SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

KLM ROYAL DUTCH AIRLINES,
Petitioner,

- *versus* -

DR. JOSE M. TIONGCO,
Respondent.

G.R. No. 212136

Present:

PERLAS-BERNABE, *S.A.J.*,
Chairperson,
HERNANDO,
GAERLAN,
ROSARIO, *and
DIMAAMPAO, *JJ.*

Promulgated:
OCT 04 2021

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DECISION

HERNANDO, *J.*:

Petitioner KLM Royal Dutch Airlines (petitioner/KLM) assails the April 10, 2013 Decision,[1] and the March 27, 2014 Resolution[2] of the Court of Appeals (CA/appellate court) in CA-G.R. CV No. 00884-MIN which affirmed with modifications the January 16, 2006 Decision[3] of the Regional Trial Court (RTC/trial court), Branch 10 of Davao City.

The Antecedent Facts:

In October 1998, respondent Dr. Jose M. Tiongco (Dr. Tiongco), a prominent surgeon and one of the founders of the Medical Mission Group Hospital and Health Services in Davao City, was invited by the United Nations - World Health Organization (UN-WHO) to be a keynote speaker in

* Designated additional Member per raffle dated September 22, 2021 vice *J.* Inting who concurred in the assailed Decision.
1 *Rollo*, pp. 41-63. Penned by Associate Justice Jhosep Y. Lopez (now a Member of this Court) and concurred in by Associate Justices Edgardo T. Lloren and Henri Jean Paul B. Inting (now a Member of this Court).
2 Id. at 65-68.
3 CA *rollo*, pp. 88-93. Penned by Judge Jaime V. Quitain.

the 20th Anniversary of Alma-Ata Declaration to be held in Almaty, Kazakhstan from November 27-28, 1998. Thus, Dr. Tiongco secured his visa for Kazakhstan and purchased tickets for his flights.[4]

There being no direct flight from Manila to Kazakhstan, Dr. Tiongco had to fly to Singapore via Singapore Airlines where he would then take two connecting flights to Almaty on board petitioner KLM, his main carrier. Below was his travel itinerary:[5]

DESTINATION	AIRLINE	FLIGHT	DATE	ETD	ETA
Manila-Singapore	Singapore Airlines	SQ75	Nov. 25, 1998	1800	2130
Singapore-Amsterdam	KLM	KL838	Nov. 25, 1998	2335	0600
Amsterdam-Frankfurt	KLM	KL1765	Nov. 26, 1998	0820	0935
Frankfurt-Almaty	Lufthansa German Airlines	LH3346	Nov. 26, 1998	1025	2205

On November 25, 1998, Dr. Tiongco arrived at the Ninoy Aquino International Airport in Manila for the first leg of his two-day flight to Almaty. He went to the counter of Singapore Airlines and checked-in a suitcase containing a copy of his speech, resource materials, clothing for the event, and other personal items. Singapore Airlines departed from Manila as scheduled. Upon arrival in Singapore at 9:30 in the evening, Dr. Tiongco proceeded to the KLM counter to check in for his flight to Amsterdam, Netherlands. KLM flight no. KL838 departed at 11:35 in the evening as scheduled.[6]

Dr. Tiongco arrived at Amsterdam the next day in time for his third flight to Frankfurt, Germany. However, his flight to Frankfurt on board KLM flight no. KL1765 departed from Amsterdam 45 minutes late, or at 9:00 o'clock in the morning. As a result, Dr. Tiongco missed his fourth flight, i.e. from Frankfurt to Almaty.[7]

Upon his arrival in Frankfurt, Dr. Tiongco searched for a KLM employee. After two hours, he found a KLM employee whom he informed at once about his missed flight to Almaty, as well as his speaking engagement and his checked-in suitcase. The employee assured him that his suitcase would be travelling with him. He also instructed the doctor to approach a Turkish Airlines employee to assist with the logistics of his trip to Almaty.[8] The KLM employee then took Dr. Tiongco's boarding pass and gave him a new itinerary,[9] to wit:

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4 *Rollo*, p. 42.
5 Id.
6 Id.
7 Id.
8 Id. at 43.
9 Id.

DESTINATION	AIRLINE	FLIGHT	DATE	ETD	ETA
Frankfurt-Instanbul	Lufthansa German Airlines	LH3454	Nov. 26, 1998	1235	0435
Instanbul-Almaty	Turkish Airlines	TK1350	Nov. 26, 1998	1930	0439

Dr. Tiongco then boarded Lufthansa German Airlines (Lufthansa) from Frankfurt to Instanbul. As instructed, he approached a Turkish Airlines employee who introduced him to a certain Miss Chizem, an employee of Lufthansa who, in turn, gave Dr. Tiongco a new boarding pass. She also assured him that his checked-in suitcase will be transported in the same flight.[10]

Before the passengers of Turkish Airlines flight no. TK1350 boarded, its personnel asked them to identify their luggages on the tarmac. Dr. Tiongco looked for his suitcase but could not locate it. He asked Mr. Osman Bey (Bey) of Turkish Airlines to ask Miss Chizem to find his missing suitcase. Thirty minutes passed and yet his suitcase was not in sight. The Turkish Airlines flight no. TK1350 personnel then instructed its passengers to board the plane. So as not to miss his flight, Mr. Bey told Dr. Tiongco to go on board. He likewise assured Dr. Tiongco that his suitcase will be loaded in the next available flight to Almaty as soon as it is found. Dr. Tiongco was left with no other option but to board with only his carry-on bag.[11]

When Dr. Tiongco arrived in Almaty, nobody from KLM, Lufthansa, or Turkish Airlines assisted him. His suitcase was still nowhere to be found. He then exited the airport, hailed a taxi cab, and proceeded to Regency Hotel where the UN-WHO convention would be held.[12]

Upon arrival in the hotel, Dr. Tiongco took a shower and changed into a pair of slacks and a sweatshirt. He went downstairs where the conference would be held. Initially, however, Dr. Tiongco was not allowed entry into the venue because of his inappropriate attire. Dr. Tiongco explained to the organizers that his suitcase containing his clothes and important materials for his speech got lost during his flight. It was only then that he was allowed inside the venue.[13]

Dr. Tiongco then delivered his lecture without any of his visual aids and despite being inappropriately attired. When he finished his speech, some of the attendees approached him and asked for his resource materials. However, he was unable to give them the materials since these were also in his missing suitcase.[14]

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[10] Id.
[11] Id.
[12] Id. at 43-44.
[13] Id. at 44.
[14] Id.

On December 14, 1998, Dr. Tiongco returned to the Philippines. Three months passed and still there was no news about what happened to his luggage. Thus, on March 15, 1999, respondent wrote Singapore Airlines, KLM and Lufthansa, demanding for compensation for his lost luggage and the inconvenience he suffered.[15] Lufthansa, in its letter[16] dated March 31, 1999, denied his claim for compensation while KLM and Singapore Airlines, in separate letters,[17] asked for time to investigate the incident. In a letter[18] dated April 21, 1999, Singapore Airlines denied any liability. KLM, unfortunately, did not write back to Dr. Tiongco.[19]

Thus, on August 5, 1999, Dr. Tiongco filed a Complaint[20] for Damages and Attorney's Fees against KLM, Turkish Airlines, Singapore Airlines, and Lufthansa.

KLM, Singapore Airlines, and Lufthansa filed their separate answers.[21] They all denied liability for the lost suitcase of Dr. Tiongco, and instead asked for indemnification from Dr. Tiongco.[22]

KLM[23] insisted that it performed extraordinary diligence in transporting Dr. Tiongco to his last destination. It denied liability for the lost suitcase since it is not his first or last carrier. Even if found liable, KLM averred that the amount of actual damages should only be $400, *i.e.*, $20 per kilo, pursuant to the Warsaw Convention since Dr. Tiongco did not declare the actual value of his suitcase.[24]

KLM further averred that contrary to Dr. Tiongco's claim, he did not immediately notify any personnel of the airline about the missing luggage. It was only when he sent a demand letter to KLM that the latter was informed of the incident. Moreover, Dr. Tiongco did not suffer any damage as he was able to deliver his speech in the convention.

Singapore Airlines also denied any liability since it transported Dr. Tiongco and his checked-in suitcase to Singapore. His suitcase was duly transferred to KLM's flight no. KL838, the second leg of Dr. Tiongco's flight, as acknowledged by its handling agent. Assuming it has any liability arising from the lost suitcase, Singapore Airlines insisted that it is only limited in nature under the Warsaw Convention.[25]

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15 Records, pp. 383-388.
16 Id. at 393.
17 Id. at 389-390 and 392.
18 Id. at 549-550.
19 *Rollo*, p. 44.
20 Records, pp. 1-7.
21 Records, pp. 49-65; 99-110; 43-48.
22 *Rollo*, p. 45.
23 Records, pp. 49-65.
24 Id.
25 Records, pp. 99-110.

Lastly, Lufthansa averred that it is KLM which should be held liable for the lost suitcase being the intermediate carrier of Dr. Tiongco to Kazakhstan. Like KLM, it maintained that its liability, if there is any, is limited to $20 per kilo under the Warsaw Convention.[26]

On June 13, 2001, Dr. Tiongco filed an Omnibus Motion[27] before the RTC praying for the dropping of Turkish Airlines as one of the defendants and for the admission of his Amended Complaint.[28] In its September 3, 2001 Order,[29] the RTC granted respondent's Omnibus Motion and admitted the Amended Complaint.[30]

Ruling of the Regional Trial Court:

In its January 16, 2006 Decision,[31] the RTC ruled that KLM is solely liable for the damages suffered by Dr. Tiongco on account of his lost suitcase. KLM failed to exercise extraordinary care in handling the suitcase of Dr. Tiongco when it wrongfully transferred it to Lufthansa flight no. LH10381 instead of LH3346, Dr. Tiongco's flight to Almaty. KLM also failed to immediately inquire about what happened to the suitcase after Dr. Tiongco informed its personnel.[32]

Further, the RTC rejected KLM's claim that Singapore Airlines and Turkish Airlines, being the first and last carriers of Dr. Tiongco, should be held liable instead of KLM. It noted that KLM, being the airline which issued the tickets, is the principal in the contract of carriage and, hence, is liable for the acts and omissions of the other carriers to which it endorsed the other legs of the flight.[33]

The RTC awarded Dr. Tiongco nominal damages considering his failure to sufficiently prove the amount of actual damages he suffered. He was likewise awarded moral damages, exemplary damages, and attorney's fees as prayed for in the Complaint.[34]

The *fallo* of the Decision reads:

> WHEREFORE, this Court hereby sentences Defendant KLM to indemnify Plaintiff the following, to wit:

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[26] Id. at 43-38.
[27] Id. at 204-206.
[28] Id.
[29] Id. at 315-318.
[30] Id. at 315-318.
[31] CA *rollo*, pp. 88-93.
[32] Id. at 90-91.
[33] Id. at 91.
[34] Id. at 92-93.

1. Nominal Damages in the amount of ₱3,000,000.00;
2. Moral Damages in the amount of ₱3,000,000.00;
3. Exemplary Damages in the amount of ₱5,000,000.00;
4. Attorney's Fees in the amount of ₱1,600,000.00.

Cost against Defendant KLM.[35]

KLM filed a Motion for Reconsideration[36] but it was denied by the RTC in its Order[37] dated May 30, 2006. Hence, KLM appealed to the CA.

Ruling of the Court of Appeals:

In its April 10, 2013 Decision,[38] the appellate court agreed with the trial court on KLM's liability for breach of contract of carriage. However, it modified the awards of damages for being excessive. The dispositive portion of the CA Decision reads:

> WHEREFORE, the Appeal is PARTLY GRANTED. The Decision dated January 16, 2006 of the Regional Trial Court, Branch 10, Davao City, is AFFIRMED with MODIFICATION that KLM Royal Dutch Airlines shall pay Dr. Jose M. Tiongco the following:
>
> 1) The awards of moral damages, exemplary damages and nominal damages are hereby reduced to ₱1,000,000.00, ₱300,000.00 and ₱50,000.00, respectively;
>
> 2) All of these amounts shall earn interest at the rate of 6% per annum from January 16, 2006. Thereafter, the interest rate of 12% per annum shall be applied from the finality of this Decision until fully satisfied;
>
> 3) The award of attorney's fees shall be reduced to the amount equivalent to 20% of the total amount adjudged to Dr. Tiongco, and;
>
> 4) Costs.
>
> SO ORDERED.[39]

KLM sought for reconsideration[40] but it was denied in the CA's Resolution[41] dated March 27, 2014 for lack of merit.

Hence, this petition for review on *certiorari*.[42]

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35 Id. at 93.
36 Id. at 94-110.
37 Id. at 111.
38 *Rollo*, pp. 41-63.
39 Id. at 62.
40 CA *rollo*, pp. 319-347.
41 *Rollo*, pp. 65-68.
42 Id. at 9-36.

Issues

KLM submits the following issues before this Court:

> 31. Whether or not there is legal basis to support the findings of the trial court and the CA that KLM's actions were attended by gross negligence, bad faith and willful misconduct to justify the award of moral and exemplary damages.
>
> 32. Whether or not the CA committed reversible error when it ignored the fact that the trial court awarded attorney's fees in the dispositive portion of its decision only and did not explain the reason for its imposition in the body of the said decision.
>
> 33. The amounts awarded to respondent as moral and exemplary damages are excessive, unconscionable and unreasonable.[43]

In essence, the main issue for resolution is whether KLM acted in gross negligence, bad faith and willfull misconduct in relation to the loss of Dr. Tiongco's suitcase so that the latter can be entitled to award of damages.

KLM alleges that its mere failure to deliver Dr. Tiongco's suitcase does not constitute gross negligence, willful misconduct, or proof of bad faith to warrant the award of damages. Its personnel did not act rudely or use profane language towards Dr. Tiongco. In fact, Dr. Tiongco did not complain about any improper behavior of KLM's personnel when he was searching for his missing suitcase. KLM also avers that there are no bases for the awards of damages, attorney's fees, and costs. Assuming that respondent is entitled to these awards, KLM prays that they be reduced for being exorbitant, and that interest charges not be applied for lack of basis thereof.[44] Lastly, KLM also maintains that Dr. Tiongco is only entitled to nominal damages pursuant to the Court's ruling in *Alitalia v. Intermediate Appellate Court*[45](*Alitalia*).[46]

Our Ruling

The petition lacks merit.

The issues raised in the instant petition are factual in nature which are not subject to review under Rule 45 of the Rules of Court.

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[43] Id. at 13-14.
[44] Id. at 14-33.
[45] 270 Phil. 108 (1990).
[46] *Rollo*, pp. 20-25.

Only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. The Court is not a trier of facts. Hence, it is not our function to re-evaluate the probative value of the evidence of both parties which were already considered in the proceedings below.[47]

The parameters of a judicial review under a Rule 45 petition is discussed in *Miro v. Vda. De Eredoros*,[48] *viz.*:

> a. Rule 45 petition is limited to questions of law
>
> Before proceeding to the merits of the case, this Court deems it necessary to emphasize that a petition for review under Rule 45 is limited only to questions of law. Factual questions are not the proper subject of an appeal by *certiorari*. This Court will not review facts, as it is not our function to analyze or weigh all over again evidence already considered in the proceedings below. As held in *Diokno v. Hon. Cacdac*, a re-examination of factual findings is outside the province of a petition for review on certiorari to wit:
>
> > It is aphoristic that a re-examination of factual findings cannot be done through a petition for review on certiorari under Rule 45 of the Rules of Court because as earlier stated, this Court is not a trier of facts. xxx The Supreme Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. This is already outside the province of the instant Petition for Certiorari.
> >
> > There is a question of law when the doubt or difference arises as to what the law is on a certain set of facts; a question of fact, on the other hand, exists when the doubt or difference arises as to the truth or falsehood of the alleged facts. Unless the case falls under any of the recognized exceptions, we are limited solely to the review of legal questions.
>
> b. Rule 45 petition is limited to errors of the appellate court
>
> Furthermore, the "errors" which we may review in a petition for review on certiorari are those of the CA, and not directly those of the trial court or the quasi-judicial agency, tribunal, or officer which rendered the decision in the first instance. It is imperative that we refrain from conducting further scrutiny of the findings of fact made by trial courts, lest we convert this Court into a trier of facts. As held in *Reman Recio v. Heirs of the Spouses Agueda and Maria Altamirano etc. et al.* our review is limited only to the errors of law committed by the appellate court, to wit:
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> > Under Rule 45 of the Rules of Court, jurisdiction is generally limited to the review of errors of law committed by the appellate court. The Supreme Court is not obliged to review all over again the evidence which the parties adduced in the court a quo. Of course, the general rule admits of exceptions, such as where the factual findings of the CA and the trial court are conflicting or contradictory.[49] (Citations Omitted.)

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47 See *Gatan v. Vinarao*, 820 Phil. 257, 265 (2017), citing *Miro v. Vda. De Erederos*, 721 Phil. 772 (2013).
48 721 Phil. 772 (2013).
49 Id. at 785-787.

However, the rule is not without exception. In *Medina v. Asistio, Jr.*,[50] the findings of fact of the CA may be passed upon and reviewed by this Court in the following instances:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[51] (Citations omitted.)

Upon careful perusal of the issues raised by KLM, the Court finds that these are factual in nature which is beyond our jurisdiction in a petition for review on *certiorari*. The arguments it posited in the petition are also noticeably similar to those raised before the CA. Thus, to give due course to the petition necessitates an evaluation all over again of the evidence presented by the parties which were already thoroughly reviewed by the RTC and the CA.

None of the exceptions is likewise present in the instant case. We note that the CA affirmed the factual findings of the RTC that KLM, being the main carrier, is liable for the lost suitcase of Dr. Tiongco and that it acted in bad faith. The appellate court likewise agreed with the trial court's disposition on the awards of damages and attorney's fees, except that these were reduced.

Unfortunately, KLM failed to substantiate its claim that the CA misapprehended any facts or failed to consider relevant facts to warrant a reversal of its assailed decision. We stress that a party praying that this Court review the factual findings of the appellate court must demonstrate and prove that the case clearly falls under the exceptions to the rule.[52] He or she must duly prove to this Court that a review of the factual findings is necessary.[53] Mere assertion and claim that the case falls under the exceptions is insufficient.[54] Hence, the hornbook doctrine that factual findings of the CA affirming those of the RTC are final and conclusive[55] stands as these findings are supported by substantial evidence and in accord with law and

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50 269 Phil. 225 (1990).
51 Id. at 232.
52 *Pascual v. Burgos*, 776 Phil. 167, 184 (2016).
53 See id.
54 Id.
55 *Japan Airlines v. Simangan*, 575 Phil. 359, 372 (2008).

jurisprudence. There is therefore no cogent reason to disturb the factual findings of both the RTC and the CA.

Assuming arguendo that the Court gives due course to the petition, We find that the CA, in affirming the findings of the RTC, did not commit any reversible error.

KLM is liable for breach of contract of carriage.

A contract of carriage is one whereby a certain person or association of persons obligate themselves to transport persons, things, or goods from one place to another for a fixed price.[56] Under Article 1732 of the Civil Code, a common carrier refers to "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."

The nature of the business which involves the transportation of persons or goods makes a contract of carriage imbued with public interest. It is therefore bound to observe not just the due diligence of a good father of a family but that of "extraordinary" care in the vigilance over the goods as required under Article 1733 of the Civil Code.[57] The nature of a contract of carriage is elucidated in *Singson v. Court of Appeals*[58] in this wise:

> 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 a human care and foresight can provide, using the utmost diligence of a very cautious person, with due regard for all the circumstances. A contract to transport passengers is quite different in kind and degree from any other contractual relation. And this is because its business is mainly with the traveling public. In invites people to avail of the comforts and advantages it offers. The contract of carriage, therefore, generates a relation attended with a public duty. 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.[59]

Considering that a contract of carriage is vested with public interest, a common carrier is presumed to have been at fault or to have acted negligently in case of lost or damaged goods unless they prove that they observed extraordinary diligence.[60] Hence, in an action based on a breach of contract of carriage, the aggrieved party does not need to prove that the common carrier

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56 *Spouses Fernando v. Northwest Airlines, Inc.*, 805 Phil. 501, 520 (2017).
57 CIVIL CODE, Article 1733; *Loadstar Shipping Company, Incorporated v. Malayan Insurance Company, Incorporated,* 809 Phil. 736 (2017).
58 346 Phil. 831 (1997).
59 Id. at 835.
60 CIVIL CODE, Article 1735.

was at fault or was negligent.[61] He or she is only required to prove the existence of the contract and its non-performance by the carrier.[62]

There is no dispute that KLM and Dr. Tiongco entered into a contract of carriage. Dr. Tiongco purchased tickets from the airline for his trip to Almaty, Kazakhstan. KLM, however, breached its contract with Dr. Tiongco when it failed to deliver his checked-in suitcase at the designated place and time. The suitcase contained his clothing for the conference where he was a guest speaker, a copy of his speech, and his resource materials. Worse, Dr. Tiongco's suitcase was never returned to him even after he arrived in Manila from Almaty. Thus, KLM's liability for the lost suitcase was sufficiently established as it failed to overcome the presumption of negligence.

Bad faith on the part of KLM was duly established.

Both the trial court and the appellate court already found KLM to have acted in bad faith in dealing with Dr. Tiongco. Bad faith is a factual question which is beyond the purview of this petition under Rule 45. Thus, We are not obliged to go over the evidence once more and recalibrate them for purposes of this appeal.

We agree with the RTC and the CA that KLM acted in bad faith. It is undisputed that Dr. Tiongco's luggage went missing during his flight. Even after his return to the Philippines, Dr. Tiongco's suitcase was still missing. Nobody from KLM's personnel updated him of what happened to the search. It was only when Dr. Tiongco wrote KLM a demand letter that the latter reached out to him asking for time to investigate the matter. Yet, it did not even notify him of the result of the purported investigation.

To make matters even worse, the Customer Relations Officer of KLM, Arlene Almario, categorically testified that the suitcase was eventually found in Almaty as shown in the baggage report dated December 18, 1998 of Turkish Airlines. The said airline immediately notified KLM. However, KLM did not bother to inform Dr. Tiongco that his suitcase had been found or took the necessary steps to transport it back to Manila.

The case of *Alitalia,*[63] contrary to KLM's claim, is inapplicable in the case at bench. While both cases involve a lost luggage of an airline's passenger, the luggage of Dr. Felipa in the *Alitalia* case was subsequently returned to her after it was lost unlike in the case here where Dr. Tiongco's suitcase was never returned to him even after it was found. More importantly, there was no bad faith on the part of the airline in *Alitalia* when it breached its contract of carriage unlike in this case where KLM acted in bad faith.

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[61] *Air France v. Gillego*, 653 Phil. 138, 149 (2010).
[62] Id.
[63] Supra note 45.

The awards of moral and exemplary damages are proper.

The bad faith on the part of KLM as found by the RTC and the CA thus renders the same liable for moral and exemplary damages. However, the amounts thereof must be modified further to be fair, reasonable, and commensurate to the injury sustained by the passenger.

Under Article 2216 of the Civil Code, the assessment of damages is left to the discretion of the court according to the circumstances of each case. The courts must adhere to the principle that the amount of damages awarded should not be palpably excessive as to indicate that it was the result of prejudice or corruption on the part of the trial court.[64] It must therefore be fair, reasonable, and proportionate to the injury suffered.[65]

The award of moral damages is proper to enable the injured party to obtain means of diversion or amusement that will serve to alleviate the moral suffering they underwent because of another's culpable action.[66] Here, KLM displayed indifference to the plight and inconvenience suffered by Dr. Tiongco when he lost his luggage. It made empty promises that his luggage would be travelling with him and even failed to inform Dr. Tiongco that his suitcase had been found. Moreover, it did not return the luggage to him even after it was found. Undeniably, KLM's bad faith, gross negligence, and lack of care warrant the award of moral damages in accordance with Article 2220 of the Civil Code, to wit:

> Article 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

Guided by the foregoing, the Court modifies the award of moral damages from ₱1,000,000.00 to ₱300,000.00 in favor of Dr. Tiongco pursuant to our pronouncement in *Kierulf v. Court of Appeals*[67] that "[t]he social and financial standing of a claimant of moral damages may be considered in awarding moral damages only if he or she was subjected to contemptuous conduct despite the offender's knowledge of his or her social and financial standing."

The award of exemplary damages likewise needs to be modified. Undoubtedly, KLM acted in a wanton, and reckless manner. Given the surrounding facts and circumstances in the instant case, the Court holds that the amount of ₱100,000.00 is sufficient.

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64 *Air France v. Gillego*, supra note 61 at 153.
65 Id. at 153-154.
66 *Spouses Fernando v. Northwest Airlines, Inc.*, 805 Phil. 501, 527 (2017).
67 336 Phil. 414, 427 (1997).

KLM is liable for temperate, not nominal, damages.

Article 2221 of the Civil Code states that nominal damages may be awarded in order that the plaintiff's right, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered. They are "recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown."[68]

On the other hand, Article 2224 of the same Code states that temperate damages or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty. Simply put, temperate damages are awarded when the injured party suffered some pecuniary loss but the amount thereof cannot, from the nature of the case, be proven with certainty.[69]

Dr. Tiongco incurred pecuniary loss when his suitcase containing his personal belongings was lost during his flight and was never returned. Unfortunately, he did not present any actual receipt that would have proved the actual amount due, as mandated under Article 2199 of the Civil Code, so as to entitle him to the award of actual damages.[70] This, however, does not preclude Dr. Tiongco from recovering temperate damages, and not nominal damages, since the exact amount of damage or pecuniary loss he sustained was not duly established by competent evidence. Verily, the Court finds the award of ₱50,000.00 as temperate damages fair and reasonable in view of the circumstances in this case.

KLM's liability for temperate damages may not be limited to that prescribed in Article 22(2)[71] of the Warsaw Convention, as amended by the

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[68] *Francisco v. Ferrer*, 405 Phil. 741, 751 (2001), citing *Areola v. Court of Appeals*, 306 Phil. 656, 677 (1994).

[69] *Philippine Hawk Corporation v. Lee,* 626 Phil. 483, 499 (2010).

[70] CIVIL CODE, Article 2199.

[71] 1. In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 250,000 francs . . . Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

2. a) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 250 francs per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that sum is greater than the actual value to the consignor at delivery.

b) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air way bill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

Hague Protocol, in the presence of bad faith.[72] As aptly held in *Northwest Airlines, Inc. v. Court of Appeals,*[73] citing *Alitalia*:[74]

> The [Warsaw] Convention does not operate as an exclusive enumeration of the instances of an airline's liability, or as an absolute limit of the extent of that liability. Such a proposition is not borne out by the language of the Convention, as this Court has now, and at an earlier time, pointed out. Moreover, slight reflection readily leads to the conclusion that it should be deemed a limit of liability only in those cases where the cause of the death or injury to person, or destruction, loss or damage to property or delay in its transport is not attributable to or attended by any willful misconduct, bad faith, recklessness, or otherwise improper conduct on the part of any official or employee for which the carrier is responsible, and there is otherwise no special or extraordinary form of resulting injury. The Convention's provisions, in short, do not "regulate or exclude liability for other breaches of contract by the carrier" or misconduct of its officers and employees, or for some particular or exceptional type of damage.[75]

Imposition of attorney's fees and legal interest was proper.

KLM avers that the award of attorney's fees should have been deleted for lack of basis thereof. We disagree.

As a general rule, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered in the absence of stipulation. This is because of the policy that no premium should be placed on the right to litigate.[76] Hence, attorney's fees are not to be awarded every time a party wins a suit.[77] They may only be awarded in the following instances:[78]

Article 2208 of the Civil Code states:

> Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
>
> (1) When exemplary damages are awarded;

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3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5000 francs per passenger.
4. The limits prescribed . . shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

72 *Northwest Airlines, Inc. v. Court of Appeals,* 348 Phil. 438, 450 (1998).
73 Id. at 451.
74 Supra note 45.
75 *Northwest Airlines, Inc. v. Court of Appeals,* supra at 450-451.
76 *Philippine National Construction Corporation v. APAC Marketing Corporation,* 710 Phil. 389, 395 (2013), *citing ABS-CBN Broadcasting Corp. v. Court of Appeals*, 361 Phil. 499 (1999).
77 Id.
78 CIVIL CODE, Article 2208.

> (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
>
> (3) In criminal cases of malicious prosecution against the plaintiff;
>
> (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
>
> (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
>
> (6) In actions for legal support;
>
> (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
>
> (8) In actions for indemnity under workmen's compensation and employer's liability laws;
>
> (9) In a separate civil action to recover civil liability arising from a crime;
>
> (10) When at least double judicial costs are awarded;
>
> (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.
>
> In all cases, the attorney's fees and expenses of litigation must be reasonable.

An award of attorney's fees under Article 2208 demands factual, legal, and equitable justification to avoid speculation and conjecture surrounding the grant thereof.[79] It is therefore required for the courts to clearly and distinctly set forth in their decisions their factual findings for the basis of the award.[80] The Court's pronouncement in *Benedicto v. Villaflores*[81] elucidated the rationale on why courts must explain their decision for granting attorney's fees:

> It is settled that the award of attorney's fees is the exception rather than the general rule; counsel's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter; while in its extraordinary concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees as part of damages are awarded only in the instances specified in Article 2208 of the Civil Code. As such, it is necessary for the court to make findings of fact and law that would bring the case within the ambit of these enumerated instances to justify the grant of such award, and in all cases it must be reasonable.[82]

The Court agrees with KLM that the RTC failed to elaborate why Dr. Tiongco is entitled to the award of attorney's fees. Admittedly, it simply made a categorical statement that "*other just and equitable reliefs were likewise prayed for by Plaintiff*".[83] The RTC then merely stated the amount thereof in the dispositive portion.

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79 See *Bun v. Bank of the Philippine Islands*, 828 Phil. 152 (2018).
80 CIVIL CODE, Article 2208.
81 646 Phil. 733 (2010).
82 Id. at 741-742.
83 CA *rollo*, p. 93.

However, a perusal of the assailed Decision shows that the CA explained that the award of attorney's fees is proper because exemplary damages are likewise awarded to Dr. Tiongco pursuant to Article 2208(1) of the Civil Code. The CA did not simply adopt the findings of the RTC but it made an independent assessment as to why attorney's fees should be awarded to him. Although brief, the appellate court's explanation is sufficient to show that there is factual and legal justification for the award thereof. Thus, the Court sustains the the award of attorney's fees to Dr. Tiongco. The amount of attorney's fees, equivalent to 20% of the total amount of the awards adjudged to Dr. Tiongco is also proper for being reasonable and just.

KLM also argues that the CA erred in imposing legal interest because neither was it granted by the RTC nor questioned on appeal by Dr. Tiongco. KLM is clearly mistaken.

It must be remembered that when a case is appealed, as in this case, the CA has the power to review the case in its entirety. It makes its own judgment as it deems just under the circumstances.[84] Thus, the appellate court can modify and/or include damages not awarded by the trial court if so warranted after an independent evaluation of the case. This is in accord with its authority to either affirm, reverse or modify the appealed decision of the trial court. As aptly held in *Heirs of Alcaraz v. Republic*:[85]

> In any event, when petitioners interposed an appeal to the Court of Appeals, the appealed case was thereby thrown wide open for review by that court, which is thus necessarily empowered to come out with a judgment as it thinks would be a just determination of the controversy. Given this power, the appellate court has the authority to either affirm, reverse or modify the appealed decision of the trial court. To withhold from the appellate court its power to render an entirely new decision would violate its power of review and would, in effect, render it incapable of correcting patent errors committed by the lower courts.[86]

In *Eastern Shipping Lines, Inc. v. Court of Appeals,*[87] the Court laid down the guidelines in determining the appropriate legal interest, to wit:

> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> 1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the

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84 *United Coconut Planters Bank v. Spouses Uy,* 823 Phil. 284, 293 (2018).
85 502 Phil. 521 (2005).
86 Id.
87 304 Phil. 236 (1994).

absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[88]

However, these guidelines were modified pursuant to *Bangko Sentral ng Pilipinas* Monetary Board (BSP-MB) Circular No. 799, Series of 2013, which took effect on July 1, 2013.

Moreover, the Court laid down the new guidelines regarding the imposition of legal interest in *Nacar v. Gallery Frames*[89] in this wise:

I. When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

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[88] Id. at 252-254.
[89] 716 Phil. 267 (2013).

> When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
>
> When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.
>
> And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.[90]

Applying the above-mentioned guidelines, the Court modifies the legal interest to twelve percent (12%) per *annum* from January 16, 2006, the date of the RTC Decision, until June 30, 2013, and six percent (6%) per *annum* from July 1, 2013 until full payment.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The April 10, 2013 Decision of the Court of Appeals in CA-G.R. CV No. 00884-MIN is hereby **AFFIRMED with MODIFICATION** in that:

(a) the awards of damages and exemplary damages are hereby reduced to ₱300,000.00 and ₱100,000.00, respectively;
(b) temperate damages in the amount of ₱50,000.00 is awarded to Dr. Jose M. Tiongco in lieu of nominal damages;
(c) the attorney's fees which is equivalent to 20% of the total monetary awards is maintained for being reasonable; and
(d) the total monetary awards shall bear interest of twelve percent (12%) per *annum* from January 16, 2006, the date of the RTC Decision, to June 30, 2013, and six percent (6%) per *annum* from July 1, 2013 until full payment.

Costs against petitioner KLM.

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[90] Id. at 282-283.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice