on June 12, 1991 - a Wednesday - to deliver petitioner's travel documents and plane tickets. Petitioner, in turn, gave Menor the full payment for the package tour. Menor then told her to be at the Ninoy Aquino International Airport (NAIA) on **Saturday**, two hours before her flight on board British Airways.

Without checking her travel documents, petitioner went to NAIA on Saturday, June 15, 1991, to take the flight for the first leg of her journey from Manila to Hongkong. To petitioner's dismay, she discovered that the flight she was supposed to take had already departed the previous day. She learned that her plane ticket was for the flight scheduled on June 14, 1991. She thus called up Menor to complain.

Subsequently, Menor prevailed upon petitioner to take another tour - the "British Pageant" - which included England, Scotland and Wales in its itinerary. For this tour package, petitioner was asked anew to pay US\$785.00 or P20,881.00 (at the then prevailing exchange rate of P26.60). She gave respondent US\$300 or P7,980.00 as partial payment and commenced the trip in July 1991.

Upon petitioner's return from Europe, she demanded from respondent the reimbursement of P61,421.70, representing the difference between the sum she paid for "Jewels of Europe" and the amount she owed respondent for the "British Pageant" tour. Despite several demands, respondent company refused to reimburse the amount, contending that the same was non-refundable.<sup>[1]</sup> Petitioner was thus constrained to file a complaint against respondent for breach of contract of carriage and damages, which was docketed as Civil Case No. 92-133 and raffled to Branch 59 of the Regional Trial Court of Makati City.

In her complaint,<sup>[2]</sup> petitioner alleged that her failure to join "Jewels of Europe" was due to respondent's fault since it did not clearly indicate the departure date on the plane ticket. Respondent was also negligent in informing her of the wrong flight schedule through its employee Menor. She insisted that the "British Pageant" was merely a substitute for the "Jewels of Europe" tour, such that the cost of the former should be properly set-off against the sum paid for the latter.

For its part, respondent company, through its Operations Manager, Concepcion Chipeco, denied responsibility for petitioner's failure to join the first tour. Chipeco insisted that petitioner was informed of the correct departure date, which was clearly and legibly printed on the plane ticket. The travel documents were given to petitioner two days ahead of the scheduled trip. Petitioner had only herself to blame for missing the flight, as she did not bother to read or confirm her flight schedule as printed on the ticket.

Respondent explained that it can no longer reimburse the amount paid for "Jewels of Europe", considering that the same had already been remitted to its principal in Singapore, Lotus Travel Ltd., which had already billed the same even if petitioner did not join the tour. Lotus' European tour organizer, Insight International Tours Ltd., determines the cost of a package tour based on a minimum number of projected participants. For this reason, it is accepted industry practice to disallow refund for individuals who failed to take a booked tour.<sup>[3]</sup>

Lastly, respondent maintained that the "British Pageant" was not a substitute for the package tour that petitioner missed. This tour was independently procured by petitioner after realizing that she made a mistake in missing her flight for "Jewels of Europe". Petitioner was allowed to make a partial payment of only US\$300.00 for the second tour because her niece was then an employee of the travel agency. Consequently, respondent prayed that petitioner be ordered to pay the balance of P12,901.00 for the "British Pageant" package tour.

After due proceedings, the trial court rendered a decision,<sup>[4]</sup> the dispositive part of which reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Ordering the defendant to return and/or refund to the plaintiff the amount of Fifty Three Thousand Nine Hundred Eighty Nine Pesos and Forty Three Centavos (P53,989.43) with legal interest thereon at the rate of twelve percent (12%) per annum starting January 16, 1992, the date when the complaint was filed;
2. Ordering the defendant to pay the plaintiff the amount of Five Thousand (P5,000.00) Pesos as and for reasonable attorney's fees;
3. Dismissing the defendant's counterclaim, for lack of merit; and
4. With costs against the defendant.

SO ORDERED.<sup>[5]</sup>

The trial court held that respondent was negligent in erroneously advising petitioner of her departure date through its employee, Menor, who was not presented as witness to rebut petitioner's testimony. However, petitioner should have verified the exact date and time of departure by looking at her ticket and should have simply not relied on Menor's verbal representation. The trial court thus declared that petitioner was guilty of contributory negligence and accordingly, deducted 10% from the amount being claimed as refund.

Respondent appealed to the Court of Appeals, which likewise found both parties to be at fault. However, the appellate court held that petitioner is more negligent than respondent because as a lawyer and well-traveled person, she should have known better than to simply rely on what was told to her. This being so, she is not entitled to any form of damages. Petitioner also forfeited her right to the "Jewels of Europe" tour and must therefore pay respondent the balance of the price for the "British Pageant" tour. The dispositive portion of the judgment appealed from reads as follows:

WHEREFORE, premises considered, the decision of the Regional Trial Court dated October 26, 1995 is hereby REVERSED and SET ASIDE. A new judgment is hereby ENTERED requiring the plaintiff-appellee to pay to the defendant-appellant the amount of P12,901.00, representing the balance of the price of the British Pageant Package Tour, the same to earn legal interest at the rate of SIX PERCENT (6%) per annum, to be computed from the time the counterclaim was filed until the finality of this decision. After this decision becomes final and executory, the rate of TWELVE PERCENT (12%) interest per annum shall be additionally imposed on the total obligation until payment thereof is satisfied. The award of attorney's fees is DELETED. Costs against the plaintiff-appellee.

SO ORDERED.<sup>[6]</sup>

Upon denial of her motion for reconsideration,<sup>[7]</sup> petitioner filed the instant petition under Rule 45 on the following grounds:

## I

It is respectfully submitted that the Honorable Court of Appeals committed a reversible error in reversing and setting aside the decision of the trial court by ruling that the petitioner is not entitled to a refund of the cost of unavailed "Jewels of Europe" tour she being equally, if not more, negligent than the private respondent, for in the contract of carriage the common carrier is obliged to observe utmost care and extraordinary diligence which is higher in degree than the ordinary diligence required of the passenger. Thus, even if the petitioner and private respondent were both negligent, the petitioner cannot be considered to be equally, or worse, more guilty than the private respondent. At best, petitioner's negligence is only contributory while the private respondent [is guilty] of gross negligence making the principle of *pari delicto* inapplicable in the case;

## II

The Honorable Court of Appeals also erred in not ruling that the "Jewels of Europe" tour was not indivisible and the amount paid therefor refundable;

### III

The Honorable Court erred in not granting to the petitioner the consequential damages due her as a result of breach of contract of carriage.<sup>[8]</sup>

Petitioner contends that respondent did not observe the standard of care required of a common carrier when it informed her wrongly of the flight schedule. She could not be deemed more negligent than respondent since the latter is required by law to exercise extraordinary diligence in the fulfillment of its obligation. If she were negligent at all, the same is merely contributory and not the proximate cause of the damage she suffered. Her loss could only be attributed to respondent as it was the direct consequence of its employee's gross negligence.

Petitioner's contention has no merit.

By definition, a contract of carriage or transportation is one whereby a certain person or association of persons obligate themselves to transport persons, things, or news from one place to another for a fixed price.<sup>[9]</sup> Such person or association of persons are regarded as carriers and are classified as private or special carriers and common or public carriers.<sup>[10]</sup> A common carrier is defined under Article 1732 of the Civil Code as persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water or air, for compensation, offering their services to the public.

It is obvious from the above definition that respondent is not an entity engaged in the business of transporting either passengers or goods and is therefore, neither a private nor a common carrier. Respondent did not undertake to transport petitioner from one place to another since its covenant with its customers is simply to make travel arrangements in their behalf. Respondent's services as a travel agency include procuring tickets and facilitating travel permits or visas as well as booking customers for tours.

While petitioner concededly bought her plane ticket through the efforts of respondent company, this does not mean that the latter *ipso facto* is a common carrier. At most, respondent acted merely as an agent of the airline, with whom petitioner ultimately contracted for her carriage to Europe. Respondent's obligation to petitioner in this regard was simply to see to it that petitioner was properly booked with the airline for the appointed date and time. Her transport to the place of destination, meanwhile, pertained directly to the airline.

The object of petitioner's contractual relation with respondent is the latter's service of **arranging and facilitating** petitioner's booking, ticketing and accommodation in the package tour. In contrast, the object of a contract of carriage is the **transportation** of passengers or goods. It is in this sense that the contract between the parties in this case was an ordinary one for services and not one of