

Liability of Air Transport Carrier in International Warsaw Air Convention

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ABSTRACT

Those countries which had developed their carriage systems in the time passed are said to be most economically developed ones. Almost all legal systems of the states in the world today bring about the liability and immunity of carriers in their legal debates. Liabilities discussed in this article seems to be a result- obligation one A thing is said to be impossible or legally impracticable where its performance becomes negative due to force majeure or due to fault of the performance becomes negative due to force majeure or due the fault of the freight forwarder or the receiver of the goods. The casual relation between the damage and loss of goods is switched off and thereby the air carrier is relieved from all charges. Common air carrier whose responsibilities are transport of person or things, are said to be liable not only for loss, damage or injuries suffered, but they are also in charge of damages to third persons and ground installations. The article is not concerned with the latter. We observe in there rules and regulations that the carrier is liable in principle for all losses, they are articulated. But we don, know whether these charges are based on equality or instituted according to faults and errors. We may however accept equal liabilities based on general principled and rules of other conventions.

KEYWORDS: the carriers, liability . Obligation – result- oriented. Casual relation in Warsaw convention. Articulation of the liabilities. Equality of the charges.

INTRODUCTION AND THE TEXT OF THIS ARTICLE

The carrier shall always be held accountable towards those losses, faults and breaches expressed mentioned in Warsaw convention. The above mentioned liabilities involve lives of the passengers, goods and indifferently deposited with the carriers . Once the contracts are entered into an aerial bills of loadings accepted, such charges will come into force. Therefore article 1 of the conventions provides that " this convention shall apply to all undertakings to carry persons or goods of any person. internationally and indifferently through air for hire of reward or free of charge". This article contemplates liabilities of common carrier involving loss of human life , personal holdings, chattels, goods. Once the Judgment rendered by the competent court, the carrier should pay all the damages expressed in the Judgment. The Warsaw convention defines international carriage involving the destinations and directions mutually agreed upon by both member states in their territories as well as the territory of one member state out of territories agreed upon by both parties. (Emami, 2007) Passengers with different nationalities even with goods belonging to Passengers from different state may be present in a single airline, therefore, one of the main initial purpose of the publishers of the convention (1929) is to update and unify these international rules. International air transport association, before Warsaw convention and after the first world war (25 August 1919) established a new corporation entitled the abbreviated form of (I.A.T.A) at the Hague (capital city of dutch). The purpose of this act was to unify the rules for air transport system. After the 2nd world war, this association was replaced by new passengers as proposed by the (I.A.T.A) member state. Following treaties are considered as documents supplemented in Warsaw convention (1929): Hague protocol 1955. Supplemented convention of Guadalajara (1961). Guatemala city protocol (1971). Montreal protocols no 1,2,3(1975).

Montreal protocols no 4,(1975) which updates Warsaw rules regarding transport of goods. (Katouzian, 1993)

The above mentioned treaties could not meet the needs for air systems. Therefore in order to illustrate Warsaw and other international air transport convention and for the purpose of updating and according these conventions a new treaty (i.e. Montreal convention 28 may 1999) was established to achieve these ends. (HosseiniNik, 2009)

A- Competent tribunals

Once the loss or damage occurred, first of all we have to determine the venue of the competent court and bring an action before such tribunal. Article 28 of the convention provides that "law for compensation of damage will be brought before the court of every high contracting parties by the plaintiff. Other competent courts are place of residence of the carriers main defaulting part of one branches courts situated in the place where the contract of carriage is entered into or the place of destination of cargo". This article determines of competent courts, but Montreal convention designates 5 courts instead of 4. Based on Warsaw convention, once the passenger gets on aircraft or leaves it, the carrier shall be held responsible for loss for damage. Those damages losses shall occur only

in between intervals both for passenger himself (herself) or in personal belongings. Article 28 of the convention designate the place where the suit is lodged also determines 4 competent tribunals. B- Liability of the air carrier towards the passenger. Clause 1 of article 3 in Montreal convention illustrate an innovation made which provides that: (Emami, 2007)

General or individual contracts must be delivered to the passenger or passengers. Hague protocol (article 3 of Warsaw convention) the former never provides for texts such as passengers, tickets and contracts. Petitions filed for compensation of personal injuries or death of the passenger will be brought before one of the courts as mentioned in article 28 of Warsaw convention. Article 22 provides quantum meruit for liability of the carrier towards each passengers shall amount to France 12500. in the following cases the debt shall be paid by installment but the total installments shall no exceed the total value of France 12500. this article finally provides for more damage exceeding this figure to be agreed upon by the passenger and the carrier. This article finally increase the limits of liabilities by contract to be entered into by both carrier and passenger. (Feiz, 2009) This article shall not apply for those passengers having trivial belongings or for businesses carried through air transport, since the air tickets and bills of lading have formerly been printed. The passenger normally by buying the ticket has entered into such contract form. (Massoud Tarom Sarie: 2005)

- 1- The question which arises here whether psychological damages and losses and their compensation have been provided for in Warsaw conventions?

Article 17 provides that "the carrier is liable for death or bodily injury of the passenger".

Unlike article 17 above, Guatemala city's protocol provides that the carrier is liable for death or personal injury of the passenger.

The word (personal injuries) as mentioned in article 17 above, denoted bodily as well as psychological injuries, but these words alone will circumscribe the whole matter. It would have been better and worthwhile, had the Warsaw pact explicitly mentioned the psychological damages too. Clauses 1 and 2 of article 20 provides "if the carrier shows that he (she) had already made necessary provisions regarding personal belonging goods and also shows that damages occurred due to mishandling and malfunctioning of the pilot, he will be relieved from any liabilities there to". If the convention includes such clauses, it will bring about some problems for the passengers as well as for the owners of the goods. Since the passengers are not aware of technical know-how, complexity of air transport and sophistication in those regards, the operators may cheat them and may commit fraud for their ignorance. The operator may thereby justify their wrong doing and may cause major problems for the passengers or freight forwarder. Since major provisions have been made in rules, regulations and international pacts such as CMR, CIM and CMS, carrier will benefit from such advantages. Since no one can however attribute the shortcoming, misleading and errors of the forwarders to the carriers, therefore the latter will not be liable for losses in this regard. Once these cases are brought before the court. Experts and technical personals will assess the losses to be incurred by each party. (Katouzian, 2006)

C- liabilities of the air carriers towards the goods owned by passengers:

Clause 3 of article 17 in both Warsaw and Guatemala city pact provides that;

"that term personal belongings" involves all properties delivered as well as chattels carried by the passengers...".

Clause 1 in article 18 of the convention provides that "if the personal belongings, chattels or goods are lost, damaged or perished, the carrier shall be liable for such losses provided however that such accident occur during air trip"

Article 4 of the convention however, provides that "carrier shall produce a receipt against all personal properties (except trivial personal chattels maintained by the passenger himself), delivered to him (her)".

Records so mentioned in article 18 of the convention is a sort of receipt to be compared with article 4 which is turned out be recorded as air bill of lading. (Mohaghegh Damad: 2005)

If a lawsuit is brought before the court for compensation of damages to goods, who then the burden of proof will be shifted to?

Here distinction should be made between the goods which have been delivered and those which have not been delivered. For the former article 17 to 21 of the Warsaw convention holds will be presumed be at fault. According to these article, unless the carrier proves that he (she) or his (her) agent proves that they have excepted their best efforts to prevent from damages and preventions were impossible, they will be held liable?

For those properties not delivered or not registered, the situation will become different. Clause 3 of article 22 provides that "if the passenger assumes obligation for some property the carrier, liability will only limited to France 5000 for each passenger". Air carrier, according to these Clauses of Warsaw convention, will also be liable for properties not delivered, but the burden of proof is also shifted the passenger. These arguments are fair and justifiable, but sometime it may happen that the passenger either intentionally or unintentionally destroy or damage his property and thereby requires the carrier to compensate will the latter has no knowledge thereof. The carrier however seems to be unable to prove the contrary. If these personal properties are damaged due to the fault or negligence of the carrier, he (she) should compensate. (Barikloo, 2008)

Conclusion

Warsaw convention as amended has so far resolved most of problems in this respect. In this article we have made some short explanations regarding air carrier liability Montreal convention (1999) on other hand, has unified and coordinated the rules of air transport. Since Warsaw convention and other so called Warsaw related protocols do prevail in most state and applies to these states so long as the loss or damage are involved, we have examined the carriers, liability in these respects and have come to this conclusion. If the member state apply them to international air transport as well as to their domestic affairs, we will achieve to a tranquility and special coordination's between the carrier and consumer. Warsaw system has tried to determine the carrier is liability and coordinate the international regulation for both parties (consumer and carrier). (Barikloo2009) They have made considerable progress in this regard. Some states for sure, have not conceded to the convention and some have passed rules and increase quantum meruit of the liquidated damage. The carriers in japan airline, for instance have amended the rules of transport (1992). Due to the amendment made in global transport both in Warsaw and hague protocol, limited liability is not applied to bodily injury of the passenger. Instead absolute liability system has been provided for in this respect. The constitution of Italy, on the other hand in observed the existing rule (clause 1, article 22 of Warsaw and Hague protocol). Finally, we expect that more will join to international convention to cop with coordination in air transport. This trend will be for the benefit both consumers and airlines.

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