Michigan Law Review

Volume 48 | Issue 2

1949

INTERNATIONAL LAW-ACCIDENTS IN INTERNATIONAL AIR TRANSPORTATION-LIMITATION OF LIABILITY

William C. Gordon S.Ed.
University of Michigan Law School

INTERNATIONAL LAW—ACCIDENTS IN INTERNATIONAL AIR TRANSPORTATION—LIMITATION OF LIABILITY—Plaintiff, known professionally as Jane Froman, sought damages of one million dollars for injuries received when defendant's transatlantic plane crashed at Lisbon, Portugal. Before the flight, defendant prepared tickets for plaintiff and other passengers scheduled to entertain troops overseas and delivered them to a USO Camp Shows' employee in charge of arranging transportation for the group. Plaintiff had not expressly authorized the USO employee to receive the ticket in her behalf. She was unaware of the plane's exact destination. *Held,* a ticket invoking the liability limitations of the Warsaw Convention was delivered as a matter of law. *Ross v. Pan American Airways,* 299 N.Y. 88, 85 N.E. (2d) 880 (1949).[1]

The International Air Transportation Convention signed at Warsaw is the only treaty limiting liability of air carriers to which the United States is a party.[2] When applicable, the treaty overrides local laws denying limitation of the amount recoverable for accidents occurring in the course of transportation.[3] The convention operates when a passenger ticket is "delivered"[4] calling for passage in "international transportation."[5] The majority of the court held that the "contract made

[1] Also found in 1949 U.S. AV. REP. 168.

[2] 49 Stat. L. 3000 et seq. (1934). The text is also found in U.S. TREATY SERIES 876 (1934), 5 HUDSON, INTERNATIONAL LEGISLATION 100 (1936). See, in general, RHYNE, AVIATION ACCIDENT LAW (1947); GOEDHUIS, NATIONAL AIR LEGISLATIONS AND THE WARSAW CONVENTION (1937); 4 HACKWORTH, DIGEST OF INTERNATIONAL LAW 369-376 (1942); Orr, "The Warsaw Convention," 31 Va. L. Rev. 423 (1945); Knauth, "Some Notes on the Warsaw Convention of 1929," 14 J. AIR L. & COMM. 44 (1947).

[3] Wyman v. Pan American Airways, 293 N.Y. 878, 59 N.E. (2d) 785 (1944), cert. den. 324 U.S. 882, 65 S.Ct. 1029 (1945).

[4] The convention provides that the carrier may not avail itself of the liability limitations "if the carrier accepts a passenger without a passenger ticket having been delivered." 49 Stat. L. 3000 at 3015, art. 3 (1934).

[5] Id. at 3014, art. 1. For purposes of the convention, international transportation means "any transportation, in which, according to the contract made by the parties, the place of departure and the place of destination . . . are situated either within the territories of two of the High Contracting Parties, or within the territory of a single High Contracting Party if there is an agreed stopping place within a territory . . . of another power, even though that power is not a party to this convention." The ticket in the instant case called for carriage from New York via Lisbon to London. Thus, the ticket itself, qualifies as "international transportation," even though Portugal is not a party to the convention.

by the parties" was for "international transportation," and the rules limiting liability had automatic impact if the condition of delivery was met.[6] It then decided there was either implied authority to accept delivery of the ticket or issuance of the ticket was ratified by boarding the plane. The dissent pointed out that plaintiff, being unaware of her precise destination, could reasonably have assumed she was going to a place where the convention was inapplicable. Therefore, they reason, a question of fact was presented whether plaintiff authorized another to accept delivery of a "Warsaw ticket."[7] In effect, the dissent would search the intent of each passenger to see if carriage constituting "international transportation" was contemplated. In view of the comprehensive coverage desired by the convention[8] and the technicalities of defining "international transportation,"[9] it is doubtful if such an interpretation would coincide with the design of the signatory powers. Criticism of the inadequate amount recoverable should not compel a result contrary to the purpose of the framers.[10] It does not appropriately seem the carrier's concern "what the arrangements were between the passengers and the person who took delivery of the ticket."[11]

William C. Gordon, S.Ed.

[6] Another case involving the same disaster and holding that an identical passenger ticket called for "international transportation" was referred to by the court. Garcia v. Pan American Airways, 295 N.Y. 852, 67 N.E. (2d) 257 (1946), cert. den. 329 U.S. 741, 67 S.Ct. 79 (1946).

[7] Discussed in 85 N.E. (2d) 880 at 892 (1949). The dissent also contended there could be no ratification, since plaintiff lacked knowledge of all the material facts.

[8] One reason for the broad scope of the convention was to foster the widespread reduction of insurance rates which would follow liability limitation. S.D., ex. G, 73d Cong., 2d sess., p. 3 (1934). "International transportation" has been interpreted broadly by the courts. See Grein v. Imperial Airways, Ltd., 1 K.B. 50 (1937), commented on in 22 CORN. L.Q. 561 (1937).

[9] For some examples of the technical problems envisioned, see Sack, "International Unification of Private Law Rules on Air Transportation and the Warsaw Convention," 4 AIR L. REV. 345 (1933); GOEDHUIS, NATIONAL AIR LEGISLATIONS AND THE WARSAW CONVENTION 121-125 (1937).

[10] In general, see Rhyne, "International Law and Air Transportation," 47 MICH. L. REV. 41 at 57 (1948); Clare, "Evaluation of Proposals to Increase the 'Warsaw Convention' Limit of Passenger Liability," 16 J. AIR L. & COMM. 53 (1949).

[11] Principal case at 886.