

SWISSAIR, by and thru its General Manager, F. KOHLROSS, Appellant, v.
KHALIL KALABAN, by and thru his Agent, **DELTA INSURANCE LOSS
ADJUSTERS, INC.**, by and thru its Manager, CHARLES ANANABA, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL
CIRCUIT, MONTSERRADO COUNTY.

Heard: March 28, 1988. Decided: July 29, 1988.

1. A trial court is required to determine all of the issues of law raised in the pleadings before dealing with the facts.
2. In ruling on the issues of law, the trial judge cannot limit his decision to some of the issues, but must pass on all of the law issues raised in the pleadings.
3. The sufficiency of a power of attorney cannot ordinarily be presumed, but it will be presumed when neither its issuance nor its genuineness has been challenged.
4. An agent may be expressly authorized to institute legal proceedings in behalf of his principal, but a mere agent usually has no implied power to institute legal proceedings on behalf of the principal in respect of the subject matter of the agency.
5. The mere fact that an agent has the authority to receive payment does not give him the authority to institute legal proceedings by attachment or otherwise; nor does it give him the authority to place a claim in the hands of an attorney for collection.
6. It is not sufficient merely that an appellee assesses special damages in an amount, or that he states as special damages an amount made out by himself; he must prove his claim by a preponderance of evidence that he has sustained the special damages.
7. A special sum of money asked for as special damages must be based upon definite and certain knowledge as to their correctness; and in such eventuality, this must be testified to and proved at the trial in order to justify a judgment awarding such sums.
8. Except as otherwise provided in a carrier's tariffs or conditions of carriage, a carrier's liability shall not exceed US\$20.00 or the equivalent per kilogram of goods lost, damaged, or delayed, unless a kilogram value is declared by the shipper and a supplementary charge paid.

Appellee, Khalil Kabalan, sued appellant, Swissair, for damages for breach of contract, claiming that Swissair had paid to him only \$1,560.00 out of over \$32,000.00

in goods alleged to have been damaged or short landed when the consignment arrived at Roberts International Airport. When Swissair was informed of the shortage and damage, it offered to pay to the appellee the amount of \$1,560.00, calculated as per the Warsaw Convention, to which Liberia is a signatory. The amount, Swissair claimed, was calculated on the basis of the weight of the missing or damaged pieces and the failure of the appellee to declare a specific value of the goods and to pay additional assessed charges thereon. The amount offered by Swissair was accepted by the appellee and a release issued in favor of Swissair with reservations. Notwithstanding the release, the appellee commenced the current action of damages.

In response to the complaint, Swissair claimed that it owed the appellee no further obligation under the Warsaw Convention than it had met in making payment to the appellee, and that in signing the release, the appellee had waived all further claims against Swissair. The law issues having been disposed of, the case was ruled to a jury trial. Following the presentation of evidence, the jury returned a verdict of \$30,660.00 as special damages and \$20,000.00 as general damages. The verdict was confirmed by the trial court in its final judgment, and an appeal announced therefrom to the Supreme Court.

The Supreme Court reversed the judgment, holding that the appellee had failed to prove by a preponderance of evidence that he had sustained the special damages claimed by him. The Court observed that it was not sufficient for a plaintiff to merely assess special damages in an amount; he must prove such damages at the trial.

The Court also opined that the trial judge had erred in not passing on the issue of whether the person who had sued as agent of the claimant was indeed an agent. The Court noted that as the appellee had challenged the right of the claims adjuster to commence legal action as an agent merely on the basis of an appointment by the appellee to adjust his claim, the trial court was legally bound to rule on the issue.

The Court opined further that under the Warsaw Convention, the appellee was obligated to declare the value of his goods and pay the additional assessed charges, if he desired to recover the full value of his goods, and that in failing to make such declaration he was entitled to only the value specified by the Convention. It observed that Liberia was a party to the Convention and therefore bound by its provisions, the applicable provision in the instance case being Article 4. It said that the appellee having elected not to make a declaration of the value of the goods, he could not seek recovery other than as specified by the Convention.

Philip A. Z Banks, III, and Seward M Cooper appeared for appellant. Moses M Agbaje and James D. Gordon appeared for appellee.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

The plaintiff/appellee, Khalil Kabalan, by and through his agent, Delta Insurance Loss Adjusters, Inc., by and through its manager, Charles Ananaba, instituted an action of damages for breach of contract in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, Republic of Liberia, sitting in its June Term, A. D. 1986, against Defendant/Appellant Swissair, by and through its general manager, F. Kohlross. Appellee subsequently withdrew his complaint and filed an amended complaint, to which an amended answer was filed. Pleadings rested with the reply which was dismissed for reason that it was filed beyond the period prescribed by statute. The trial judge, without disposing of the issues of law raised in the pleadings, proceeded thereupon to rule the amended complaint and amended answer to trial of the facts by an empanelled jury.

In his complaint, appellee alleged that he had entered into a contract with appellant for the transportation of sundry goods from Beirut, Lebanon, to Liberia, on appellant's airline and that the appellant had agreed and accepted appellee's sundry goods to be transported from Lebanon to Liberia. According to appellee's complaint, the consignments were properly packed in cartoons containing clothing and watches. The complaint alleged further that the appellant levied its charges, including supplementary charges per kilo, on the said consignments, and that the said charges were paid by the appellee to the appellant's agent in Beirut. Subsequently, the records show, a bill of lading was issued to the appellee. When the goods landed at Roberts International Airport, Liberia, it was discovered, to appellee's surprise, that some of the cartons were opened and the contents therein found damaged and short. Appellee immediately communicated with appellant, informing appellant in full details of the matter and listing the costs of the damaged items as well as their respective values, as stated on the invoices therefor. Appellant in turn filled out said lost items on its official form, "Form for Claim", and submitted same to appellee. Subsequently, a conference was held and appellant offered to pay appellee an amount of \$1,560.00 in settlement of the entire claim which appellant contended was in accordance with the "Warsaw Convention" schedule. Appellee rejected the offer and contended that he would receive the \$1,560.00 from appellant only under protest or as partial payment against the entire claim which was in an the amount of over \$32,000.00. This amount, the appellee said, was less than the grand total which was placed at over \$60,000.00, the value of the original goods transported by appellant

from Lebanon to Liberia based on the invoices and other supporting documents. Thus, while appellee received the amount of \$1,560.00 from appellant, he made a notation on the claim document that he considered the same as a receipt issued under protest, pending payment of the balance demanded before signing a release. Appellant's refusal to comply with the appellee's demand and the appellee's insistence on the settlement of the entire claim necessitated the institution of this action.

The records, including airway bill No. 085-7500 25941, reveal that of the total consignment of sundry goods consisting of 21 packages (cartons) with a gross weight of 545 kilos, checked in at Beirut International Airport, the contents of 3 cartons were alleged to have been found exposed or damaged upon arrival at R. I. A. Subsequent to the alleged damage, it weighed 467 kilos, a reduction of 78 kilos' from the original weight of 545 kilos.

In appellant's answer it denied appellee's right to an award contending that subsequent to the filing of the claim, appellee had presented what he said were invoices and packing lists relating to the consignment. The invoices and packing lists, it said, showed that the goods delivered to the appellant's carrier in the 21 packages (cartoons) were valued at \$62,355.00. Yet, that the goods which were missing from the 3 packages (cartons) were valued by the appellee at \$32,220.00, representing more than 50% of the invoice price of the total consignment. Appellant contended that inquiries made by it revealed no insurance was secured on the goods, that the consignor had declined to make a declaration of the value of the goods to be transported, and that the consignor had declined to pay the extra or supplementary charges required in order to obligate the carrier to compensate the consignee in a higher amount. Appellant further contended that only the reduced rate offered on the clothing and footwear and the regular rate offered on valuable watches were paid for the transportation of the goods. It mentioned that had the con-signor declared the actual value of the goods to the carrier, he would have been required to pay an additional charge of 0.5 of the difference on the carrier's liability and the value so declared.

It is from the above facts, stated during the trial and presented to the jury, that the verdict was returned in favour of the appellee. The verdict was confirmed and affirmed by the trial judge in a judgment rendered thereon. From this judgment, the appellant noted exception and announced an appeal. Hence, this appeal in which the appellant has filed a bill of exceptions containing six (6) counts. In addition, the appellant has filed a brief containing the issues stated above, the answers to which

will cover all of the counts of the bill of exceptions. Four issues were presented, as follows:

1. Whether one who, in securing the transportation of goods by air, fails or elects not to make a declaration of the value of the goods and thereby fails to make the payment of the extra declaration charge as prescribed by the contract of carriage, is entitled to receive full compensation for the goods alleged to have been damaged or lost, over and above the compensation stipulated in the contract for goods whose value are not declared?
2. Whether under the circumstances set forth above, the jury could legally grant an award to appellee, in contravention of the Warsaw Convention which, by ratification by Liberia, has become an integral part of Liberian law?
3. Whether appellee had, by the production of evidence, established or proved that the value of the goods transported was \$62,355.00 or that the value of the goods alleged to have been lost or damaged was \$32,220.00. In addition, the question was posed as to whether the appellee had shown the inconvenience and other embarrassments he allegedly suffered to warrant the jury returning a verdict of \$30,660.00 as special damages and \$20,000.00 as general damages?
4. Whether the trial judge was under a legal duty to dispose of all of the issues of law raised in the pleadings before ruling the case to trial by jury on the facts?

In response to the appellant's issues, enumerated above, appellee has also raised the below issues for our consideration.

- I. Whether or not the trial judge committed a reversible error when he refused to admit into evidence appellee's documentary evidence, even though the said documents were testified to, identified and marked by court?
- II. Whether or not in an action of damages, the bringing of a verdict by the jury in favour of the plaintiff is ipso facto evidence of liability if the trial judge or jury failed to accord the necessary consideration to the evidence produced by the witnesses of the defendant?
- III. Whether or not the acceptance of the \$1,560.00 by appellee and the release signed by him with reservation absolved appellant from further paying the balance of appellee's claim?

IV. Whether or not the allegation by appellant that Liberia is a signatory to the Warsaw Convention was established by documentary evidence?"

Turning now to the issues raised by appellant's counsel in their brief, which were well argued in support of their bill of exceptions, let us look at them in the reversed order, beginning with the issue of "whether the trial judge was under a legal duty to dispose of all of the issues of law raised in the pleadings before ruling the case to trial by jury on the facts."

In arguing this issue, appellant's counsel strongly contended that the trial judge was under a legal duty to dispose of all of the issues of law raised in the pleadings before ruling the case to trial by jury. In this connection, appellant argued that the document upon which appellee relied to institute the suit was not a legal power of attorney to institute the suit; instead, appellant said, the document only authorized the Delta Insurance Adjusters, Inc. and Charles Ananaba to negotiate the adjustment of Appellee Khalil Kabalan's, claim. This contention, appellant argued, was a legal issue and should have been passed upon by the trial judge. This Court held in the case *Thompson v. Faraj*, 25 LLR 34 (1976), that "A trial court is required to decide all issues of law raised by the pleadings before dealing with the facts." Definitely this issue should have been addressed by the trial court, same being legal and pertinent to the case at bar. This Court also held in the case *Morris v. Johnson*, 26 LLR 73 (1977), that "In ruling on issues of law, a trial judge cannot limit his decision to some, but must pass on all that are raised in the pleadings." We have also said that "where issues of law and fact are raised by the pleadings, the issues of law must be decided before trial of the issues of fact." *Wright v. Richards*, 12 LLR 423 (1957). The authority of Delta Insurance Loss Adjusters, Inc and Charles Ananaba was challenged by appellant, based upon a document they purported to be a power of attorney authorizing them to sue on behalf of appellee. That issue should have been passed upon by the trial court. The sufficiency of a power of attorney cannot be presumed, but will be presumed only when neither its issuance or genuineness has been challenged.

Even assuming the existence of an agency, we hold that "An agent may be expressly authorized to institute legal proceedings in behalf of his principal, but a mere agent usually has no implied power to institute legal proceedings on behalf of the principal in respect of the subject matter of the agency. The mere fact that the agent has the authority to receive payment does not give him the authority to institute legal

proceedings by attachment or otherwise; nor does it give him the authority to place a claim in the hands of an attorney for collection."

Appellant's next issue is whether appellee had, by the production of evidence, established or proved that the value of the goods transported was \$62,355.00, or that the value of the goods alleged to have been lost or damaged was \$32,220.00. In addition, the question was posed as to whether the appellee had shown the inconvenience and other embarrassments he allegedly suffered to warrant the jury returning a verdict of \$30,660.00 as special damages and \$20,000.00 as general damages.

It is not sufficient merely that an appellee assesses special damages in an amount; he must prove his claim by a preponderance of evidence that he has sustained the special damages alleged. Civil Procedure Law, Rev. Code 1: 25.6(1). We are not convinced that appellee has clearly and cogently proved with particularity the special damages alleged in his complaint, appellee's claim for damages grew out of goods shipped by appellant's airline, some of which were alleged to have been damaged. Under the contract it was required that all goods shipped by air must carry an airway bill on which should have been enumerated the declared value of the goods shipped. However, there was no showing on the airway bill exhibited in the case any declared value of the goods that were shipped, except for an amount representing the rate paid for clothing and footwear and a regular rate for valuable (such as watches) for the transportation of the goods.

This brings us to the third issue, which is whether under the circumstances set forth above, the jury could legally grant an award to appellee in contravention of the Warsaw Convention which, by ratification by Liberia, has become an integral part of Liberian law.

This issue deals with the verdict of the jury that was confirmed by the trial court, awarding appellee an amount of \$30,600.00 as special damages and \$20,000.00 as general damages. We hold that this award was contrary to the evidence adduced at the trial as well as the law controlling. Here is what the law says on special damages: "When items of special damages are claimed, they shall be specifically stated." Civil Procedure Law, Rev. Code 1: 9.5 (7). A recourse to the records in this case show that appellee did not prove with particularity, as required by law, the claim for special damages. For instance, appellee did not specifically established how the sum of \$30,600.00 constituted the additional award for loss as a result of alleged damage sustained by him. "Specific sum of money asked for as special damages must be

based upon definite and certain knowledge as to their correctness; and in such eventuality, this must be testified to and proved at the trial in order to justify a judgment awarding such sums." *Vianini Company v. Cole*, 16 LLR 94, 97 (1964). The airway bill did not show the value of the goods that were shipped by appellant's airline. It is not sufficient merely that appellee state as special damages an amount made out by himself. To enable the shipper to identify the shipped consignment, the value of the goods must be stated on the airway bill. This appellee failed to do.

Appellee allegedly received from appellant \$1,560.00, with reservation, and thereafter instituted this suit. But let us see what appellant has said regarding this compensation that was received by appellee. Appellant has referred us to the Warsaw Convention to which Liberia is a signatory and to which it abides. Article 4 of that Convention states: "Except as otherwise provided in carriers' tariffs or conditions of carriage, in carriage to which the Warsaw Convention does not apply, carriers liability shall not exceed US \$20.00 or the equivalent per kilogram of goods lost, damaged, or delayed, unless a kilogram value is declared by the shipper and a supplementary charge paid." We hold that since no value was declared, appellant did just what was right by paying US\$20.00 per kilo as required by the Warsaw Convention. When 78 kilos, claimed to have been lost or damaged was multiplied by US\$20.00, the figure was \$1,560.00 which was paid by appellant to the appellee. Liberia has ratified the said Convention, and as Liberians we must abide by the Convention.

We come now to the last issue presented by the appellant, i.e. "Whether one who, in securing the transportation of goods by air, fails or elects not to make a declaration of the value of the goods and thereby fails to make the payment of the extra declaration charge, as prescribed by the contract of carriage, is entitled to receive full compensation for the goods alleged to have been damaged or lost over and above the compensation stipulated in the contract for goods whose value are not declared?"

The records reveal that the entire relationship between appellant and appellee was governed by the contract of carriage executed for the transportation of the goods in question - airway bill No. 085-7500-2594. This airway bill referred us to the Warsaw Convention mentioned supra. We say in conjunction with what has previously been said, that had the airway bill carried the declared value, then and in that case, the appellant would be liable for the full value of the goods declared. But in the case where the airway bill has been marked on its face "NVD" (No Value Declared), appellee is entitled only to the compensation required by the Warsaw Convention.

It is therefore our considered opinion that in the interest of justice and the law controlling, the judgment confirming the verdict be and same is hereby reversed without prejudice. And it is hereby so ordered.

Judgment reversed without prejudice.