

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**KOREAN AIRLINES CO., LTD.,
*Petitioner,***

-versus-

**G.R. No. 114061
August 3, 1994**

**COURT OF APPEALS and JUANITO C.
LAPUZ,
*Respondents.***

X-----X

**JUANITO C. LAPUZ,
*Petitioner,***

-versus-

**G.R. No. 113842
August 3, 1994**

**COURT OF APPEALS and KOREAN
AIRLINES CO., LTD.,
*Respondents.***

X-----X

DECISION

CRUZ, J.:

RESOLUTION dated August 23, 1995

Sometime in 1980, Juanito C. Lapuz, an automotive electrician, was contracted for employment in Jeddah, Saudi Arabia, for a period of one year through Pan Pacific Overseas Recruiting Services, Inc. Lapuz was supposed to leave on November 8, 1980, via Korean Airlines. Initially, he was “waitlisted,” which meant that he could only be accommodated if any of the confirmed passengers failed to show up at the airport before departure. When two of such passengers did not appear, Lapuz and another person by the name of Perico were given the two unclaimed seats.

According to Lapuz, he was allowed to check in with one suitcase and one shoulder bag at the check-in counter of KAL. He passed through the customs and immigration sections for routine check-up and was cleared for departure as Passenger No. 157 of KAL Flight No. KE 903. Together with the other passengers, he rode in the shuttle bus and proceeded to the ramp of the KAL aircraft for boarding. However, when he was at the third or fourth rung of the stairs, a KAL officer pointed to him and shouted “Down! Down!” He was thus barred from taking the flight. When he later asked for another booking, his ticket was canceled by KAL. Consequently, he was unable to report for his work in Saudi Arabia within the stipulated 2-week period and so lost his employment.

KAL, on the other hand, alleged that on November 8, 1980, Pan Pacific Recruiting Services Inc. coordinated with KAL for the departure of 30 contract workers, of whom only 21 were confirmed and 9 were wait-listed passengers. The agent of Pan Pacific, Jimmie Joseph, after being informed that there was a possibility of having one or two seats becoming available, gave priority to Perico, who was one of the supervisors of the hiring company in Saudi Arabia. The other seat was won through lottery by Lapuz. However, only one seat became available and so, pursuant to the earlier agreement that Perico was to be given priority, he alone was allowed to board.

After trial, the Regional Trial Court of Manila, Branch 30,^[1] adjudged KAL liable for damages, disposing as follows:

WHEREFORE, in view of the foregoing consideration, judgment is hereby rendered sentencing the defendant Korean Air Lines to pay plaintiff Juanito C. Lapuz the following:

1. The amount of TWO HUNDRED SEVENTY-TWO THOUSAND ONE HUNDRED SIXTY (P272,160.00) PESOS as actual/compensatory damages, will legal interest thereon from the date of the filing of the complaint until fully paid.
2. The sum of TWENTY-FIVE THOUSAND (P25,000.00) PESOS as and for attorney's fees; and
3. The costs of suit.

The case is hereby dismissed with respect to defendant Pan Pacific Overseas Recruiting Services, Inc.

The counterclaims and cross-claim of defendant Korean Air Lines Co., Ltd. are likewise dismissed.

On appeal, this decision was modified by the Court of Appeals^[2] as follows:

WHEREFORE, in view of all the foregoing, the appealed judgment is hereby AFFIRMED with the following modifications: the amount of actual damages and compensatory damages is reduced to P60,000.00 and defendant-appellant is hereby ordered to pay plaintiff-appellant the sum of One Hundred Thousand Pesos (P100,000.00) by way of moral and exemplary damages, at 6% interest per annum from the date of filing of the Complaint until fully paid.

KAL and Lapuz filed their respective motions for reconsideration, which were both denied for lack of merit. Hence, the present petitions for review which have been consolidated because of the identity of the parties and the similarity of the issues.

In G.R. No. 114061, KAL assails the decision of the appellant court on the following grounds:

1. That the Court of Appeals erred in concluding that petitioner committed a breach of contract of carriage notwithstanding lack of proper, competent and sufficient evidence of the existence of such contract.
2. That the Court of Appeals erred in not according the proper evidentiary weight to some evidence presented and the fact that private respondent did not have any boarding pass to prove that he was allowed to board and to prove that this airline ticket was confirmed.
3. That the Court of Appeals erred in concluding that the standby passenger status of private respondent Lapuz was changed to a confirmed status when his name was entered into the passenger manifest.
4. That the Court of Appeals abused its discretion in awarding moral and exemplary damages in the amount of P100,000.00 in favor of private respondent notwithstanding its lack of basis and private respondent did not state such amount in his complaint nor had private respondent proven the said damages.
5. That the Court of Appeals erred in dismissing the counterclaims.
6. That the Court of Appeals erred in dismissing the counterclaim of petitioner against Pan Pacific.
7. That the Court of Appeals erred in ruling that the 6% per annum legal interest on the judgment shall be computed from the filing of the complaint.

In G.R. No. 113842, Lapuz seeks: (a) the setting aside of the decision of the Court of Appeals insofar as it modifies the award of damages; b) actual and compensatory damages in the sum equivalent to 5 years' loss of earnings based on the petitioner's month salary of 1,600 Saudi rials at the current conversion rate plus the cost of baggage and personal belongings worth P2,000 and the service fee of P3,000 paid to the recruiting agency, all with legal interest from the filing of the

complaint until fully paid; c) moral damages of not less than P1 million and exemplary damages of not less than P500,000.00, both with interest at 6% per annum from the filing of the complaint; and d) attorney's fees in the sum equivalent to 30% of the award of damages.

It is evident that the issues raised in these petitions relate mainly to the correctness of the factual findings of the Court of Appeals and the award of damages. The Court has consistently affirmed that the findings of fact of the Court of Appeals and the other lower courts are as a rule binding upon it, subject to certain exceptions. As nothing in the record indicates any of such exceptions, the factual conclusions of the appellate court must be affirmed.

The status of Lapuz as standby passenger was changed to that of a confirmed passenger when his name was entered in the passenger manifest of KAL for its Flight No. KE 903. His clearance through immigration and customs clearly shows that he had indeed been confirmed as a passenger of KAL in that flight. KAL thus committed a breach of the contract of carriage between them when it failed to bring Lapuz to his destination.

This Court has held that a contract to transport passengers is different in kind and degree from any other contractual relation.^[3] The business of the carrier is mainly with the traveling public. It invites people to avail themselves of the comforts and advantages it offers. The contract of air carriage generates a relation attended with a public duty. Passengers have the right to be treated by the carrier's employees with kindness, respect, courtesy and due consideration. They are entitled to be protected against personal misconduct, injurious language, indignities and abuses from such employees.^[4] So it is that any discourteous conduct on the part of these employees toward a passenger gives the latter an action for damages against the carrier.

The breach of contract was aggravated in this case when, instead of courteously informing Lapuz of his being a "wait-listed" passenger, a KAL officer rudely shouted "Down! Down!" while pointing at him, thus causing him embarrassment and public humiliation.

KAL argues that “the evidence of confirmation of a chance passenger status is not through the entry of the name of a chance passenger in the passenger manifest nor the clearance from the Commission on Immigration and Deportation, because they are merely means of facilitating the boarding of the chance passenger in case his status is confirmed.” We are not persuaded.

The evidence presented by Lapuz shows that he had indeed checked in at the departure counter, passed through customs and immigration, boarded the shuttle bus and proceeded to the ramp of KAL’s aircraft. In fact, his baggage had already been loaded in KAL’s aircraft, to be flown with him to Jeddah. The contract to carriage between him and KAL had already been perfected when he was summarily and insolently prevented from boarding the aircraft.

KAL’s allegation that the respondent court abused its discretion in awarding moral and exemplary damages is also not tenable.

The Court of Appeals granted moral and exemplary damages because:

The findings of the court a quo that the defendant-appellant has committed breach of contract of carriage in bad faith and in wanton, disregard of plaintiff-appellant’s rights as passenger laid the basis and justification of an award for moral damages.

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In the instant case, we find that defendant-appellant Korean Air Lines acted in a wanton, fraudulent, reckless, oppressive or malevolent manner when it “bumped off” plaintiff-appellant on November 8, 1980, and in addition treated him rudely and arrogantly as a “patay gutom na contract worker fighting Korean Air Lines,” which clearly malice and bad faith, thus entitling plaintiff-appellant to moral damages.

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Considering that the plaintiff-appellant’s entitlement to moral damages has been fully established by oral and documentary evidence, exemplary damages may be awarded. In fact,

exemplary damages may be awarded, even though not so expressly pleaded in the complaint (Kapoe vs. Masa, 134 SCRA 231). By the same token, to provide an example for the public good, an award of exemplary damages is also proper (Armovit vs. Court of Appeals, supra).

On the other hand, Lapuz's claim that the award of P100,000.00 as moral and exemplary damages is inadequate is not acceptable either. His prayer for moral damages of not less than P1 million and exemplary of not less than P500,000.00 is overblown.

The well-entrenched principle is that moral damages depend upon the discretion of the court based on the circumstances of each case.^[5] This discretion is limited by the principle that the "amount awarded should not be palpably and scandalously excessive" as to indicate that it was the result of prejudice or corruption on the part of the trial court.^[6] Damages are not intended to enrich the complainant at the expense of the defendant. They are awarded only to alleviate the moral suffering that the injured party had undergone by reason of the defendant's culpable action.^[7] There is no hard-and-fast rule in the determination of what would be a fair amount damages since each case must be governed by its own peculiar facts.

A review of the record of this case shows that the injury suffered by Lapuz is not so serious or extensive as to warrant an award of P1.5 million. The assessment of P100,000 as moral and exemplary damages in his favor is, in our view, reasonable and realistic.

Lapuz likewise claims that the respondent court could not rule upon the propriety of the award of actual damages because it had not been assigned as an error by KAL. Not so. The rule is that only errors specifically assigned and properly argued in the brief will be considered except errors affecting jurisdiction over the subject matter and plain as well as clerical errors.^[8] But this is not without qualification for, as the Court held in Vda. de Javellana vs. Court of Appeals:^[9]

The Court is clothed with ample authority to review matters, even if they are not assigned as errors in their appeal, if it finds

that their consideration is necessary in arriving at a just decision of the case.

A similar pronouncement was made in *Baquiran vs. Court of Appeals*^[10] in this wise:

Issues, though not specifically raised in the pleading in the appellate court, may, in the interest of justice, be properly considered by said court in deciding a case, if they are questions raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignored.

The Court of Appeals was therefore justified in decreasing the award of actual damages even if the issue was not assigned as an error by KAL. Consideration of this question was necessary for the just and complete resolution of the present case. Furthermore, there was enough evidence to warrant the reduction of the original award, as the challenged decision correctly observed:

A perusal of the plaintiff-appellant's contract of employment shows that the effectivity of the contract is for only one year, renewable every year for five years. Although plaintiff-appellant intends to renew his contract, such renewal will still be subject to his foreign employer. Plaintiff-appellant had not yet started working with his foreign employer, hence, there can be no basis as to whether his contract will be renewed by his foreign employer or not. Thus, the damages representing the loss of earnings of plaintiff-appellant in the renewal of the contract of employment is at most speculative. Damages may not be awarded on the basis of speculation or conjecture (*Gachalian vs. Delim*, 203 SCRA 126). Hence, defendant-appellant's liability is limited to the one year contract only. Plaintiff-appellant is, therefore, entitled only to his lost earnings for one year, i.e., P60,000.00, which is 1/5 of P300,000.00, the total amount of actual damages, representing lost earnings for five years prayed for in the Complaint.

Plaintiff-appellant's contention that in computing his lost earnings, the current rate of Saudi Rial to the Philippine Peso at the time of

payment should be used, is untenable, considering that in his Complaint, plaintiff-appellant has quantified in Philippine Pesos his lost earnings for five years.

We disagree with the respondent court, however, on the date when the legal interest should commence to run. The rule is that the legal interest of six percent (6%) on the amounts adjudged in favor of Lapuz should resume from the time of rendition of the trial court's decision instead of November 28, 1980, the date of the filing of the complaint.

On this matter, the Court has held:

If suit were for payment of a definite sum of money, the contention might be tenable. However, if it is for damages, unliquidated and not known until definitely ascertained, assessed and determined by the courts after proof, interest should be from the date of the decision.^[11]

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The obligation to pay interest on a sum of filed in a judgment exists from the date of the sentence, when so declared; for until the net amount of the debtor's liability has been determined, he cannot be considered delinquent in the fulfillment of his obligation to pay the debt with interest thereon.^[12]

Finally, we find that the respondent court did not err in sustaining the trial court's dismissal of KAL's counterclaim against Pan Pacific Overseas Recruiting Recruiting Services Inc., whose responsibility ended with the confirmation by KAL of Lapuz as its passenger in its Flight No. 903.

This is still another case of the maltreatment of our overseas contract workers, this time by the airline supposed to bring the passenger of his foreign assignment. Our OCWs sacrifice much in seeking employment abroad, where they are deprived of the company of their loved ones, the direct protection of our laws, and the comfort of our own native culture and way of life. This Court shall exert every effort to vindicate their rights when they are abused and shall accord them

the commensurate reparation of their injuries consistent with their dignity and worth as members of the working class.

WHEREFORE, the appealed judgment is **AFFIRMED**, but with the modification that the legal interest on the damages awarded to private respondent should commence from the date of the decision of the trial court on November 14, 1990. The parties shall bear their own costs.

SO ORDERED.

**Davide, Jr., Quiason and Kapunan, JJ., concur.
Bellosillo, J., is on leave.**

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- [1] Penned by Judge Jesus O. Ibay; Rollo, pp. 32-46 (G.R. No. 114061).
 - [2] Ynares-Santiago, J., ponente with Herrera and Ibay-Somera, JJ., concurring.
 - [3] Zulueta vs. Pan American World Airways Inc., 43 SCRA 397; Pan American World Airways vs. IAC, 153 SCRA 521; Air Forces vs. Carrascoso, 18 SCRA 155.
 - [4] Air France vs. Carrascoso, supra.
 - [5] Prudenciado vs. Alliance Transport System. 148 SCRA 440; Pleno vs. CA, 161 SCRA 208; Mayo vs. People, 204 SCRA 642.
 - [6] Siguenza vs. CA, 137 SCRA 570; Prudenciado vs. Alliance Transport System, supra; Gellada vs. Warner Barnes & Co., 57 O.G. [4], 7358.
 - [7] R & B Surety & Insurance Co., Inc. vs. IAC, 129 SCRA 736; Grand Union Supermarket, Inc. vs. Espino Jr., 94 SCRA 953.
 - [8] Sec. 7, Rule 51 of the Rules of Court; Hernandez vs. Andal, 78 SCRA 196.
 - [9] 123 SCRA 799.
 - [10] 2 SCRA 873.
 - [11] Rivera vs. Matute, 98 Phil. 516.
 - [12] Montilla vs. Augustinian Corp., 25 Phil. 447.