JOURNAL OF CURRENT RESEARCH IN SCIENCE
ISSN 2322-5009
CODEN (USA): JCRSDJ
Available at www.jcrs010.com

JCRS
4 (3), 2016: 203-208

Civil Liability of Iran Air toward the Air Crash of Boeing 727, Tehran-Urmia Flight

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K E Y W O R D S: Civil Liability, Damage, Negligence, Risk, Force Majeure

ABSTRACT : Increasing the number of aviation incidents in the present world and excessive air crash casualties, delay in declaring the cause of the accident (more than one year) that significantly impacted the clarification of public opinion, and also the lack of comprehensive research on civil liability of airline companies toward the plane crash accidents and the relevancy of the subject of the current article to the climatic conditions of Ardabil city- especially the location of Ardabil airport that is foggy in most months of the year, and the demise of the dear Iranians on Sunday evening in 9 January 2011 due to the falling of Boeing (EP-IRP) in the vicinity of Urmia all have been motivations for author to carry out the current research. The current research was done primarily in a library-based manner and somehow in a field-based manner. Scrutinize and examine the contents of the study determines that the existence of force majeure as one of the causes of the air crash had no effect on the civil liability of the airline, and airline still will be liable to compensate the damages. Among domestic law and international treaties governing civil liability, Warsaw Law further protects the compensation of the expenses of the victims. Airlines are responsible for any passenger goods that are not registered, and among the prevailing theories on the civil liability of negligence, risk and guarantee of the right, the theory of risk mainly provides victims' rights to justice and their legal representatives and is more determined to establish justice.

Introduction

Increase in the number of aviation accidents in the world, especially in Iran, due to broad political and social dimensions and the relevancy of the subject (frequent snow precipitation and adverse weather conditions in Ardabil), the demise of the respected family of Professor Khodabakhsh as one of the academic figures in Ardebil, the lack of technical defect in the plane by taking its longevity (more than 27 years) into account, excessive use of the plane (more than thousands kilometers) at the morning of the incident, insufficient experience of the pilot, and the repetition of the air crash exactly five years ago on the same day and at the same area, all are some of the issues that prompted me to analyze the obligations and liabilities of Iran Air flight towards the flight resulting in Uremia aviation accident, and to illuminate its dark aspects from the perspective of the law and in particular civil liability.

Research Questions

What rule shall be imposed on Iranian airline in case of force majeure (inevitable accident) in terms of compensation (civil liability)?

Among the relevant laws in this regard (civil law, civil liability law, Islamic penal law, and Warsaw Pact), which one further protects the damages occurred?

How much is Iran Airline's civil liability for passengers' personal belongings that do not need a bill of lading?

Among the theories governing the civil liability (fault, risk and guarantee the right), which one guarantees the rights of the injured party and is closer to justice?

Historical background of Iran Air Airlines

Iran Air since the establishment in 1961 until 1981 was called "Iran National Airlines" and was abbreviated as "HOMA". The official international title of the company as a flag carrier has been Iran Air since the beginning of the establishment until now. A group of Iranian businessmen in 1942 established the first airline company carrying Iran flag under the title of "Iranians Airways". The company did transport passengers and freight on domestic and regional routes, and also did a weekly freight flight to Europe. Its fleet was composed of a number of Douglas DC-3 aircrafts. Later, a number of DC-4 Viscount Planes were also added to the fleet. In 1954 another private airline called Persian Air Services (YAS) was established

in Tehran. YAS began its activities in the field of freight transfer, and then did passenger traffic on the domestic routes leading to Tehran, and the company started its international flights on European routes in 1960. These routes include Tehran- London, Tehran-Paris, Tehran-Geneva, and Tehran-Brussels. These flights were done by DC-7 airplanes rented from the company SAYNA. On 24 February of 1962, the two companies of Iran Airways and Persian Air Services were merged, and Iranian national airline (HOMA) with the international title of Iran Air was established. The company was nationalized, and took advantage of all the facilities and personnel owned by the two of the companies. At the same time, the brand of HOMA was designed for the newly established company. HOMA started its flights using airplanes including Douglas DC-3, DC-6, Vickers Viscount and Euro York, and in 1946 became a full member of IATA.

International scene

Warsaw Pact and its opt-outs

Warsaw Pact

In 1925, by the efforts of France, a meeting was held with the participation of the leading countries in the area of air transport. In addition, a committee known as the International Committee of Technical Experts was formed to prepare the text of the provisions technically and legally. After preparing the text of the Treaty, the committee presented it at a meeting for that purpose on 12 October 1929 in Warsaw, Poland, and the text was finally signed by the participating countries. The treaty which was later called "Warsaw Pact 1929" aimed for the integration of some regulations over international airlines transport. 25 years later, because of some deficiencies in the text of the treaty, some revisions were done in order to more simplify its provisions, and the amendment is known as "1955 Hague Protocol". Now, after 86 years of the signing of the Warsaw Pact, many countries have joined the Treaty and its provisions have been enacted in almost all countries of the world, and its successful application has been proved. The concerns have been now gone and passengers are aware that in case of travel to anywhere in the world, a set of fixed and uniform regulations entitled Warsaw Pact guarantees to compensate damages to the personal belongings on the part of the Airlines.

At the international level, "Warsaw Pact 1929" with its subsequent amendments including "Corrective Hague Protocol 1955", "Protocol of Guatemala, 1971", "Four-part 1975's Montreal Protocols", "Montreal Convention 1999" which replaced the "Warsaw Convention", and all its amendments, specified and limited the scope of the liability of transfer operator in international flights, and has specified some conditions for such limitation of liability. However, obviously, such international regulations do not apply on domestic flights, and we should refer to domestic law of other countries in this regard. (Law on Iran's accession to Warsaw Convention of October 12 1929, the Hague Protocol 18 September of 1955, and Convention 18 September of 1961*Guadalajara*, and the Guatemala Protocol on March 8, 1971).

Instances of exclusion stipulated in Warsaw Pact

Warsaw Pact does not include the following cases: 1- domestic flights (except the states that, ratified by the national law, have accepted the provisions of Warsaw Pact on domestic flights), and on the basis of the Law of Iran's accession to the Warsaw Pact, adopted in 1975, we can conclude that Iran's domestic flights same as the subject of the current article are subject to the provisions of Warsaw Pact), 2-Flight to transport parcels and postal shipments. 3-The flights that are done in extraordinary circumstances and outside the normal activities of an airline company. 4- Pilot flights for air regular services. A private agreement for air regular services under the title of "Montreal 1966 agreement or Malta contract" and signed between airline groups of United States of America and some countries joined to IATA (International Air Transport Association) has done some revisions on the Warsaw Pact. This agreement has been signed between airlines, not countries (Ibid).

Liability of airlines joined to this agreement toward damage to passengers on the flights whose origin or destination are the United States of America or have a stop in the country, have risen significantly. The amount has risen to 75 thousand dollars for injuries to adult passengers. Due to the lack of flight of the airplane under study in the current article in the airways path of United States of America and the countries joined to IATA, the regulations relating to the accident have been excluded from "1966 Montreal Agreement" or "Malta Agreement". Another measure related to Montreal Agreement is deleted paragraph one of Article 20 of Warsaw Pact regarding filling up the liability gap of the airlines. Thus, even if the airlines prove that they have focused all their efforts on preventing damage, but damage has been done, they would be held liable and shall compensate for damages. Therefore, in international flights, the main focus is on the implementation of the provisions of the Warsaw Pact amended in The Hague, except for the member states of Montreal Agreement in 1966. Iran accepted the provisions of the Warsaw Convention on international flights in 1975, and then in 1985 by accepting and passing a law in the Parliament extended the above rules identically to domestic flights. Thus, the responsibility of Iranian airlines for domestic and foreign flights is the same as Warsaw Pact modified in The Hague in 1955. In addition to Iran, provisions of this regulation were enacted in many countries around the world.

In Iran

With reference to the domestic law of countries, it would be clear that every country in general has chosen one of the three following options in this regard: 1- Some have adopted internal rules for compensation in the case of aviation accidents and have chosen the unity and integrity of the legal system applied in their country. 2-Some due to the specific characteristics of aviation legislation have enacted special rules on the liability of transfer operator in domestic flights. 3-Some other countries have formulated the rules on transfer operator in domestic flights at least or to some extent on the basis of the provisions of international conventions, and they have preferred the unity of domestic and international legal system in the area of air transportation over the integrity of regulations underlying civil liability in their own territory. Initially in 1979 only with regard to Iranian national airline (HOMA)[1]and then in 1985 on all of Iranian airlines, Iranian legislator delimited of the liability of transfer operator in domestic flights on the basis of Warsaw Convention and the pertinent amended Protocols.

However, the difficulties of implementing international treaties in national courts, their conflict with the domestic legal regulations and some other functional problems caused the legislator to ratify "the law on the delimitation of civil liability of Iranian airlines" and annul the law 1985 in 1 September 2012", which this implicitly confirms the legislator's tendency toward domestic principles and rules of civil liability. In fact, the achievement of this law can be summarized in the application of the Islamic Penal Code of "blood money rules" on the casualties suffered by passengers in domestic flights, which is a kind of return to the origin. Regardless of the other criticisms leveled against the law that are analyzed in the current article as the main point of this law, it appears that this issue (the implementation of blood money regulations on domestic flights) has been adopted without considering the substance of air rights that is a maximum compliance with international rules and standards.

In this regard, some major questions have been arisen: this law has been enacted in order to fix which of the problems and ambiguities in previous laws? What is the status of this bill in terms of keeping pace with legal developments in international rights? What are the positions of other countries on domestic flights and Iran's international obligations? How much is the delimitation of the liabilities of transport operator in domestic flights? What are the economic effects of the law on air transport in Iran? To answer such questions, the current article aims to critique and analyze the law applicable in 2013 on the relevant crash. First, the main cause of the enactment of the law, then its subject matter and implementation will be reviewed. In the next section, the different types of the liabilities of the airlines and the scope of such liability on domestic flights, and finally some solutions are offered by the legislators.

Apparently, the law of 2013 has been set forth in order to fix some disadvantages, problems and uncertainties that previously suffered courts, insurance companies, airlines and finally the passengers. In fact, according to the "law of delimitation of responsibilities of Iranian airlines on domestic flights ratified in 1985" (which reflects the development of the theme of "bill on the delimitation of the national airline's responsibility on domestic flights Approved in 1358 by the Revolutionary Council), the delimitations of the responsibility of transport operator provided by the "Warsaw Convention 1929" and "1955 Hague Reform Protocol", which is essentially specified on international flights, are also ruling on the responsibility of the ruling Iranian airlines in the area of domestic flight.

The enactment of the relevant law had some disadvantages and problems which are clarified as follows. From the perspective of mere legal argument, international regulations are executed in the cases in which two or more countries are involved, and in other words, there is at least one external factor in this regard. However, in domestic flights that their origin and destination exist in a country, and the passengers are mainly Iranian, the implementation of international regulations that have been established primarily for international cases, is not proper. Practically, and with regard to the reform of the Hague Protocol, the scope of liability of air transportation in case of physical injury and death of passengers is 250.000 French franc, which given the global economic conditions even in the 60s and 70s for the compensation of damages caused to passengers, this amount is so low, even this issue was led to the exclusion of some countries, including the United states from Warsaw Convention. Nowadays, with regard to the exchange equivalent of Franc, the above-mentioned amount will be 50 million toman, which the amount in no way can be considered sufficient to offset the losses caused by the death of the passenger

On the other hand, regardless of the fact that French Franc has been obsolete and is no longer used, due to the provisions of the Warsaw Convention and in particular paragraph 5 of amended Article 22 of The Hague Law, the method of

[1] The legislation concerning the delimitation of liability Iran Air Company on domestic flights in the meeting dated 12 March 1980 was passed by the Revolutionary Council of the Islamic Republic of Iran, and it is announced as attached. **Article:** since the date of enactment of this bill, and given Iranian accession law to Warsaw Convention of 12 October 1929 and The Hague Protocol of 28 September 1955, and Convention of 18 Sep. 1961 in *Guadalajara,* and Protocol March 8, 1971 of Guatemala (ratified in 12 June 1975), the delimitation of the responsibility of Iran Air regarding passengers and their luggage on domestic flights is subject to the liability of the relevant company regarding foreign flights.
Note: the provisions of the legislation is applicable on passengers and their luggage on Flight No. 291 dated 21 January 1980 the Boeing 727 in the path of Mashhad to Tehran (Islamic Republic of Iran's Revolutionary Council).

calculation of damages for the courts of our country was much difficult. According to this article, Franc is "a currency that has sixty-five milligrams of gold to a carat of a thousand nine hundred. In case of judicial proceedings for converting these sums into national currencies other than gold, the verdict shall be issued based on the value of money to gold". This verdict is applicable for the time when the gold was the backing of money, but now that gold has been deleted from the backing of money, and the amount of equality of gold with the exchanges of countries has been changed, and the market and official price of gold is different, it is not either necessary to change Franc into the currency of a country (Jabbari, 2009, p. 52).

In addition, Iranian judges who were accustomed to the traditional institution of "diya" (blood money) mentally and practically were in doubt regarding the implementation of the relevant law instead of Islamic Penal Code. When dealing with claims for damages arising from aviation accidents in domestic flights, the judge was wondering whether in addition to the amount calculated according to "Warsaw Convention" and "Hague Protocol", he has to issue blood money warrant or only warrants the blood money without regard to the Convention. In case of applying the second case, and given the increase in the amount of blood money, law implemented in 1985 would be automatically enacted. In these cases, given the special nature of the regulations overlying conventions and the law 1985 in comparison to the generality of the regulations related to Islamic law, the issuance of the verdict based on blood money law is not proper, and we must suffice to that insignificant sum (Shahlaei, 1995, p. 90).

Above all, this question has occupied the minds of the public that what is the difference between plane crashes on the one hand and other events and causes of death and injury on the other hand that justifies deviation from the general rule of physical injury and death, and blood money" in this regard? Assume that the Islamic Republic of Iran with consistency and compliance with international provisions has to accept the relevant conventions in its domestic flights, what would be the necessity to follow such rule? Accordingly, the law of delimitation of the liability of Iranian Airlines approved in 2013 in its first article dictates that Iranian airline companies and their responsibility for the transport of passengers on domestic flights shall be "only" in accordance with the Islamic Penal Code. The emphasis on the word "only" represents the legislator's sensitivity to lack of implementation of the specified legislations in international conventions and resolve any ambiguities and differences that previously prevailed our judicial system.

Civil liability

Sometimes the concept of civil liability in a general sense is applied in the cases where a person would be held accountable to another party due to the damages incurred and violations of the law, and is obliged to do compensation to the injured party. On the other hand, civil liability is the guarantee and commitment to enact law by the perpetrator of the action leading to damage. However, in most of cases, civil liability is applied in a special sense, and this term is in contrast to liability arising from breach of contract or delay in implementing "contractual liability". The meaning of civil liability in a particular sense is that somebody is held liable due to inflicting injury on another person, without signing a contract between the relevant parties. This reliability which some part of its general rules and general principles are included in civil law under the heading of non-contractual obligations is known as tortious liability (*zaman ghahri*) as well. Liability or legal responsibility may be moral or legal. Legal liability is divided into two types of criminal and civil. Civil liability or guarantee may be created by free will and sign of contract and creating contractual commitment, its breach, or based on the direct rule of the law. This part of guarantee that is created based on law and without interference of free will is called tortious liability or civil liability (Ghasemzadeh, 2005, p. 23)

In each case when the person had to do compensation, it is said that the perpetrator has civil liability against the damaged party, and responsibility is a precondition to provide free will. A free and wise man is aware of and responsible for the outcome of his actions. Therefore, the responsibility of the person for the compensation of losses resulting from the actions is a normal rule per se (Katouzian, 2008, p. 46).

Regarding the liability of airlines for injuries resulting in death, it can be concluded that the airlines' liability is up to 250 thousand French franc, and pay that amount is done regardless of gender, religious beliefs and other factors, and its amount is also fixed for each member State. In addition, the involved court cannot refuse to comply with such law due to inconstancy with internal rules and regulations of the country or pay less money. However, every airline can sign a contract with passenger and commit to pay more compensation.

The latter part of the first paragraph of the Warsaw Pact decrees that "…with the conclusion of a special agreement, transport operator and passenger can agree that a higher amount is approved for the probable damage". In the air crashes leading to a plane crash, there may be some people among the passengers who inherit from each other. For example, in case of the demise of a couple, how would be the condition of heirs and inheritance? And who may inherit from another? Iranian civil law has presented some strategies for this issue. Whether this solution is applicable in the deaths caused by air transport or not? Article 873 of the Civil Code of our country provides: "If the date of death of the persons who inherit from each other is unknown, and antecedence and precedence of none of them is specified, such persons will not inherit from each other, unless the death is done due to sink or destruction, and in this case they are entitled to inherit from each other. Given the fact that in air accidents all of the passengers lose their soul at the same time, it is possible to execute the pertinent article on air accidents.

The article 873 is an exceptional one that cannot be extended to similar cases such as the fall of airplane. However, from another perspective, the specificity of this state is caused by relevant condition, i.e. in case of destruction or drowning all people die at a moment, or in case of drowning all people suffocate at a moment. Therefore, we should not make a distinction between them and the fall of the airplane Boeing 272 in which the passengers were died in an instant. In other words, the article does not have characteristics that cause the law to avoid its application on the air crash of Tehran-Urmia flight. It could be also said that the lack of its applicability on the air crashes may be due to the recession in airline industry during the formulation of civil law (civil law).

How to compensate damages to personal belongings

Warsaw Pact has accepted damages to passengers caused by incidents, while regarding the compensation for damages to luggage, the term "incident" has been applied that merely includes damages to commodities. The article 28 of Warsaw Pact in this regard states that: "transfer operator is held liable to the damage that is caused by destruction, missing, or damage to recorded personal belongings, under the condition that the event leading to damage has occurred during an aviation accident". The paragraph 2 of Article 18 has specified the limitations and generalizations of the term "during air transportation". The relevant areticle provides: "according to the preceding paragraph, air transportation includes the time during which personal items or goods- whether in an airport or on a plane, in the event of landing of airplane outside the airport-is controlled by transport operator". According to this article, airline liability is not excused under any circumstances, because the liability of the firm is of the type of no-fault liability in this regard, that should be compensated in case of damage and impairment.

Given that the weight and number of appliances delivered to the airline company is specified and stipulated in the ticket from the very beginning, the company is responsible for the items that have been reduced or missed in the destination. In case the weight of appliances is less than the amount stipulated in ticket, the company shall pay 250 French franc per kg of incompletion or damage. Some companies, rather than this amount, record $ 20 per kg loss, and this is due to the equal amount of the relevant sources as well. Each passenger has the right to take advantage of the free transportation up to 20 kg. Therefore, a passenger who has delivered 20 kg of personal belongings in the origin airport and receives ten kg of his belongings in the destination, he is entitled to receive 250 French franc from the relevant company. In case of any damage to the belongings, the price differential after evaluation by the expert is paid. In the flight 277 of Tehran-Urmia, with the exception of the amount of blood money, no price as compensation to the commodities owned by passengers has been paid to the survivors (Warsaw Pact).

Domestic law and international treaties governing the civil liability of airlines

To conclude on the subject of liability of airlines regarding the damages leading to passengers' death, it could be concluded that the liability of airlines is up to 250.000 French franc and this amount would be paid off regardless of passengers' gender and religious beliefs and other factors, and its amount for each member state is fixed. Reviewing court cannot avoid its enactment because of inconsistency with the domestic rules and regulations of the country or pay less money. However, each airline company can sign a contract with passenger, and commit to pay more compensation.

The latter part of the first paragraph of the Warsaw Pact decrees that "...with the conclusion of a special agreement, transfer operator may agree that a higher amount be approved for the damage". In the plane crashes leading to a plane crash, there may be some passengers some people who inherit from each other. For example, in case of the death of a couple from a family, how would be the division of heirs and their inheritance? Which person can inherit from another one? Iranian civil law has determined approach to this issue to some extent. Whether this strategy is applicable to the death caused by air transport or not? Article 873 of the Civil Code of Iran provides: "If the date of death of each person who inherit from each other is not known, and the precedence and antecedence of none of them is specified, such persons will not inherit from each other unless the death did occur due to drowning or destruction, that in this case they inherit from one another". Considering that in plane crashes all the time passengers lose their lives, it is possible to apply the above mentioned article on air accidents. The legal provision 873 is an exceptional one that cannot be applied to cases such as plane crash. However, uniqueness of this case is due to the situation in which it exists, i.e. in the time of destruction or drowning all people die in an instant. Thus, no difference shall be made between them and the fall of Boeing 727 whose passengers were killed at a time. On the other hand, the provisions of the article lack the properties that cannot be applied it on air crash of Tehran-Urmia 277 Flight. Perhaps its inability to cover air accidents is caused by failure to boost the airline industry in the time of formulation of civil law (Civil Code).

Old and new Islamic penal code

According to Article 533 of Islamic Penal Code, adopted in 2014, when two or more people collaboratively cause crime or cause damage to one another in such a way that crime or damage caused to both of parties or all the parties can be proved, they are equally held to be liable. Therefore, in this law, same as the previous one, if a number of people collaboratively lead to killing of a person, all of them are held liable to such act. Similarly, if two persons take separate actions

yet lead to a common cause that end in damage, both of them are held accountable. For example, if two people by removing the one-way street cause the entrance of cars to streets and then this action lead to fatal accidents, they are held liable and shall be punished. Therefore, if the court fail to attribute the result to one of them, and in turn a causal relationship between them is established, in this case, if the commitment of crime is general, all will be in charge and punished as independent agent, and in case the court turns to blood money (in unintentional crimes), they will be in charge of and responsible for blood money.

Conclusion and Recommendations

The delimitation of liability of airlines that has been specified by the Warsaw Pact is of no-fault type. Accordingly, the pact has assumed the liability of airlines, and confirms the fault of airlines. Therefore, the force majeure does not have any effect on the liability of airlines. This is because air transport operators' undertaking is of the type of the commitment to result, and proving the fact that the company has taken all necessary efforts to achieve the result would not negate the responsibility. In other words, any damage caused to passengers and commodity and personal belongings lead to the raise of liability. Among the rules governing the civil liability of airlines, Warsaw Pact, by adopting constant and uniform legislation, guarantees airlines' compensation of damages to the property owned by passengers. In accordance with paragraph 3 of Article 11 of Warsaw Pact, transfer operator (airline) is responsible for undeclared personal belongings that do not require bill of lading, and maximum commitments amounts to five thousand French franc that is now calculated and paid based on Euro. According to the Act of Accession of Iran to Warsaw Pact (1975), the risk theory can better ensures the rights of victims. In Warsaw Pact, mental and physical injuries caused to passengers and observers are not taken into account. This pact has not formulated any rule on how to compensate the damages to the precious antiques owned by the passengers (such as women jewelry). In addition, no measure is adopted on the damages caused to the location of accident. Therefore, it is recommended that, adopters of Warsaw Pact consider the above mentioned issues in subsequent amendments.

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