

**Mrs. Willette A. Kesselly** for herself and as Natural Guardian of her minor children, Hawa Micketta K. Kesselly, Jewel A.C. Kesselly, of the City of Monrovia, Liberia APPELLANTS / APPELLEES VERSUS The **Management of SN Brussels Airlines**, represented by and thru its Manager or Authorized Representative(s), Ashmun Street, Monrovia, Liberia, 1st Defendant and the **Karou Voyage Travel Agency**, represented by and thru its Manager or Authorized Representatives, 2<sup>nd</sup> Defendant, of Broad Street, Monrovia, Liberia....APPELLEES / APPELLANTS

APPEAL. JUDGMENT AFFIRMED WITH MODIFICATION.

HEARD: November 19, 2008 DECIDED: January 28, 2009

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT

For the purpose of providing synopsis, it is well to say that this suit has travelled to this Court for the second time. When this matter was first heard during the October 2006 Term of the Honourable Supreme Court, this Court limited itself to the lone issue of service. This was a primary question of law as service is a statutory requirement to bring a party under the jurisdiction of the court.

Appearing before us during said October 2006 Term, Appellant SN Brussels Airlines had strenuously contended that it was never served the writ of summons to afford it that opportunity guaranteed to every party litigant, to answer to the complaint in the action of damages for breach of contract, filed by appellants.

On review of the appeal taken by appellees/complainants Willette Kesselly et al, from the Chambers Justice's ruling, the Supreme Court *en banc* affirmed the Justice's ruling. The Supreme Court then ordered the court below to resume jurisdiction and allow SN Brussels, as party defendant, to file its responsive pleading nunc pro tunc.

As per said Mandate, Appellant S.N. Brussels filed its Answer. Thereafter, both parties filed amended pleadings and then rested. A regular trial was had at the close of which the jury found appellant SN Brussels liable and awarded Appellants Willette A. Kesselly, et. al, USD5,335.00 (five thousand three hundred and thirty five United States dollars) and L\$935.00 (nine hundred and thirty five Liberian dollars) respectively as special damages and USD 30,000 (thirty thousand United States dollars) as general damages. The trial court denied the parties' respective motions for new trial and entered final judgment affirming the verdict.

Both parties appealed the final judgment. The two parties being appellants in these proceedings, we shall refer to them as Appellant S.N. Brussels and Appellants Kessellys.

In support of their respective appeals, Appellants Kessellys filed a 10 (ten) count bill of exceptions essentially contending that the final judgment did not conform to the weight of the evidence adduced at the trial for just and adequate compensation. They maintained that the award is inadequate in light of the humiliating circumstances to which they were subjected and said humiliation being a direct consequence of Appellant SN Brussels' negligence and breach of the transport contract.

On the other hand, Appellant SN Brussels filed a 14 (fourteen) count bill of exceptions therein submitting that the Warsaw Convention of 1929 as amended in 1944, being the controlling law in this jurisdiction, the judgment rendered by the court awarding USD 30,000.00 damages, violated the limited liability provisions of Article 21 of said Convention.

Gleaned from the records as summarized in the October 2006 Term, (unpublished) Opinion of this Court, the facts reveal that Appellants Kessellys complained at the Sixth Judicial Circuit sitting in its March 2003 Term, that on August 20, 2002, Co-appellant Willette Kesselly purchased 3 (three) round-trip tickets, from Karou Voyage Travel Agency, as authorized representatives of Appellant SN Brussels Airlines, for herself and her two minor children, Hawa Micketta Kessely, 15 (fifteen) months old and Jewel A.C. Kesselly, 9 (nine) years at the time. Appellants Kessellys intended travelling from Monrovia to the United States of America and back to Monrovia.

As scheduled, Appellants Kessellys were booked and did travel on August 21, 2002 on SN Brussels Airlines from Monrovia to Brussels, and from Brussels to Newark, New Jersey and thereafter to Charlotte, North Carolina, U.S.A. Accordingly, the first leg of the journey was successfully done without encountering problem.

The complaint further narrates that for their return leg to Monrovia, Appellants Kessellys, on three occasions called Continental Airlines — Appellant SN Brussels-connecting carrier- and as indicated on the face of their tickets, confirmed and re-confirmed their return leg of the trip for Wednesday, November 20, 2002 from the United States to Brussels and from Brussels to Monrovia, for Thursday, November 21, 2002, respectively. As apparent evidence of said confirmation,

Appellants Kessellys were received as scheduled and confirmed on Wednesday, November 20, checked in and boarded on Appellant SN Brussels connecting flight, Continental Airlines, from the United States of America to Brussels. It was while in Brussels awaiting the Thursday November 21 connecting flight, Appellants Kessellys were suddenly informed of the change in the flight schedule. They were informed that the new and next available schedule flight was the 27th November, some six days later.

Faced with abrupt change in flight schedule, Appellants Kessellys averred that Appellant SN Brussels's agent took away their tickets and passports. The agent promised to make hotel accommodation for Appellants Kessellys for the six (6) days waiting, period occasioned by the change of schedule. Co-appellant Willette A. Kisselly said that for about six (6) hours and without Appellant SN Brussels giving them any water or food, she waited with her children, one of whom was of the tender age of about fifteenth (15) months,

While in this dilemma, Co-appellant Willette Kisselly further explained that they were approached by immigration officers who requested Co-appellant Willette Kisselly to sign an instrument written in a language other than English. As she could not sign an instrument whose contents she did not know, Co-appellant Willette Kisselly said that she resisted and refused to sign same.

The complaint further averred that Belgium Police and Immigration Officers became visibly infuriated by Co-appellant Willette Kisselly's refusal. The officers are said to have rounded up co-appellant and her children and took them away to a heavily guarded security room, where Appellants Kessellys remained locked up clearly under condition analogous to detention for the whole night mingled with other strange men who smoked throughout the period.

According to the complaint, the appellants were subjected to and kept under such terrible and undignified conditions for no fault of the Kessellys. Co-appellant Willette Kisselly said that she, her fifteen (15) month-old and nine (9) years old children suffered severe cold with resulting fever such as to require medical treatment. They attached to their complaint a medical certificate, dated March 3, 2003 issued by Monrovia Seventh-Day Adventist Church Cooper Memorial Hospital, over the signature of Dr. Nathaniel P. Mosqueda. The medical instrument seeks to certify that co-appellant, fifteen (14) months old Jewel Kesselly, "was checked up twice for fever and cough and treated for respiratory tract infection". Emphasis supplied.

Further stating their complaint, Appellants Kessellys narrated that they were removed from the detention room only on the next day, Thursday, November 22, 2002, taken to a waiting sealedup security van and escorted by armed security officers, as if they were terrorists, and boarded on a waiting aircraft in full indignity and sent back to the United States of America. Appellant SN Brussels' conduct, according to Appellants Kessellys, has caused them profound humiliation and public disgrace resulting to mental anguish and stress, as well as physical stress and torture. For these wrongs, Appellants Kessellys prayed the court for awards both for special and general damages in a sum not to exceed USD\$1,000,000.00 (one million United States dollars).

The appeal disposed of by this Court during the October 2006 Term, was at the instance of Appellants Kessellys. This Court denied said appeal and ordered the case remanded. The Supreme Court at the time determined that the records before us were void of showing by conclusive evidence that the writ of summons was served on Appellant SN Brussels Airlines. This was in harmony with practice and procedure hoary with time in this jurisdiction. In a case analogous to this before us, this Court further adopted a common law principle. Mr. Justice Horace, speaking for this Court stated:

"The rule of conclusiveness of the Sheriff's returns, although tending to the security of the record, often imposes hardship, and many courts have discarded the idea that such return must be accepted as verity, in favour of the more liberal rule that the return is only prima facie evidence of the facts therein stated, and may be impeached by competent extrinsic evidence " Faqans v. Harris-Faqans 23 LLR, 190, 194-5 (1974).

In harmony with the laws herein referenced, the Supreme Court remanded this case and ordered that SN Brussels Airlines be allowed to file its answer nunc pro tunc.

As per said mandate, Appellant SN Brussels, on September 14, 2007, filed a twenty-two count answer to Appellants Kessellys' complaint.

In the answer, Appellant SN Brussels Airlines did not deny the existence of a contract between the parties but contended that the contractual relationship between the parties was strictly governed by the Warsaw Convention of 1929 and the General Conditions of Carriage.

Therefore Appellant SN Brussels has submitted that Liberian courts are required by

law to give credence to, and apply the relevant provisions of said Convention. This is more the case, according to Appellant SN Brussels, since infact the applicability of the Warsaw Convention to Liberia was heretofore affirmed by the Honourable Supreme Court of Liberia in 1988 in *Swissair v. Kalaban*, 35 LLR, text at page 49 (1988).

It is Appellant SN Brussels' contention that Article 9.1.1 of the General Condition of Carriage provides:

"The flight times shown in the timetables may change between the date of publication and the date you actually travel. We do not guarantee them to you and they do not form part of your contract with us."

Appellant SN Brussels therefore maintained that its modification of the date of its flights from Brussels to Monrovia, was a legitimate exercise of its rights provided for under Article 9.1.1 of the General Conditions of Carriage and said action and exercise of its right, cannot be said to be a breach of the contract of carriage.

Further thereto, Appellant SN Brussels submitted that Appellant Kessellys in fact were under a contractual duty to have confirmed their return trip to Monrovia with Appellant SN Brussels. This duty, according to Appellant SN Brussels, should have been carried out by Appellants Kessellys telephoning any of SN Brussels' offices in the United States at least 72 hours prior to their departure to reconfirm their return flight from Brussels to Monrovia.

Appellant SN Brussels also averred that by "their admission", Appellants Kessellys saw fit to reconfirm the first leg of their return trip from the United States to Brussels only with Continental Airlines, but failed and refused to reconfirm their return trip from Brussels to Monrovia with the Appellant SN Brussels. Appellants Kessellys' failure, according to the answer, to confirm shows a clear breach of their carriage contract. Appellant SN Brussels therefore maintained that it is precisely this failure which directly caused the damages Appellants Kessellys may have subsequently sustained.

Appellant SN Brussels also stated and confirmed that notwithstanding Appellants Kessellys' breach of the contract by their failure to reconfirm their flight from Brussels to Monrovia directly with Appellant SN Brussels, Appellant SN Brussels nevertheless was willing and did offer to accommodate them at a nearby hotel for the entire six day period, at no cost to them. Appellant SN Brussels then sought to draw the court's attention to what it called the fact that Appellants Kessellys having at no

time blamed Appellant SN Brussels for any alleged liability for what happened to them, as the action taken against them was solely attributable to the Belgian Immigration authorities.

Appellant SN Brussels says therefore that if any liability is to be assessed, it is obvious that the proper party responsible must be the Belgian Immigration authorities- not Appellant SN Brussels/Defendant. Appellant SN Brussels has therefore submitted that Appellants Kessellys' proper recourse is to institute proceedings against the Belgian Immigration authorities in Brussels, and not to file these proceedings against Appellant SN Brussels in Liberia, when, by Appellants own admission, the action taken against Appellant Kessellys, were committed solely by the Belgian Immigration authorities.

It is also Appellant SN Brussels' contention that its "obligation to provide free accommodation for Appellants Kessellys at a local hotel in Brussels was fully discharged when Belgian Immigration authorities refused to permit Appellants Kessellys to enter the country because they lacked entry visas. Appellant SN Brussels then cited a basic common law principle, providing:

"....a contractual duty is discharged....where performance is subsequently prohibited by an administrative order made with due authority by an officer of the United States." 17 Am Jur 2d, CONTRACTS, Section 419, p. 875.

Appellant SN Brussels, concluding, strongly attacked Appellants Kessellys' prayer for general damages award in the amount not less than USD\$ 1000,000.00. According to Appellant SN Brussels, not only does this prayer lack any legal basis but it is also contrary to the decisional laws of this jurisdiction as found in *ADC Airlines v. Sannoh*, 39 LLR 431, and subsequently reaffirmed in *Knuckles v. Tradevco*, 40 LLR 515, 530-1.

In the cited cases above, this Court enunciated the principle that general damages award in our jurisdiction be not less than 10%, and not more than 100% of the special damages awarded a claimant. Appellant SN Brussels has infact further contended in the alternative, that Article 22 (1) of the Warsaw Convention, governing the contracting parties in these proceedings, limit the carrier's liability to 125,000 French Francs, approximately USD\$8,300.00 to each passenger. There being no legal basis for Appellants Kessellys' prayer for USD\$ 1,000,000.00, the entire complaint should therefore be dismissed, Appellant SN Brussels prayed.

Countering this answer, Appellants Kessellys filed a nineteen-count reply. Therein they argued that Appellant SN Brussels, having admitted that it cancelled or changed its flight time schedule; Appellant SN Brussels is therefore liable to Appellants Kessellys for wilfully changing its flight time schedule without any notice to these appellants. Appellants Kessellys said that they still maintained that there was no information to them about any change; that had Appellant SN Brussels notified its agent, Continental Airlines which transported the Kessellys, agents of Continental Airlines in New Jersey, USA, would have informed Appellants Kessellys of said notification that the flight from Brussels to Monrovia had been changed. This information not having been given to Appellants Kessellys in the USA by Brussels' agent, Continental Airlines, it is conclusive evidence that SN Brussels changed its flight time without any notice to its own agent, and also without any notice to appellants. This is so because it was Continental Airlines that transported Appellants Kessellys to the USA; and it was the same Continental Airlines that confirmed plaintiffs' flight from the USA to Brussels on behalf of first defendant as its agent. Hence, appellants say that SN Brussels can in no way, form or manner disclaim liability or shift liability to the Immigration Officers in Brussels.

When pleadings rested, regular trial was had; whereupon the trial jury returned a verdict holding Appellant SN Brussels Airlines liable in damages for breach of contract.

The relevant portion of the court's final judgment, dated August 19, 2008, affirming the verdict states:

*"After having denied the two motions for re-trial, thereby confirming the verdict as returned by the jury empanelled to hear this matter, this court hereby adjudges the first defendant [ESN Brussels Airlines] liable in damages for breach of contract and therefore, the court hereby award to the plaintiffs special damages in the amount of US\$5,250.00 and L\$935.00 and general damages in the amount of US\$30,000.00..."*

To this final judgment, both Appellants-Plaintiffs Kessellys and Appellant SN Brussels Airlines/First Defendant excepted and announced an appeal to the Honourable Supreme Court sitting in its October Term A.D. 2008.

Appellants Kessellys have put forward for our review a bill of exceptions containing ten counts. We quote counts 1, 7 and 9 as germane to the disposition of this case:

*"1. Plaintiffs contend that Your Honour committed prejudicial and reversible error when Your*

*Honour denied plaintiffs' Motion for New Trial contending that the Jury's verdict was in harmony with the law and facts and as such, for Your Honour to set aside said verdict will be travelling beyond your jurisdiction and as such, proceed to review the weight attached to the evidence by the Jury which evidence has been found to be relevant by the court. Plaintiffs then and there excepted to Your Honour's Ruling on the Motions for New Trial because plaintiffs submit that the preponderance of evidence adduced at the trial by the plaintiffs is overwhelming so much so that the amount of general damages, US\$30,000.00 (thirty thousand United States dollars) is too small an amount for three (3) plaintiffs who were illegally arrested and detained as a result of 1<sup>st</sup> defendant's breach of contract for failing to transport them to Monrovia on November 21, 2002; and also because Your Honour committed prejudicial and reversible error when Your Honour refused to increase or augment or modify the Jury's award of general damages to at least US\$750,000 (seven hundred fifty thousand United States dollars) as prayed for by plaintiffs in their motion for new trial. Hence, plaintiffs excepted and appealed to the Supreme Court of Liberia for its review and modification or to render the judgment that Your Honour should have rendered in the court below..."*

*"7. Also because plaintiffs contend that Your Honour's failure, refusal and neglect to have properly directed the Jury on the liability of the carrier under the Warsaw Convention of 1929 and Liberia Partnership Law and that Your Honour only dwelled on common law when Liberia is a signatory to the Warsaw Convention and the 1944 Chicago Convention, Annex 9 thereof which imposes responsibility on airlines to provide accommodation for their passengers in circumstances such as this experienced by plaintiffs and in the face of the Convention, common law does not apply. For this prejudicial and reversible error, plaintiffs excepted to Your Honour's Charge to the Jury and Your Honour's Final Judgment of July 19, 2008. See Your Honour's charge to the Jury, sheet 5 and 6 of the minutes of court of the 3<sup>rd</sup> Day's Jury sitting dated July 21, 2008, to which charge, plaintiffs excepted and appealed to the Supreme Court."*

*"9. Also because Your Honour further committed prejudicial and reversible error when Your Honour affirmed and confirmed the verdict of the Jury which verdict is contrary to the weight of evidence and as such, the said verdict even though unanimous should have been increased by Your Honour because by the Award of US\$30,000.00 (Thirty thousand United States dollars) as general damages and US\$5,335.00 (Five thousand three hundred thirty-five United States dollars) and L\$925.00 (Nine hundred twenty-five Liberian dollars) as special damages is conceded by the Jury that SN Brussels breached its contract with plaintiffs and as such, said award is contrary to the evidence because the evidence establishes the facts that plaintiffs, due to 1<sup>st</sup> defendant's uninformed change in flight schedule, without notification to 1<sup>st</sup> defendant's partner and agent Continental Airlines and Karou Voyage, Continental Airlines having airlifted plaintiffs from America to Brussels after plaintiffs had confirmed their return flight 72 hours with Continental Airlines prior to departure time, all of the maltreatment, failure to provide accommodation in keeping with the*



*Chicago Convention of 1944 Annex 9 thereof, failure to provide food and water, exposure of the plaintiffs to the winter weather for thirty minutes on the steps of Continental Airlines without winter coats and clothes, the arrest and detention of plaintiffs by the Belgium Immigration, exposure of plaintiffs to cigarettes fumes while sealed up with strange men in the same prison, the disgraceful deportation of plaintiffs back to America as well as placing plaintiffs at gun point and conveying them to prison under maximum security guard escort in sealed up security vans as well as the additional six days that plaintiffs had to remain in America, are at no fault to plaintiffs, are all un rebutted evidence against 1 st defendant SN Brussels, Plaintiffs submit that but for SN Brussels failure to have informed Continental Airlines, SN Brussels' agent and partner and principal of reversal of 1 st defendant's change in flight schedule for the winter season since September 11, 2002 plaintiffs would never ever had been in Brussels to have been subjected to torture and degrading human degradation at the hands of the Belgium Immigration personnel. For Your Honour's refusal to have properly charged the Jury on the responsibility of air carriers, the Jury were in a state of confusion as to the actual amount of general damages to be awarded plaintiffs. Hence, Your Honour's refusal to have increased the award of general damages, thereby confirming and affirming the Jury's verdict which is contrary to the weight of evidence, precipitated plaintiff's exception to both the Jury's verdict and Your Honour's Final Judgment and appealed to the Supreme Court."*

On the other hand appellant SN Brussels Airlines submitted for appellate review, a fourteen count bill of exceptions. Counts 4, 5, 13 and 14, being relevant to the disposition of this case, are quoted as follows:

*"4. 1st defendant/appellant says that the verdict of "LLABLE" brought against it by the trial jury on July 21, 2008 is manifestly against the weight of evidence adduced at the trial. 1st defendant/appellant says that during the trial, plaintiffs produced three (3) witnesses whose testimonies failed to establish any breach of the contract of carriage by the defendant. Although the basis of plaintiffs' action is that 1st defendant breached the carriage of contract by its failure to have informed the plaintiffs about the change in its flight schedule, however, the testimonies of all of plaintiffs' witnesses confirmed that it was the plaintiffs who were in breach of their contractual obligation when they failed to provide the defendant with their contact telephone numbers when they purchased their tickets from the 2nd defendant or when they disembarked from 1 st defendant's flight in Brussels on August 20, 2002."*

*"5. Plaintiffs were in breach of the conditions of the carriage of contract when they failed to establish that they reconfirmed their return flight directly with 1 st defendant 72 hours prior to their departure from the United States. In order to establish a breach on the part of 1 st defendant, plaintiffs were under a legal duty to establish the following facts during trial: (a) that they left contact numbers with 1st defendant as required by the Africa Reconfirmation card issued to all passengers of 1 st defendant; (b) that although they left their contact numbers with 1st defendant, 1st defendant*

*failed to inform them of the change of its flight schedule from the summer schedule to the winter schedule; and (c) that they reconfirmed their return flight with 1st defendant seventy-two (72) hours prior to their departure from the United States.*

*Although plaintiffs failed to produce any evidence to substantiate these vital points, the jury erroneously brought a verdict of "Liable" against 1st defendant. 1st defendant/appellant says that because the jury's verdict is not supported by any evidence adduced at the trial, Your Honor therefore erred as a matter of law when you denied the Motion for New Trial and confirmed the jury's verdict in your final judgment of August 19, 2008. To which jury verdict and the final judgment 1st defendant excepts."*

*"13. 1st defendant submits that the law extant in this jurisdiction is that general damages should not be less than ten percent of the special damages nor more than hundred percent of the special damages. See A.D.C. Airlines vs. Sannoh, 39 LLR 431 (1999); Knuckles vs Liberian Trading and Development Bank, 40 LLR 515 (2001). The award of US\$30,000.00 as general damages was contrary to the principle of law enunciated by the Supreme Court in the cases cited above. The court's final judgment confirming the jury's award of general damages in the amount of US\$30,000.00 is clearly erroneous."*

*"14. 1st defendant further says that the award of US\$30,000.000 as general damages is contrary to and in violation of the provisions of the Warsaw Convention. Under article 21 of the Convention, a carrier cannot be held liable if the carrier proves that the damage was caused by or was contributed to by the negligence of the passenger. 1st defendant submits that it proved conclusively at the trial by evidence which was not rebutted by the plaintiffs that any injury the latter sustained was due entirely to their breach of the conditions of the contract of carriage by their refusal to reconfirm the second leg of their trip from Brussels to Monrovia with the 1st defendant. Applying the provisions of the Convention, as a matter of law, the jury should not have found 1st defendant liable."*

Having carefully examined the records transmitted to us, the following three issues are dispositive of this case:

1. Whether the Warsaw Convention of 1929, as amended at The Hague in 1955 providing for, and limiting remedy in respect to claims for injuries and damages arising out of international air carriage, applies to, and is enforceable in this jurisdiction?
2. Whether the verdict returned by the trial jury and the court's final judgment entered thereon were contrary to the weight of the evidence as contended by

Appellant SN Brussels?

3. Whether the general damages awarded to the Kessellys were disproportionate to the amount of special damages and therefore inconsistent with decisional laws in this jurisdiction? Or put differently, whether the award of general damages to the Kessellys was consistent with the laws hoary with time and therefore controlling in this jurisdiction?

Answering the first issue respecting the applicability of the Warsaw Convention as amended to our jurisdiction, we recourse to a review of our jurisprudence.

It is well to note that a review of both the transmitted records as well as our decisional laws shows that both appellants in these proceedings, the Kessellys as well as SN Brussels, are agreed on the applicability of the Warsaw Convention to our jurisdiction. The parties however disagree on the applicable provisions of the Convention to the facts and circumstances of this case.

It is also important to state that the case *Swissair v. Kabalan* decided by this Court in 1988, as reported in 35 LLR page 49, text at page 57, confirms that not only is Liberia a signatory to the Warsaw Convention, but a High Contracting Party by virtue of its ratification of the said international instrument. Liberia's ratification of the Instrument devolves on the nation both national and international duties. Consequently, unless the Convention provides for the remedy being sought by Appellants Kessellys, this jurisdiction is legally obligated not to otherwise provide any such remedy. As detailed in this Opinion, the parties are in agreement that the relationship existing between them is strictly regulated by the contract of carriage.

This Court recognizes that the Convention is tightly drawn, a reflection of tough negotiations characteristic of international instruments. But we are equally mindful, as a High Contracting Party, that to allow any remedies outside the Convention to be available to a claimant, not only defeats the intents and purposes of the Convention, but to do so would engender, undesirably, endless litigations. Therefore, this Court holds and applies the principle that where the Convention has provided no remedy, no such relief can be made properly available in this jurisdiction.

Chapter III of the Warsaw Convention provides for liability of the carrier under a wide range of circumstances. Article 17 provides:

*"The carrier is liable for damage sustained in the event of the death or wounding of a passenger or*

*any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking."*

Article 19 states:

*"The carrier is liable for damage occasioned by delay in the transportation by air of passengers, baggage, or cargo."*

Article 20 stipulates:

*"In the carriage of passengers and baggage, and in the case of damage occasioned by delay in the carriage of cargo, the carrier shall not be liable if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for them to take such measures."*

Appellant SN Brussels has heavily relied on the following Articles 21.1, 22.1 and 24.1 & 2 of the Warsaw Convention. Article 21.1 provides:

*"In the carriage of passengers and baggage, if the carrier proves that the damage was caused by or contributed to by the negligence of the person suffering the damage the court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability."*

Article 22.1 provides:

*"In the carriage of persons the liability of the carrier for each passenger is limited to the sum of two hundred and fifty thousand francs (16,600 Special Drawing Rights). Where, in accordance with the law of the Court seized of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed two hundred and fifty thousand francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability."*

While subsections 1 and 2 under Article 24 obligate as follows:

*1. In the carriage of passengers and baggage, any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention, without prejudice to the question as to who are the person who have the right to bring suit and what are their respective rights.*

*2. In the carriage of cargo, any action for damages, however founded, whether under this Convention*

*or in contract or in tort or otherwise, can only be brought subject to the conditions and limits of liability set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. Such limits of liability constitute maximum limits and may not be exceeded whatever the circumstances which gave rise to the liability.*

Appellants Kessellys are contending, and in due consideration of the circumstances of their case at bar, have urged this Court to strictly apply article 25 of the Convention. Article 25 of the Warsaw Convention provides:

*"In the carriage of passengers and baggage, the limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment." [Emphasis supplied].*

To decide which provision/s properly apply, the conduct of each party in these proceedings must be examined. In this respect, the critical question now would be whether Appellants Kessellys suffered injury, and by their conduct caused or contributed to the injury for which they now claim damages. We take recourse to the facts as recorded in the case file.

In her testimony in chief, Co-appellant Willette Kesselly told the court that she and her children were placed *at gun point and taken under maximum security guard escort, driven in a sealed up security van and thereafter detained over night. She claimed that during said detention, the Kissellys were exposed to cigarettes fume while sealed up with strange men in the same prison; She also told the court and jury that as from their arrival on the morning of November 21 to their deportation on the following day, November 22, SN Brussels failed and neglected to provide food and water for her and her children throughout their stay in Brussels. According to the witness, she and her children were also exposed to harsh winter weather for thirty minutes when they were forced to stand waiting on the steps of Continental Airlines without winter coats and clothes. At no fault of Appellants Kissellys, the witness said she and her children were subjected to the disgraceful deportation back to America. These are all unrebutted evidence against 1<sup>st</sup> defendant SN Brussels. The injury suffered by the Kessellys, according to Co-appellant Willette, was proximately caused by SN Brussels' failure to have informed its agent and partner, Continental Airlines, of the change in flight schedule for the winter season since September 11, 2002. The witness said, if such information on change of flight schedule had been provided by Appellant SN Brussels to its agent, Continental Airlines, and duly acted upon by said agent, Appellants Kissellys would not have been in Brussels in the first place to have been subjected to torture and degrading human treatment at the hands of the Belgium Immigration personnel.*

Appellant SN Brussels contends that Appellants Kessellys' neglected and failed to comply with the seventy-two (72) hours re-confirmation of tickets in keeping with their obligation under the conditions of contract of carriage. Appellant SN Brussels also argued that the Kessellys did not produce any evidence to the contrary during the entire trial. Under the circumstances, Appellant Brussels insists that Article 21.1 of the Convention applies. For, it provides essentially that where the damages complained of were caused by or contributed to by the negligence of the person suffering the damage, as in the case of the Kessellys, the carrier may partly or wholly be exonerated from liability.

But as regards this question, the witness offered a detailed account of what she averred obtained. She explained that she purchased through Karou Voyage Travel Agency, Appellant SN Brussels' ticketing agent, three (3) round trip tickets for herself and her children to travel from Monrovia to Charlotte, North Carolina, United States of America and back to Monrovia. After being boarded on SN Brussels Airlines in Monrovia, she said their first stop was Brussels, Kingdom of Belgium. Upon arrival, and following formal inspection of their travel documents, they were escorted by agents of SN Brussels Airlines to a different plane. Although their tickets were SN Brussels Airlines' tickets, the witness said SN Brussels' agents gave her and her children boarding passes and also helped to embark them on Continental Airlines. Continental Airlines that took them to Newark, New Jersey and, to Charlotte, North Carolina, U.S.A., the final destination of the first leg of their trip.

Witness Willette Kesselly further testified that in keeping with the 72 (seventy two) hours confirmation notice requirement, she, on three occasions, telephoned Continental Airlines, SN Brussels connecting flight, and confirmed their return leg to Monrovia via Brussels. Having reconfirmed the return trip, the witness explained that she and her children were received at the airport in Charlotte, checked in and boarded by agents of Continental Airlines. According to her, only after their arrival at Brussels Airport, the agents of SN Brussels told her about the change in flight schedule. She further explained that agents of SN Brussels then took away their passports along with their over night bags and promised to arrange hotel accommodation for them. Thereafter, the witness said she and her minor children sat there waiting from 8: 45 a.m. to evening hours. During this long waiting period, the witness said she and her children had no clothes to change and SN Brussels' agents also gave them no water or food. Even her baby's milk had run out. Around 7 p.m., according to the testimony, two men approached the witness and asked her to sign an instrument written in a foreign language. During cross examination, the witness was asked whether the two

men she identified to be security officers "were the same ones who took you and your children from the terminal to a confined area within the Brussels Airline?" The witness' answer was:

"Yes, they were the two men, who took us from the terminal and took us to the Security Area, where the other security personnel were already seated for us."

To a similar question, the witness further said:

"On November 21, 2002, my children and I were in jail and so we did not know at the time the money was missing because we did not have the bags that contained the money, we were still in jail; there it was impossible to report same to the Belgium Security."

The fourteen year-old co-appellant, testifying, corroborated the confinement of the Kessellys at Brussels Airport. This is what 14 year Miss Kesselly said: "No, we were not given any food, nothing for eating."

Further, Miss Kesselly was asked to tell the court whether the people that reportedly jailed the Kessellys were people working with SN Brussels?

The witness answered:

"I do not know whether they worked for SN Brussels, the two men that carried us were in ordinary clothes. In the car, the guards there were in army clothes."

From these testimonies, it appears that Appellants Kessellys discharged their contractual obligation by re-confirming their tickets consistent with the contract of carriage. Based on the re-confirmation, Continental Airlines, acting as agent of SN Brussels in these circumstances, received the Kessellys, checked them in and boarded them to Brussels Airport with the knowledge that the passengers will fly the next day, November 21, 2002 to Monrovia.

To the mind of this Court, the act by Continental Airlines, as agent of Appellant SN Brussels, to board the Kessellys on its aircraft from America and fly them to Brussels Airport, constitutes negligent and reckless act by Continental Airlines acting for Appellant SN Brussels. Continental Airlines as agents of SN Brussels knew or ought to have known that faced with such a situation, Appellants Kesselly as passengers would suffer some damages. Such reckless conduct as demonstrated by Continental

Airlines, acting within its scope as agent of Appellant SN Brussels, strictly places this case under the application of Article 25 of the Warsaw Convention and removes it from within the ambit of Article 22. For a re-statement, Article 25 stipulates:

*"In the carriage of passengers and baggage, the limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment."*

In reviewing also, this Court did not see anything in the records which refuted or impeached the credibility of the Kessellys' testimonies. Further, nothing was demonstrated to convince a reasonable person that flying Appellants Kessellys from the USA to Brussels, where they were subjected to the terribly discomforting and mentally disturbing circumstances, was a consequence of the Kessellys' contributory negligence. That argument, as being urged upon this Court, has not, to say the least, impressed.

That Appellant SN Brussels failed to prove that Appellants Kessellys did not re-confirm their return trip appears to be stated in a letter dated January 15, 2003, under the signature of Ilse Gallot of the Customer Relations Department, SN Brussels Airlines.

"...You state in your letter that Mrs. Kesselly contacted Continental Airlines prior to her departure in order to confirm the return flights. Why did she only confirm the return flights with Continental Airlines? As the ticket was bought with SN Brussels Airlines, flights to and from Africa, and at that moment give us the opportunity to inform her about the schedule change and the proposed solution?

Our colleagues at Brussels airport did their utmost to assist Mrs. Kesselly but as the Immigration officers at Brussels Airport concluded that the responsibility lay with Continental Airlines and therefore decided that Continental Airlines had to transport Mrs. Kesselly and her children back to Charlotte, there was nothing else we could do..."

From reading this letter, one may be tempted to ask: was Continental Airlines notified about the change in flight schedule? If the answer is in the affirmative, was Continental Airlines then negligent and reckless in her failure to have informed Appellants Kessellys as to that change in schedule? Or, did Appellant SN Brussels



actually notify its agent, Continental Airlines, as to its change of schedule consistent with the winter weather? The duty of proof that the damage was caused or contributed to by the passenger in this case is squarely placed by the Convention on the carrier. Article 21.1 of the Convention states:

*"In the carriage of passengers and baggage, if the carrier proves that the damage was caused by or contributed to by the negligence of the person suffering the damage the court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability."*

We hold that Appellant SN Brussels was clearly negligent in its duty to its passengers in this case. This negligence constitutes a breach of its duty under the Warsaw Convention and the injury suffered by the Kessellys strictly falls within, and is covered under Article 25, where there is finding, as in this case, that the damage resulted from an act or omission of the carrier, his servants or agents, with the intent to cause damage or with knowledge that damage would probably result.

Under the circumstance where there is showing, as in this case, that Appellants Kessellys were treated in manners far from being decent, due to the act or omission by SN Brussels or Continental Airlines in the lawful execution of its duties as agent representative of SN Brussels Airlines, Article 25 stipulates that "...the limits of liability specified in Article 22 shall not apply..." We so we hold.

On the second issue, whether the verdict by the trial jury and the court's final judgment entered thereon were contrary to the weight of the evidence adduced at the trial, Appellant SN Brussels has strongly contended this point in its bill of exceptions. It is the appellant's argument that the verdict and judgment entered thereon are manifestly against the weight of the evidence adduced at the trial. Appellant SN Brussels has submitted that Appellants Kessellys produced three (3) witnesses at the trial; that the testimonies of these witnesses combined failed to establish any breach of the contract of carriage by Appellant SN Brussels.

We must here affirm the general controlling principle of law in this jurisdiction that a verdict and a judgment rendered thereon, if unsupported by evidence, will be set aside. *Insurance Company of Africa/Intrusco Corporation v. Fantastic Store*, 32 LLR 336, 383 (1984).

This Court, at this stage, turns to the records before us to reach a decision on this stark and critical question.

Appellants Kessellys' first witness was co-plaintiff Willette A. Kesselly. In her testimony in chief, the witness offered a detailed account of what obtained. The witness told the court that in August, 2002, she purchased through Karou Voyage Travel Agency, (Second Defendant) and Appellant SN Brussels ticketing agent, three (3) round trip tickets for herself and her two children to travel from Monrovia, Liberia to Charlotte, North Carolina, United States of America, and back to Monrovia. She explained that she and her two children, ages 14 months and 9 years were subsequently boarded on SN Brussels Airlines. She said their first stop was Brussels, Kingdom of Belgium, where upon arrival, and following inspection of their passports, they were escorted by agents of SN Brussels Airlines to a plane. She said SN Brussels' agents not only gave her and her children boarding passes but helped and accordingly boarded them on Continental Airlines, although their tickets were SN Brussels Airlines' tickets. Continental Airlines then took them to Newark, New Jersey and then to Charlotte, North Carolina, U.S.A., the final destination of the first leg of their trip.

While in the United States, she and her children were said to have visited many churches and charity groups, performed musical concerts and raised funds for the school she operates in Liberia. That through these activities, the witness said she received donations. In keeping with the 72 (seventy two) hours confirmation notice requirement, the witness told the court that she telephoned Continental Airlines, SN Brussels connecting flight, and confirmed their return leg to Monrovia via Brussels. The witness said that having confirmed her return trip, she and her children were received at the airport in Charlotte, checked in and boarded by agents of Continental Airlines. When they arrived at Brussels Airport, there she said SN Brussels' agent told her about the change in flight schedule. She further explained that agents of SN Brussels took away their passports along with their over night bags and promised to arrange hotel accommodation for them. Thereafter, the witness said she and her minor children sat there waiting from 8: 45 a.m. to evening hours. During this long waiting period, the witness told the court she had no clothes to change and SN Brussels' agents also gave them no water or food. Even her baby's milk had run out. Further recounting, the witness said that around 7 p.m., two men approached her and asked the witness to sign an instrument written in a foreign language. She said that on her request that they translate the contents of the document, one of the men said: "Madam, this is not an English speaking country; so you sign or go to jail." She said not only she refused to sign the document whose content she did not understand, but she also stood there and kept looking at the two men. She said one of the men then took the baby in the stroller and the other took the 9 years old and asked that the

witness go with them. She said that they walked across the terminal to a van with armed security guards which virtually had no window. They were driven to a building with long stair way. They got down and two security personnel again took the children while the others with their arms walked behind the witness as they climbed the stairs to a place which visibly had no doors. One of the security personnel pushed a button and what appeared as a wall opened. The armed security were said to have escorted the witness and her children into this place and handed them over to the guards in charge. According to the witness, the guard apparently in charge then said to her: "Madam, you are now in prison"; and they then closed the door behind her. According to the witness, she started to cry because, in the sealed up room also, there were some men smoking cigarettes right into her face as she sat there with her minor children. As she cried, the witness further told the court one of the "jailors" who was a lady approached her and asked whether she would like to make a phone call to inform her family about the situation. She said she took advantage of that offer and called her sister in America, who, unfortunately, was not available as it was office hours in America. According to the witness, when her sister called back however, the security guard talked to her and did not allow the witness to receive the return call from her sister. Her sister reportedly contacted the Liberia Consul General in Brussels who, unfortunately, could do very little as it was late in the night. Early in the morning, the "prison guard" woke her up and told her it was time to go back to America. She again started to cry not only because she was filthy, as neither she nor her minor children had taken shower, but also because she was apprehensive as to what could happen to her as her children had no visa to go to America any longer. But all the guards said the flight was ready. When the witness reportedly pleaded with the immigration authority, she was then allowed to speak on the phone. The officer reportedly said to her: "we cannot afford you to remain in prison for five (5) days with your children." The witness explained that she was then removed and taken to a van, this time with two escort vans, carrying armed security personnel.

The Continental Airlines flight was waiting as all the passengers had been boarded. She said that as she sat in the plane and started to cry again due to the untold humiliating treatment, the witness said she was ordered to get out of the plane and was made to stand out on the stairs in Brussels freezing cold for a while as authorities sorted out her return to America. As she stood there helplessly, an employee of Continental came over and took the 14 months old child as the baby was not warmly dressed. She said she and her 14 months old caught serious cold as a result. When she was later taken to her seat, she realized that the envelope she had with the money she raised in America was also missing.

The witness also said:

*"When I returned to America, one of the ladies from SN Brussels called me to apologise for what happened to me and...the second time she called to give the confirmation numbers of the new tickets, which SN Brussels purchased. When I arrived this time in Brussels, the Consul General of Liberia met and talked to me about my situation and personally helped to escort me and my children to the plane. When we got to Liberia, my older daughter was sick and weak, the smaller one took sick so much we had to go to the hospital, Cooper Clinic, where she was treated at that time and even as I speak, she is still sick, from the bad cold, my baby's stroller got missing."*

The witness concluded her testimonies by telling the court that there was exchange of communications between her lawyer and SN Brussels representatives. When this exchange yielded no amicable settlement, she instituted this action.

During their testimonies, the witnesses testified to, identified and confirmed a number of instruments. These included articles drawn on SN Brussels, communications between the counsel for the witness and representative of appellant SN Brussels, as well as Medical Certificate issued by S.D. Cooper Hospital.

On the cross, the witness was asked this question.

"Madam witness, in your testimony in chief, you stated as found on sheet five of yesterday's sitting, "strangely for me two men came to me, and they brought a paper and they asked me to sign that paper which was written in foreign language, "Madam witness, please tell this court and the Trial Jury who were these two men that brought the paper to you to sign?"

A. As I said in my testimony, around six 6:00p.m. two men believe to be Belgium Security Personnel brought a document to me that I identified yesterday, during my direct examination, written in foreign language for me to sign for which I refused that was done late in the evening after we had stayed all day in the terminal.

Q. By that answer, Madam witness, am I correct to say, that these two men you identified to be Security Officers, were the same one who took you and your children from the terminal to a confined area within the Brussels Airline?

A. Yes, they were the two men, who took us from the terminal and took us to the Security Area, where the other security personnel were already seated for us.

Q. Madam witness, in your testimony in chief, you made mention of losing US\$5,210.00 that you say you had on you. When you took the stand yesterday, you told this Court and Trial Jury, that upon the arrival of Brussels, Belgium on August 21, 2002, all of the luggages including overnight bags were taken from you by First Defendant's personnel and you did not have anything with you. Upon the OATH that you took to say the true, please the Court and the Trial Jury, where did you have this envelope containing the US\$5,210.00 since according to you all of the personal effects were taken away from you the by First Defendant.

A. I had the amount of US\$5,210.00, United States Dollars, in an envelope in my bag pocket, as I told you in my testimony. My bag was taken away from me at the terminal and it was returned to me when I entered the plane the first time five minutes after, we were ordered out of the plane, the bags taken again along with the passport and we stood on the step for 30 minutes in the cool, it was winter time, by that time they could give us back our bags and passport to put us back in the plane it was when I realized that the money was missing.

Q. Madam witness, this US\$5,210.00 that you said got missing which you are claiming as part of special damages did you declare the amount to the Belgium Authority upon arrival in Brussels on November 21, 2002?

A. On November 21, 2002, my children and I were in jail and so we did not know at the time the money was missing because we did not have the bags that contained the money, we were still in jail, it was impossible to report same to the Belgium Security, we were still in jail, November 21, 2002.

Q. Madam witness, another aspect of the special damages that you are claiming are medical bill, which you paid at S.D. Cooper Hospital for daughter, Jewel Kesselly, I have in my hand, a medical certificate from that hospital dated March 3, 2003, which states that your daughter was treated twice in December, A.D. 2002, please reconcile the number of visits made/stated in the certificate and the various receipts for medical bills that you are claiming as part of your special damages.

A. When I took my daughter to the hospital, the first time in December, she was really bad off, that is, she was breathing so hard that the doctor put her on medical treatment for which we had to pay when we visited the hospital. Normally, if you go for consultation and you do not have the money at the time to go to the lab or to the pharmacy, you can come back the following day to continue your treatment; also, my daughter was rescheduled in March to continue the same treatment but for

respiratory tract infection for which she suffers, that is the reason why we have different dates subsequently.

Q. The SN Brussels flight you should have boarded on November 21, 2002, from Brussels to Monrovia was changed by First Defendant, SN Brussels on September 11, 2002, from November 21, 2002, to November 28, 2002, and this change was communicated to both Continental Airline and Second Defendant Kayou Voyage. Is it not a fact, Madam witness, that on November 21, 2002, Continental Airlines and not First Defendant, SN Brussels, was held liable for transporting you and your children to Brussels, knowing fully well that the connecting flight had been cancelled as far back as September 1, 2002, and Continental was fined 750 Euros and ordered to take you and your children back to America at Continental Airlines.

A. I am not aware nor responsible for the fine you talked about imposed on Continental Airlines, the agent of SN Brussels for bringing me and my children from America; at the same time, I was not informed of any change of flights whatsoever.

Appellants Kessellys' second witness was 14 (fourteen) years old Hawa Micketta K. Kesselly. She testified in chief corroborating the earlier testimonies of the first witness. She essentially explained about the funds they raised through musical concerts and other activities in America. She recounted her experience as a child during their confinement in Brussels and how they were escorted by armed security officers from the room of confinement to the waiting plane, taken out of the plane and made to stand out in the freezing cold before being re-seated and flown back to America. She also told the Court that throughout their stay in Brussels, the people did not offer them any food nor water. On the cross she was asked:

Q. Thank you Miss Kesselly. In your testimony in chief, you also told this Court and the jury, that upon your arrival in Monrovia, that your mother told the people who went to meet you people that SN Brussels jailed you people. Miss Kesselly, to the best of your knowledge and upon the Bible that you kissed to tell the truth, please tell this court and the jury whether the people you said jailed you and your people were people working with SN Brussels?

A. I do not know whether they worked for SN Brussels. The two men that carried us were in ordinary clothes. In the car, the guards that were in army clothes.

Q. Thank you Miss Kesselly, lastly, in an question to put to you on the direct examination you told this Court and the Trial Jury, that your little sister contracted

cold while in Brussels and that up to now when she got sick can be easy. My question to you is, that the same cold she contracted in 2002, she is still suffering from today?

A. Yes.

Thereafter, the jury put the following question to the witness:-

Q. Miss witness, please tell us, at the time you and your mother, and sister were kept waiting at the airport in Brussels, whether you re-called anybody taking a bag from your mother?

A. Yes, they took our overnight bag, and all of our belongings, including the passport

Q. Miss witness, according to you, when you returned to Liberia, from your trip to America, your little sister was treated for the cold, alleged she contracted during your still in Brussels. Please tell us if you can remember or if you know which hospital she was treated in?

A. We carried her to be treated to the S.D. Cooper Hospital.

Q. Miss witness, after you were taken from your prison the following morning after your detention in Brussels, please tell us, whether any staff from SN Brussels came to accompany you or to see you out to the plane that took you back to the United States of America?

A. Yes, some guards were in army clothes with their guns escorted us to the plane.

Q. Miss witness, during your overnight detention in Brussels, were you given any food to eat?

A. No, we were not giving any food neither eating.

Appellants Kessellys' third witness, Michael K. Kesselly, also testified essentially corroborating the testimonies of the first two witnesses. He also confirmed that he too did call Karou Voyage, SN Brussels' ticketing agent, to reconfirm the return trip of his family. The appellants/plaintiffs thereafter rested.

The records transmitted to us, further reveal that counsel for Appellants Kessellys, on December 7, 2002, addressed a letter of complaint to the Manager, Sabena Brussels

Airlines, Ashmun Street, Monrovia. We provide this communication verbatim:

*"December 7, 2002.*

*The Manager*

*Sabena Brussels Airline*

*Ashmun Street Monrovia, Liberia.*

*Dear Sir:*

*We write to inform you that our legal services have just been retained by Mrs. Williette A. Kesselly to represent her and her children's legal interest relative to a matter between your Airline and them.*

*Our clients, Mrs. Williette a Kesselly and her two children who have been your customers, informed us that your management sold them three airline tickets through the Karovogage Travel Agency serving as your ticket agent located on Broad Street, City of Monrovia, to travel to the United States of America. That on their return to Monrovia, Liberia, your airlines caused her and her two children damages, embarrassment and humiliation by your re-schedule travel arrangements during their travel from the United States of America to Liberia and through SABENA Brussels Airline for not informing them of your change of flight schedule as stated herein below.*

*Mrs. Williette A. Kesselly explains that she travelled to Newark and to Charlotte, North Carolina on the 21<sup>st</sup> of August 2002 with her two (2) kids, Hawa Mickeete Kesselly and Jewel Kesselly from Monrovia. They were connected from the SN Brussels Airlines to the Continental Airline from Brussels to the United States. On the tickets issued by your Airline through the Karovoyage Travel Agency, your ticket agent located in the City of Monrovia, Broad Street, their return departure date from Charlotte, N.C. to Newark, NJ and to Brussels to Liberia was Thursday, November 21, 2002.*

*On three different occasions prior to their departure, they made telephone calls to the Continental Airline to confirm their departure date. They were not informed that there was a change of date/day from Brussels to Liberia as scheduled. They boarded the plane (Continental Airline) from Charlotte, NC to Newark, NJ and to Brussels on the 20<sup>th</sup> of November 2002 to meet up with their November 21, 2002 departure schedule as confirmed.*

*Upon our clients arrival in Brussels on the 21<sup>st</sup> of November 2002, an Agent at the checking booth in that country informed that that the flight had been changed from Thursday, November 21, 2002 to Wednesday, November 27, 2002 instead. The Agent then called two (2) of the SABENA Brussels female agents who came and talked to Mrs. Kesselly about the situation at about 8:45a.m. The two (2) female agents of the SABENA Brussels then took Mrs. Kesselly and her two (20 kids passports and tickets away. They also informed our clients that they were going to*



*arrange for hotel accommodation for the five (5) days until the following week, Wednesday November 27, 2002. They also informed our clients that they were going to arrange for hotel accommodation for the five (5) days until the following week, Wednesday November 27, 2002. Mrs. Kesselly waited from 8:45a.m. to 5:00p.m with her two (2) kids at the ages of fifteen (15) months and nine (9) years respectively, without food and no proper information about their plight in Brussels.*

*Little over 6:00p.m. that day, two (2) immigration men came to Mrs. Kesselly and asked her to sign a document that was written in a foreign language different from English that she could not read nor understand. She refused to sign because they refused to interpret the said content of the document to her, and they made this statement to Mrs. Kesselly: "This country is not an English speaking country, madam, we are not responsible." This was said to her in a very harsh tone in English.*

*The Immigration men then took Mrs. Kesselly and her kids from the terminal and took them to a confined area where they were locked up in prison for one night. There were some other men in the room who were smoking cigarettes. The smoke was too much in the room that inhaling it caused a lot of implications for Mrs. Kesselly and her kids. Presently, her fifteen (15) months old baby girl is suffering from deep cold since that night.*

*The following morning November 22, 2002 at about 7:00a.m., one of the guards walked into the room, woke Mrs. Kesselly and her kids up and asked them to get ready to be sent back strangely to America. Our clients then pleaded with the immigration to kindly allow them to wait and grant them entry visas because it was too much of a difficulty for them especially, for the kids whose American one way visas had already expired. The Immigration police who talked to Mrs. Kesselly by a telephone told her that there was nothing to be done. He also asked her this question: "Do you want to remain in prison for five (5) days with those kids?" Mrs. Kesselly response was "please help us because my kids do not have another entry to the United States." But he refused and asked that our clients get ready to board the plane.*

*At the time, all of our clients' documents were seized and all of their baggage were kept by the Immigration officers. They had no clothes to wear so they had to remain in the filthy clothes they had worn since their travel from the United States." But he refused and asked that our clients get ready to board the plane.*

*At the time, all of our clients' documents were seized and all of their baggages were kept by the Immigration officers. They had no clothes to wear so they had to remain in the filthy clothes they had worn since their travel from the United States. They were escorted to the plane by almost seventeen (17) Police and Immigration personnel as if they were terrorists and placed in a sealed up security van to be transported to the plane.*

*After Mrs. Kesselly and her kids were seated in the plane (Continental Airline), they were then*

*asked out of the plane and placed on the steps of the plane with the place freezing cold for over thirty minutes.*

*At the time, when Mrs. Kesselly and her kids were being drilled back and forth, she lost an envelope that contained US\$5,210.00 (Five Thousand Two Hundred Ten United States Dollars. This amount was solicited from individuals, church groups and relatives for the purchasing of the school's land in Liberia, the purpose of her travel to the United States in the interest of her school, the Micketta's Nursery Kindercare & Preparatory School. The door of the plane was ordered open and they went back in and were flown back to Newark, NJ and to Charlotte, NC.*

*Upon Mrs. Kesselly and her kids arrival in Charlotte, she had to call for a taxi that took them for US\$100.00 (One hundred United States Dollars) to their destination. They were not accommodated nor fed by the Airline for the five (5) days they were in Charlotte, NC. They got very sick but had no means of going to hospital. All efforts were made to get Continental Airline's help but they were told that they were not responsible for whatsoever difficulties they encountered. Presently, they are still ill and need medical attention. Her nine (9) years old daughter has been dizzy and weak, while she Mrs. Kesselly suffered back pains and the baby with deep cold in the chest and are now receiving medical treatment.*

*According to the new flight schedule, our clients boarded the plane on the 27th and 28th of November 2002 from Charlotte to Newark to Brussels and to Monrovia.*

*This situation has made Mrs. Kesselly and her kids to suffer distress, emotional imbalances and embarrassment because of the way they were treated as criminals. This is a formal complaint to your office and let it claim your immediate attention.*

*In view of the above, our clients, have instructed us to file legal proceedings against your Airlines for reparation for the loses, shame, false imprisonment, mental anguish, disgrace, embarrassment and humiliation which she and her kids sustained by your Airline.*

*However, it being our policy not to proceed to court without firstly having made all efforts to amicably resolve such matters, we hereby cite your management to a conference with us and our clients on the 12th day of December, A.D. 2002 at the hour of 5:00a.m. at the above office in order to have this matter amicably resolved.*

*Upon your failure to appeal for said conference, we would be left no alternative but to institute legal proceedings against your management for damages, both special and general without further notice.*

*The ball is in your court to avoid the embarrassment.*

*Kind regard.*

*Very truly yours,*

*(Signature)*

*Marcus R. Jones*

*Counsellor-at-law*

*Cc: Mr. & Mrs. Michael K. Kesselly*

Ilse Gallot, customer relations officer, SN Brussels Airlines, on January 15, 2003, responded to the above quoted letter. The response read:

*Mr. Marcus R. Jones*

*Counsellor at Law*

*Jones and Associates*

*Legal Consultants*

*Suite 6, Beauty Building*

*Mechlin Street*

*Opposite Finance Ministry*

*P.O. Box 10-0991*

*1000 Monrovia 01*

*Liberia*

*Ilse Gallot*

*Customer Relations*

*SN Brussels Airlines*

*The Corporate Village*

*Da Vincilaan 9 Box 3.3*

*1930 Zaventem*

*Tel: 00.32.2.723.85.70*

*Fax 00.32.2.723.81.10*

*Infobrussels-airlines.com*

*Zaventem, 15 January 2003.*

*Our ref.: CR/2002006538/IG*

*Dear Mr. Jones,*

We thank you for your letter of December 7, 2002, concerning the planned travel of Mrs. Kesselly and her two children from Charlotte to Monrovia via Newark and Brussels on November 21, 2002.

We sincerely regret the difficulties they encountered due to the schedule change of our flight from Brussels to Monrovia. We present our sincere apologies for the inconvenience they were caused.

However, please allow me to explain that, as there was no contact number present in the reservation file, it was impossible for us to contact Mrs. Kesselly to inform her of this change. You state in your letter that Mrs. Kesselly contacted Continental Airlines prior to her departure in order to confirm the return flights. Why did she only confirm the return flights with Continental Airlines? As the ticket was bought with SN Brussels Airlines, flights to and from Africa, and at that moment give us the opportunity to inform her about the schedule change and the proposed solution?

Our colleagues at Brussels airport did their utmost to assist Mrs. Kesselly but as the Immigration officers at Brussels Airport concluded that the responsibility lay with Continental Airlines and therefore decide that Continental Airlines had to transport Mrs. Kesselly and her children back to Charlotte, there was nothing else we could do.

We re-iterate our apologies for the unfavourable impression Mrs. Kesselly retained from our company but hope you understand that in view of the above, we are unable to comply with your request for compensation.

Yours sincerely,

(signature)

Ilse Gallot Customer Relations

What appears to be on second thought was a second communication from Gallot dated February 4, 2003 and sent to appellant's Kessellys' counsel. The letter reads thus:

Dear Mr. Jones,

Thank you for your email.

Please allow me to point out that in our letter of January 15, 2003, we had to decline all responsibility in this case and therefore we cannot comply with your request for compensation.

Confident you will understand our position in this matter, we remain,

Kind regards,

Ilse Gallot Customer Relations officer.

It is also well to note that when appellants/plaintiffs rested with production of evidence, SN Brussels moved the court to enter judgment in its favour during trial. Counsel for Appellant SN Brussels submitted that Appellants Kessellys having miserably failed to establish a prima facie case of damages for breach of contract against SN Brussels, Appellant SN Brussels was therefore entitled to judgment as a matter of law.

The motion was resisted and the court denying the motion in its ruling dated July 10, 2008 stated:

*"The Court says that in its mind, the plaintiffs by its evidence established a cause of action against the defendant; and ....this evidence standing not controverted, is sufficient to hold the defendant liable for any damages that may have been sustained by the plaintiff's as the outcome of the action or omission of the First Defendant. Damages are based on fault; that if the defendant, according to the plaintiffs evidence had not breached its contract of carriage, no damages would have been suffered as outcome of the contract of carriage."*

Appellant SN Brussels then took the stand and produced four witnesses. The first witness Faith Davis, a former station Manager of appellant SN Brussels told the court that SN Brussels Airlines changed their flight schedule to the winter seasons, after Appellants Kessellys left Liberia and all of the travel agencies were informed about the change in flight schedule. She also explained that all passengers were required to reconfirm their flight 72 hours before departure. She also averred that every passenger was given "reconfirmation card" to be filled up reconfirmation.

*"Upon the departure of Mrs. Kesselly and her family from the United States of America, SN Brussels Airlines winter schedule was in force. So when she boarded the Continental Airlines flight from the United States of America for SN Brussels, the flight from Brussels to Monrovia had already left. Upon Mrs. Kessellys' arrival in Brussels she could not had made the flight to Monrovia and as such, without holding a visa for Belgium, the Belgium immigration officers refused her entering into Belgium, she was given to Continental to be taken back to the United States of America. Giving that the Continental Flight from Brussels back to the States of America had left, Mrs. Kesselly and her children were confined to the Airport. The next day, Continental Airlines being responsible for bringing Mrs. Kesselly and her children into Brussels were fined and have to buy three round tickets to take Mrs. Kesselly and her children back to the United States of America, where they stayed until the next available flight to Monrovia was available..."*

On cross, the following question was put to the witness:

Q. Madam witness, you have stated that in the event of cancellation of flight, or in the event of no flight at all in-keeping with the contract, accommodation is provided the passengers by the Airline. Tell us why was the plaintiffs not provided accommodation by SN Brussels or its agent Continental Airline, and partner when they arrived in Brussels on November 21, 2002?

A. As I previously stated, Continental Airlines was not acting as an agent for SN Brussels Airlines. SN Brussels Airlines flight schedule was changed about a month or more before the departure of the Kesselly's from the United States of America and as such. in the Airlines industrial the lifted carrier bear the responsibility until passengers connect on the other carrier and that was the reasons why Continental felt liable and issued the Kesselly's tickets to go back to the United States of America knowing fully well that Continental Airlines did not follow SN Brussels winter schedule as such SN Brussels could not have accommodated them.

Q Madam witness, I put it to you that SN Brussels did offer to accommodate the plaintiffs but that SN Brussels claimed that the plaintiffs did not have visa to enter the City of Brussels for hotel accommodation. Are you aware of that?

A. If that was offered to them, it was not done in keeping with the binding duty of SN Brussels Airlines; it may have been an offer, not the duty of SN Brussels.

The other three witnesses, who were neither witnesses to the scene nor in contact with Belgian Security Officers, took the stand and narrated their individual experiences in the event a passenger missed out on his flight. They said at no time anyone of them was ever maltreated or imprisoned at Brussels airport when they faced a similar situation. The combined probative value of testimonies of SN Brussels' witnesses appeared to be marginal, if the verdict is anything to go by. While this Court agrees with Appellant SN Brussels that Article 21.1 of the Warsaw Convention absolves a carrier of liability where there is proof that the passenger caused or contributed to the damage complained of, Appellant SN Brussels, however, failed to provide any such proof during the trial. At the end of the trial therefore, the trial jury brought a verdict in favour of Appellants Kessellys supported by the evidence adduced.

This Court cannot but disagree with Appellant SN Brussels that the finding by the

jury is not in accord with the evidence adduced at the trial and that the final judgment of the court below affirming the verdict should be disturbed. In both *Holder v. American Life Insurance Company*, 29 LLR 143, 165 (1981) and *Liberia Oil Refinery Company v. Mahmoud*, 21 LLR 201, 214-215 (1972) this Court held:-

*"In the trial of civil cases, it is the province of the jury to consider the whole volume of testimony, estimate and weigh its value, accept, reject, reconcile, and adjust its conflicting parts, and be controlled in the result by the part of the testimony which it finds to be of greater weight. The jury is the exclusive judge of the evidence, and must in reason be the exclusive judge as to what constitutes the preponderance of the evidence. Accordingly, where the jury have reached a conclusion after having given consideration to evidence which is sufficient to support a verdict, the decision should not be disturbed by the Court."*

During the entire trial, appellant SN Brussels failed to contradict the testimonies of the Kessellys' that they were confined under rather inhospitable conditions very similar to imprisonment. The Kessellys' testimonies also that they were kept un-accommodated and provided no food or water, was also not contradicted. The testimonies also offered by the Kessellys' that they were treated by security officers as if they were criminals, escorted by these officers to a waiting plane, removed from the plane and made to stand outside during freezing cold while Co-appellant Williette Kesselly carried her fourteen months old child, stand un-refuted.

As held in *Vianini Limited vs. McBourough*, 19 LLR 39, 48-49 (1968), and sundry of cases, and unlike a criminal case, "preponderance of the evidence suffices as proof" especially where the defendant made no effort to contradict same.

To the mind of this Court, the testimonies of Appellants Kessellys as to reported injuries, inconveniences and embarrassments they suffered at the instance of Appellant SN Brussels, changed the burden of proof as the subject matter of negative averment shifted the burden clearly and squarely to the peculiar knowledge of Appellant SN Brussels. For under our law, it is sufficient for a party making an allegation to establish his case by a preponderance of the evidence. 1 LCL Rev. Civil Procedure Law, tit. I Section §25.5 (1) & (2).

As to what constitutes preponderance of evidence, Mr. Justice Horace speaking for this Court has observed:-

*"...Preponderance of the evidence,...has no reference to the relative number of witnesses testifying for the opposing parties. The numerical strength of witnesses is not decisive of the weight of their*

*testimony, and does not establish the truth of the matters as to which they may testify. The jury is free to believe the minority of the witnesses, and a verdict based upon the testimony of such minority will not be disturbed because opposed to the testimony of the majority. Witnesses may be of equal candour, fairness, intelligence, and truthfulness, and be equally well corroborated by all the other evidence, may have no great interest in the result of the suit, yet the weight to be given their respective testimony may differ materially. The opportunity for knowledge, the information possessed, the manner of testifying, and many other things that go to convince the mind must be taken into consideration. The preponderance of the evidence maybe established by a single witness as against a greater number of witnesses who testify to the contrary".* Liberia Oil Refinery Company v. Mahmoud 21 LLR 201, 213-214 (1972).

We therefore hold that Appellants Kessellys did make a prima facie case in support of their complaint.

On the third and final question respecting what Appellant SN Brussels referred to as award disproportionate to the amount of special damages and therefore contrary to the laws controlling in this jurisdiction, not only have we taken keen interest in this argument, but also we have painstakingly reviewed the cases Appellant SN Brussels cited in support of its argument.

In A.D.C. Airlines v. Sannoh, 39 LLR 431, decided in 1999 this Court sought to set a parameter for minimum and maximum as a controlling principle to govern awards in damages suits in our jurisdiction. Mr. Justice Morris speaking for the Court said:

*"The last issue of importance is the verdict of the jury which awarded the appellee the amount of US\$80,000.00 as general damages. Reviewing the records of the trial, we find nothing to warrant the verdict in that amount. It is true that general damages of US\$100,000.00 that were prayed for by the appellee which the jury reduced to US\$80,000.00 are not required to be pleaded specifically, but this clearly required some evidence to sustain the awarding of US\$80,000.00 as general damages...."*

*"Predicated upon the excessiveness of the verdict with respect to the general damages awarded, it is the holding of this Court- that the general damages of US\$80,000.00 (Eighty Thousand United States Dollars) are reduced to not less than 10% and not more than 100% of the special damages awarded plus actual litigation costs, in the interest of substantive justice, notwithstanding, the affirmation of the judgment of Knuckles v. The Liberian Trading and Development Bank, Ltd (TRADEVCO). the court below for the purpose of discouraging unjust enrichment and excessive awards...." lbd. 445-446.*



In 2001, the Supreme Court affirmed the principle enunciated in the A.D.C. case in

Speaking for this Court in the Knuckles case, Mr. Justice Wright said:-

*"This Court reaffirms its holding in the ADC case, cited supra, that for general damages to be awarded there must be some evidence of damage or loss and that the award must be somewhat proportionate to the actual damage sustained. According to that rule, the general damages awarded must be between ten percent (10%) and one hundred percent (100%) of the special damages...." lbd. 526.*

Notwithstanding our tireless endeavours to find the legal authority to support the principle that general damages award should not be less than 10% and not more than 100% of the special damages in what the Court referred then to be *"in the interest of substantive justice....and [to] discourage unjust enrichment and excessive awards"*, yet we have ended without finding any such authority.

Under these circumstances, this principle, as enunciated in the ADC and Knuckles cases, can no longer be upheld by this Court .The two cases, A.D.C. Airlines v. Sannoh as well Knuckles v. The Liberian Trading and Development Bank, Ltd (TRADEVCO), are hereby recalled.

The controlling legal principle in this jurisdiction in respect to general damages is detailed in many cases with "Intrusco Corporation vs. Osseily", 32 LLR 558 (1985) being one of the most instructive.

In the Intrusco case, cited above, the plaintiff's vehicle was insured with the defendant corporation. When the insured car was involved in an accident, the defendant corporation took the vehicle to a garage for repairs. However, the corporation later declined the repair responsibility contending that the plaintiff, with the sole purpose of collecting insurance money, intentionally planned and carried out the accident. The plaintiff then sued in an action of damages. He claimed in his action, both special and general damages.

The trial jury returned a verdict awarding the plaintiff \$4,960.00 as special damages. The jury also found \$30,000.00 for the plaintiff as general damages.

Of the issues revealed on appeal were:

(a) That plaintiff did not prove the special damages as claimed;

(b) That the amount awarded as general damages was excessive as the award was far above the money value of the vehicle, the subject of the damages suit, and also the costs of repairs of said vehicle. The value of the car was \$5,000.00 while the repair cost was \$3,600.00.

This Court spoke to the salient contentions of exorbitant awards and the measurement to be judicially applied in awarding general damages for injuries.

Borrowing from common law principles, and writing for this Court, Mr. Justice Koroma said:

*"Exemplary damages are damages on an increased scale, awarded to the plaintiff over and above what will barely compensate him for his property loss, where the wrong done to him was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant are intended to solace the plaintiff for mental anguish, laceration of his feelings, shame, degradation or other aggravations of the original wrong, or else to punish the defendant for his evil behaviour or to make an example of him."*

He further said:

*"Exemplary or punitive damages are generally defined or described as damages which are given in enhancement merely of the ordinary damages of the wanton, reckless, malicious, or oppressive character of the acts complained of. Such damages go beyond the actual damages suffered in the case; they are allowed as a punishment of the defendant and as a deterrent to others."*

*"In most jurisdictions exemplary damages are allowed and awarded as a punishment to the defendant and as a warning and example to deter him and others from committing like offenses in the future. Under this theory such damages are allowed on grounds of public policy and in the interest of society and for the public benefit, not as compensatory damages, but rather in addition to such damages"*

*"It is also held that such damages are given on the theory that the injury is greater, and the actual damages are increased by reason of the aggravating circumstances. Thus, it has been held that they be given as compensation for injuries which cannot be accurately estimated, such as mental distress and vexation, or what in common language is spoken of as "offenses of the feelings", "insults", "indignity".*

Continuing, the Court said: *"Predicated upon these legal authorities, we can safely say that the trial jury did not abuse its discretion in awarding the amount of \$30,000.00; nor did the trial judge err when he confirmed this award. For exemplary or punitive damages are given as compensation for injuries such as mental anguish and distress, insult, indignity and hurt to the plaintiff's feelings, etc. which can not be accurately estimated. As the allowance or refusal to allow exemplary damages rests in the discretion of the trial jury, so also the amount recoverable is not a matter of right subject to question by parties. A trial court has no legal authority to set aside a jury's verdict on the ground that the exemplary or punitive damages awarded is exorbitant, as such court has no legal or judicial yardstick to measure mental anguish and distress, insult and indignity for which such damages are awarded as compensation.*

*"... The general doctrine is that the punitive damages awarded must bear some relation to the injury inflicted and the cause thereof. They should not be awarded in a case where the amount of compensatory damages is adequate to punish the defendant. And in a case where such compensatory damages are not adequate for the purpose of punishment, only such additional amount should be awarded as taken together with the compensatory damages will be sufficient for that purpose. The amount to be awarded rests largely in the discretion of the jury having regard to all the circumstances of the particular case.*

This Court holds and affirms this long held principle of law in our jurisdiction; that general damages are not required to be specifically pleaded; that general damages *are given as compensation for injuries as mental anguish and distress, insult, indignity and hurt to the plaintiff's feelings; that whether to allow or refuse to allow general damages rests in the discretion of the trial jury and the amount recoverable is not a matter of right subject to question by parties. In the same sense, a trial court has no legal authority to set aside a jury's verdict on the ground that the award given by a jury for general damages is exorbitant, for a court has no legal or judicial yardstick to measure mental anguish and distress, insult and indignity for which such damages are awarded as compensation.*

Also, in their bill of exceptions, Appellants Kessellys have contended that the trial judge erroneously charged the jury as to the law they should apply or consider. According to Appellants Kessellys, this charge placed the jurors *in a state of confusion as to the actual amount of general damages they could award to Appellants Kessellys* in arriving at a verdict. Appellants Kessellys also insisted that the trial judge committed reversible error when he refused to properly direct the petit jury on liability of the carrier under the Warsaw Convention and instead elected to only dwell on common law when Liberia is a signatory to the Warsaw Convention which imposes responsibility on airlines for their passengers in circumstances such as in the instant case. Appellants Kessellys has therefore maintained that the trial judge's application of common law in

the face of the Convention was prejudicial to the Kessellys' interest and resulted in the size of the award the jury found for Appellants Kessellys. Hence Appellants Kessellys have assigned the judge's conduct in this regard as reversible error and urged this Court to review said ruling, reverse the judge's ruling and award them in a manner commensurate with the injury they sustained due to the reckless conduct of Appellant SN Brussels.

During the 31<sup>st</sup> day jury sitting on Monday, July 21, 2008, His Honor Judge Kaba, instructed the jury on the relationship between Appellant SN Brussels and Continental Airlines, and how that relationship borders on liability relied on a common law authority. The judge quoted 14 Am Jur 2ed., under Carrier, section 892, saying as follows:

"Where a carrier sells a ticket in taking a passenger to transportation over its own line and that of a connecting carrier, if the charges its transport duty when it delivers the passengers to the end of its own line, and, it is not liable for the failure of the connecting carrier to perform its transportation duty and especially if this true where by term of the contract the initial carrier liability/ies is limited to its own line. Under such an arrangement, the initial carrier in selling the tickets for the other transporter acts as principal with reference to its own line and as agent for the connecting carrier, and the right of the purchaser and the responsibility of the different carrier are the same as though separate tickets had been purchased from each. By this common law principle, an agency relationship was created between SN Brussels Airlines and Continental Airlines. With respect to the connecting flight from Brussels to America, and back to Brussels, SN Brussels was serving as an agent for Continental Airlines. Therefore, the relationship between these two airlines is one that was created by virtue of the sales of the ticket of the other. SN Brussels contracted on behalf of Continental Airways with the plaintiff to transport them from Brussels to the United States of America, and back [to Brussels].

The law that I have just read, is that, SN Brussels assumes liability if, Continental Airways breached its part of the contract by failing to transport the plaintiffs from Brussels to America or from the United States of America to Brussels. The law went further to say, that the tickets sold by SN Brussels to the plaintiffs for the connecting flight from Brussels to the United States of America placed equal responsibility on Continental Airlines for that portion of the flight as if, the tickets were separate tickets, one for Continental Airlines and one for SN Brussels. Under the agency agreement between SN Brussels, the plaintiffs and the Continental Airlines, the same relationship that exists between Karyou Voyage travel agency, SN Brussels and the

plaintiffs also exists in that relationship. SN Brussels was only acting as a sale agent for the Continental Airlines."

The charge by the judge to the jury on general damages is here in quoted also:

"Another issue of importance is the measurement of damages especially general damages. Under International Convention, the liability of a carrier is limited. However, if the act constituting the injury was caused by the wilful act of the carrier then, and in that case, the law of the area or the court that making determination of the matter will prevail. By wilful act the law contemplates deliver, rightly acts. In your opinion as Judges of the facts, as it being established that the act of the first defendant in this matter was wilful?

If, it is so, the local law will govern. But if the evidence established that the act by the first defendant in this matter was not wilful, then the provision of the Warsaw Convention will apply."

Further charging, the judge instructed the jury stating: "If it is your findings, that the act of the first defendant was wilful, [in] this case our own [law is] applicable. In [the] Opinion deliver by the Honourable Supreme Court, in the case known as A.D.C. v. Sannoh where the damages sustained by the plaintiff, can be determined in terms of cash, the general damages should not be less than 10% percent of the special damages nor more than 100% percent of the special damages. In another case, the facts of which tend to establish that the damages suffered by the plaintiff was not limited to the special damages that could be expressed in monetary term, the general damages to be awarded must commensurate with the injury suffered and general underlined by cautions of that injury. In the present case, you have to assess the evidence first making the determination in the face of the law just provided you, whether first defendant, SN Brussels was at fault for the alleged injury suffered by the plaintiffs. To determine whether they are [at] fault you must make determination whether the plaintiffs abide by the 72-hour re-confirmation provision of the contract of carriage. And if you find that the first defendant is at fault then, determine whether the act was wilful. If you find that the act was wilful, then the Liberian law on damages as I explained to you will prevail."

We are of the opinion that the learned judge, in his reliance, acted within the law as he charged the jury based on the principle of admeasurements and awarding general damages liability, enunciated by the Supreme Court in the A.D.C. and Knuckles cases. But clearly, the judge was in error when he appeared on the jurors also application a

common law principle of carrier liability to this case when the facts glaringly and squarely placed the dispute within the grips of the Warsaw Convention. This was reversible error.

Appellant SN Brussels has urged and drawn our attention to a famous English case, "Sidhu and Others, Appellants vs. British Airways PLC., Respondents, Abnett (Known as Sykes), Appellant and Same, Respondents. Annotated Law Reports version at: [1997] A.C. 430.

A brief review of the Sidhu case reveals that the Appellants purchased air tickets and travelled in August 1990 on British Airways from London Heathrow for Kuala Lumpur by way of Kuwait and Madras. The aircraft landed at Kuwait Airport for refuelling and the passengers disembarked and were seated in the transit lounge at the airport terminal. The airport was attacked during this brief stay by Iraqi forces. Both BA149 flight crew and passengers were detained and later removed and taken to Baghdad. The passengers remained detained for almost a month.

These passengers subsequently sued claiming to have suffered psychological injury and baggage loss due to the stress directly consequential of their captivity. They claimed damages on the ground that the respondents were in breach of an implied condition of the contract of carriage that they would take reasonable care for the safety of their passengers; that the Respondents knew or ought to have known that the passengers could be at serious risk if the aircraft were to land in Kuwait after hostility had been commenced against it by Iraq; hence, respondents' negligence in landing their aircraft in Kuwait under such hostile situation resulting to the captivity of the passengers was therefore a fit subject for damages action.

The issue before the British Court in this case was, whether the Warsaw Convention as amended at the Hague in 1955 provides the exclusive cause of action and remedy in respect of claims for loss, injury and damage sustained in the course of, or arising out of, international carriage by air.

Dismissing the damage suit, the English Court relied on Article 20 of the Convention. Said Article provides:

*"The carrier is not liable if he proves that he and his servants or agents have taken all necessary measures to avoid the damage [and] that it was impossible for him or them to take such measures."*

The English Court critically examined the circumstances leading to the captivity and

reasoned that Article 20, quoted above, applied to the case. The English Court therefore declined the prayers of the appellants passengers to apply Article 25 of the Convention, providing that the limited liability provision of the Convention shall not apply if the damage results from an act or omission of the carrier, his servants or agents done with intent to cause damage, or recklessly.

This Court fully agrees with the well reasoned holding and principle enunciated in the Sidhu case. The facts in the English case, not being analogous to those of SN Brussels', the holding therein is also inapplicable. The law hoary with time in this jurisdiction is that in the disposition of an appeal, the appellate court may reverse, affirm, or modify, wholly or in part, any judgment before it, as to any party, and shall render a final determination. [§51.17, Civil Procedure Law, LCLR, Title I]. Exercising said authority, the judgment of the trial court is hereby affirmed with the modification that the award of general damages be increased in light of the injuries — both mental and physical — caused to, and suffered by Appellants Kessellys.

In due consideration of the unjustified conduct and its direct resultant injuries to Appellants Kessellys, the award for general damages is ordered increased to the amount of US\$100,000.00 (on hundred thousand United States Dollars). AND IT IS HEREBY SO ORDERED.

THE CLERK OF THIS COURT IS hereby instructed to send a Mandate to the trial court ordering the judge therein presiding to resume jurisdiction and enforce this judgment. AND IT IS SO ORDERED.

AT THE CALL OF THIS CASE, APPELLANTS KESSELLYS WERE REPRESENTED BY COUNSELOR MARCUS R. JONES OF JONES & ASSOCIATES LEGAL CONSULTANTS, WHILE APPELLANT SN BRUSSLES AIRLINES WAS REPRESENTED BY COUNSELLORS N. OSWALD TWEH AND SCHEAPLOR R. DUNBAR OF THE PIERRE, TWEH AND ASSOCIATES LAW FIRM.