



IN THE HIGH COURT OF SIERRA LEONE  
COMMERCIAL AND ADMIRALTY DIVISION  
FAST TRACK COMMERCIAL COURT

CASE NO: FTCC095 /13

MR. DONALD OPEYEME NICOL

-PLAINTIFF

AND

MESSRS AIR MAROC

-DEFENDANT

REPRESENTATION

C. J. PEACOCK ESQ.

-COUNSEL FOR THE PLAINTIFF

S. K. KOROMA ESQ.

-COUNSEL FOR THE DEFENDANT

BEFORE THE HON. MR. JUSTICE SENGU M. KOROMA J.  
JUDGMENT DELIVERED ON THE 10<sup>TH</sup> OCTOBER, 2015

By a Writ of Summons dated the 11<sup>th</sup> December, 2013 the Plaintiff claimed against the Defendant the following reliefs:-

1. General damages for breach of contract of carriage of goods and luggage by air.
2. Special damages.
3. Damages for the Tort of negligence.
4. Any other relief(s) as this Honourable Court may deem fit and just.
5. Costs of the action.

In his particulars of claim, the Plaintiff pleaded that by a return electronic air ticket dated and issued on the 31<sup>st</sup> August, 2015 by the Defendant to the Plaintiff, a binding contract was entered into for the Defendant's Aircraft to convey the Plaintiff from Freetown through Casablanca, Istanbul to Tel Aviv. Due to the Defendant's negligence, the Plaintiff's luggage was erroneously tagged at the Freetown International Airport on the 8<sup>th</sup> September, 2013 leading to the loss of the said luggage. The Defendant did not enter an appearance and Judgment in default of appearance was entered by the Plaintiff on the 13<sup>th</sup> March, 2014. This Judgment was set aside by the Hon. Justice V. M. Solomon J. A (as she then was) on the 13<sup>th</sup> October, 2014. After close of pleadings, the matter proceeded to the pre-trial settlement conference but the parties did not reach any settlement and trial commenced.

At the trial, the Plaintiff called one witness of fact. The witness, Mr. Donald Nicol relied on his witness statement dated the 13<sup>th</sup> June, 2015. He testified that his luggage was wrongly tagged by the Defendant. The Counsel for the Defendant raised an objection to this testimony on the ground that the luggage was tagged by officials of the Airports Authority and not by the Defendant. However, the Plaintiff established by Exhibit C that the tag had an Air Maroc inscription on it. The Plaintiff testified that when he discovered that his luggage was missing, he reported the matter to officials of the Turkish Airline-this was because he had flown on board the airline to Tel Aviv- who advised him to complete the missing luggage form which he did. The Plaintiff stayed in Tel Aviv from the 9<sup>th</sup> to the 21<sup>st</sup> September, 2015. He did not receive his luggage during that time.

Under cross-examination, the Plaintiff answered that he checked-in one suitcase and that it was not in excess of the allowed weight. He denied the suggestion made by Counsel for the Defendant that the luggage was delivered to the Ramat Hotel in Tel Aviv. The Plaintiff agreed that the weight allowed was 20 kilograms.

At the end of the examination of the witness, the Plaintiff closed his case. The Counsel for the Defendant informed the Court that they could not get their witness and closed the case for the defence.

Both Counsel for the Plaintiff and the Defendant submitted written submissions.

Counsel for the Plaintiff in his submission stated that there was a binding contract between the Plaintiff and the Defendant and that the said contract was formed in Freetown thereby making it the forum of convenience by the principles of International Law of Contract. He submitted that it was the personnel /agent of the Defendant who was responsible for the tagging of the luggage and its security until they were loaded into the Air carrier. He submitted further that the Defendant by admitting that even if the Defendant was liable and or the Plaintiff had any claim against the Defendant, it should be based on damages limited to the weight of the luggage, the Plaintiff is entitled to Judgment as to that admission. Counsel for the Plaintiff also submitted that the Plaintiff is entitled to damages under the law of Tort for negligence and also entitled to special damages as he expended money to replace some of the items such as warm clothing etc whilst resident in Tel Aviv. Counsel cited series of authorities in support of his submissions which I shall deal with in due course.

Counsel for the Defendant argued only one major point to wit: that he relied on the Warsaw Convention of 1929 and that this was the only applicable law that governs the carriage of goods by air in Sierra Leone. Counsel also submitted that the Plaintiff pleaded special damages but no evidence was led to show the kind of damages that he suffered. He cited the case of JABER-v-BASMA 1950-56 ALR SL Series 244 as authority for the proposition that special damages must be strictly proved.

I have carefully perused the pleadings herein, the submissions made and the authorities cited. It is my view that the issues in dispute in this matter can be disposed of under the following heads:-

- a) Was there a contract between the parties?

It should first be made clear that the rules of common law are of minimum importance in the law of carriage by air, whether of passengers, baggage or cargo: for international carriage is regulated by international conventions which have been given statutory form in various jurisdictions. The principal convention governing international carriage by air in Sierra Leone is the WARSAW CONVENTION of 1929. It gained statutory force in independent Sierra Leone in 1968. The Warsaw Convention of 1929 was drafted in order to remove inconsistencies between the national laws of different countries and to strike a fairer balance than might otherwise have been the case between carriers and passengers and owners of cargo in respect of their mutual rights and liabilities. Under the Convention, the carrier was enabled to limit his liability. In return the passenger or owner of cargo did not have to prove negligence on the part of the carrier.

The incidence of a contract of carriage by air is the passenger ticket. Who is a passenger? International Air Transport Association Conditions define a passenger "as any person, except members of the crew, carried or to be carried in an aircraft with the consent of carrier."-Article 1 thereof. To become a passenger, the person should have a ticket. A ticket must be delivered containing certain compulsory information (Article 4 of The Warsaw Convention).

- a) An indication of the places of departure and destination.
- b) If the places of departure and destination are within the territory of a single high contracting party, and one or more agreed stopping places are within the territory of another State, an indication of at least one stopping place.
- c) A statement to the fact that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable.

d) A number and weight of the luggage.

I have looked at Exhibits A and B and considered the circumstances under which a person could be said to be a passenger and hold that there was a binding contract between the Plaintiff and the Defendant for the latter to carry the former from Freetown-Casablanca, Istanbul and Tel Aviv.

A related issue here is whether the Plaintiff can sue the Defendant or the Turkish Airline which conveyed him to Tel Aviv. In determining this question, I have sought guidance from Chitty on Contracts (specific contracts) 25<sup>th</sup> edition. Chitty wrote at Page 359 paragraph 2765 as follows: "if the carriage is performed by several successive carriers as one undisturbed carriage as defined by the Convention, and the passenger's baggage suffers destruction, loss, damage or delay, he can sue the first carrier, the last carrier, and the carrier who performed the carriage during the loss, destruction, damage or delay took place. In the instant case, the Plaintiff has opted to sue the first carrier and I hold that it is his right to do so.

b) Did the Defendant breach his contract with the Plaintiff?

Article 18 of the Warsaw Convention is very clear on this point. Here the liability of the carrier is strict. In other words, the liability rule is presumed liability. The carrier is liable without the need of proving negligence for the destruction or loss of or damages to registered baggage if the occurrence which caused the damage took place during the carriage by air. This last phrase is defined to mean the period during which the baggage is in charge of the carrier. The Plaintiff has led evidence of the tagging of his luggage at The Freetown International Airport and taken on board the Defendant's aircraft. A duplicate tag was issued to him and when he could not find his luggage at Tel Aviv, he immediately filed a report at the relevant office and completed his missing luggage form. It therefore goes without saying that the Defendant was in breach of his contract with the Plaintiff.

c) What is the measure of damages recoverable?

Counsel for the Defendant submitted that the liability of the Plaintiff is limited to that provided for under the Warsaw Convention. Counsel for the Plaintiff, on the other hand submitted that I. A. T. A Rules do not oust the national laws of Sierra Leone nor the jurisdiction of our constitutional costs in awarding full compensation in damages. To my mind, the Warsaw Convention which has been ratified by Sierra Leone and domesticated into our laws should apply. Applying the said Convention does not in any way oust the laws of Sierra Leone as it is an integral part of the said laws. The limit set out by this Convention is 250 Franc per kilogram (\$ 20 per kilogram) for checked baggage. However, these limits could be overcome in two ways: (a) by demonstrating "willful misconduct" by the carrier; or (b) with regard to checked baggage, by demonstrating that the carrier failed to comply with Article 4 (these I have already stated earlier in this Judgment). A perusal of Exhibit "A" shows that the Defendant did not include the weight of the baggage on the ticket. This amounts to a breach of Article 4. In this circumstance the weight will be based on the maximum allowable weight set forth in the carrier's tariff. According to the official website of the Defendant, its baggage principle is based on number of pieces principle (piece concept). For economy class which the Plaintiff used, the maximum allowable weight is one piece of 23 kilogram. The Plaintiff is therefore entitled to the sum of \$ 460 (four hundred United States Dollars) as general damages.

The Plaintiff has in addition claimed special damages being cost of purchasing few apparels and personal effects for the trip on the open market. The Counsel for the Defendant submitted that the Plaintiff has not led evidence to show the kind of damages that he suffered and failure to prove it should lead to defeat of his claim. Counsel cited the case of JABER-vs-BASMA 1950-1956 ALR SL series at Page 244 where it was stated that special damages must be strictly proved and a trial Judge who is not satisfied by the Plaintiff's evidence in respect of his losses is not justified in endeavoring to estimate it.

The Counsel for the Plaintiff on the other hand argued that it is quite obvious to the reasonable and objective individual that when the Plaintiff

could not make use of the contents of his missing or lost luggage, he expended money to at least replace some of the items from an open market. My own view on the issue of special damages is that it must be specifically pleaded. As Chitty puts it "the main meaning of special damages is that precise amount of pecuniary loss which the claimant can prove from the particulars set out in pleadings." The Plaintiff in his particulars of loss and damage claimed the sum of USD\$ 500(Five hundred united states Dollars) being cost of purchasing few apparels and personal effects for the trip. These, the Plaintiff testified were bought in the open market (meaning no receipts were issued). The principle however is that the Plaintiff is required to prove actual amount of the loss and in the instant case, the Plaintiff has not strictly done so. However, it has been proved that the Plaintiff lost his luggage whilst in the custody of the Defendant and that he stayed in Tel Aviv for a period of 12-13 days without receiving it. In such a situation one need not be a magician to conjure that the Plaintiff would need to buy clothes and related items for his daily use. However, Counsel for the Defendant has argued that since the loss had not been specifically proved, the claim must not be countenanced by this Court. My response to that submission is to ask whether it would serve the interest of justice to do so? It has not been disputed that the Plaintiff stayed in Tel Aviv for 12-13 days without his luggage and as such the Plaintiff must have procured some clothes to use. It will be most unreasonable to believe that he used the clothes he traveled in for that period. In the circumstance, I hold that the Plaintiff is entitled to special damages based on the special circumstances of this particular case.

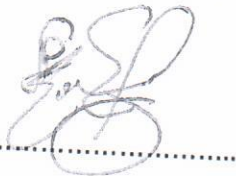
On the issue of damages for the Tort of negligence, I hold that carriage by air is a specialized contract governed by an international Convention-the Warsaw Convention. As I have stated in the early part of this Judgment, under the Convention, the carrier was enabled to limit his liability. In return the passenger or owner of cargo did not have to prove negligence on the part of the claim. It follows therefore that proof of negligence was not a factor in determining whether the Defendant was liable.. This Convention which has been municipalised into the laws of Sierra Leone limits the liability of the Defendant to what is provided for in

that Convention. This constitutes the general damages payable to the Plaintiff. This Court therefore does not see the need, nor is it the law to additionally award damages for negligence.

I am of the opinion that because of the attitude of the Defendant and the undue delay in settling this matter, interest should have been charged on the special damages to be awarded.

For the reasons given above, this Court holds that the Plaintiff has proved his case against the Defendant on a balance of probabilities and I hereby make the following Orders:-

1. That the Defendant pays to the Plaintiff the sum of USD \$ 460(Four hundred and sixty United States Dollars) as general damages.
2. That the Defendant pays to the Plaintiff the sum of USD \$ 500(Five hundred United States Dollars) as special damages.
3. Interest on the said USD \$ 500(Five hundred United States Dollars) at the rate of 25 percent from 10<sup>th</sup> September, 2013 to date of this Judgment.
4. That costs of this action to the Plaintiff to be taxed if not agreed upon.



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Hon. Justice Sengu M. Koroma J.