



Dear Clients,

We are pleased to provide you with an important aviation law legal update.

Small Claims Appeal Application (District Court, Tel Aviv) 56432-07-17 Iberia Airlines v. Fleisher Peled *et al.*

The District Court in Tel Aviv-Yafo with an expanded three judge panel, rejected Iberia Airlines' appeal in the matter 56432-07-17 **Iberia Airlines v. Fleisher Peled *et al.***

Iberia Airlines was appealing with regard to the judgement of Small Claims Court matter 14290-03-17, in which the court dealt with the Plaintiffs' argument claiming that in a lawsuit brought against an airline, compensation can be awarded for mental anguish resulting from delayed or lost baggage, in light of the Montreal Convention (formally, the Convention for the Unification of Certain Rules for International Carriage by Air from 1999, which came into force in Israel on March 20, 2011, in the framework of a 2009 amendment to the Air Transport Law, 5740-1980). The Small Claims Court held that the airline was required to provide monetary compensation for the delayed baggage as well as compensation for mental anguish.

Iberia submitted an appeal application on the Small Claims Court judgement in which its main argument was that the airline's liability on delayed baggage was limited pursuant to the provisions of the Montreal Convention. Furthermore, Montreal Convention does not allow compensation for mental anguish arising from delays in receiving the baggage. The District Court agreed to hear Iberia's appeal application and sitting as an expanded panel, adjudicated regarding the principle question of whether there's an option to compensate passengers for mental anguish caused due to delayed baggage.

In a leading and principled decision, the District Court established that compensation can be awarded to passengers for mental anguish or mental damage due to lost or delayed baggage. The District Court comprehensively reviewed Israeli and foreign case law and concluded that the airlines could be ordered to provide compensation for emotional or mental damage and distress, this as distinct from and without any connection to compensation for bodily harm. However, the fact that mental distress damages can be awarded does not change the conclusion that the Montreal Convention establishes a limitation for the compensation for a passenger; thus, even if a passenger is awarded non-pecuniary damages, all of the compensation awarded for lost or delayed baggage (both for pecuniary and non-pecuniary damages) cannot exceed the

compensation limitation established in the Montreal Convention.

The appeal court's judgement was based, *inter alia*, on an analysis of the provisions of article 17 of the Warsaw Convention. Article 17 establishes that an air carrier is liable for "bodily injury" (lesion corporelle in the French version of the Convention) that it caused if the accident which caused the damage took place on board the aircraft or in the course of any of the operations of embarking or disembarking. This section has caused a dispute between courts and scholars around the world, with some on the one hand maintaining that the term "bodily injury" also includes mental distress concomitant with the bodily injury, while on the other hand some maintain that emotional harm is not included in the term. Most signatory countries of the Warsaw Convention did not recognize the awarding of compensation for mental damages in claims under the convention.

In Israel the issue of compensation for mental damages in air transportation claims was already adjudicated by the court in 1984, in a case that dealt with the hijacking of an Air France flight to Entebbe. The court in that case analyzed the term "bodily injury" under the French law and it established that compensation can be claimed for emotional damage resulting directly from an accident, and furthermore a plaintiff can raise claims for compensation only for mental damage. In a further hearing of the Supreme Court regarding this case, the court established a binding precedent that "bodily injury" under the Warsaw Convention includes mental damage. The Supreme Court reached this conclusion despite the fact that it created a lack of uniformity with other jurisdictions around the world.

In 1991, the Supreme Court of the United States handed down an important decision (*Eastern Airlines v. Floyd* (111 S. Ct. 1489 (1991))), which rejected the legal position established in Israel. The US Supreme Court established that bodily injury does not include mental distress, thus compensation for mental distress alone will not be awarded pursuant to section 17 of the Warsaw Convention.

In 1999 it was decided to update and modernize the Warsaw Convention, as well as to reconsolidate the tort law in the field of civil aviation. This decision led to the drafting of the Montreal Convention which established, *inter alia*, a compensation limitation that a passenger is entitled to, for delayed or lost baggage (Article 22 of the convention). Article 29 of the convention states: "In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention [...] In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable."

In the Montreal Convention the focus shifted from the protection of the airlines to the protection of passenger rights. When the Montreal Convention was drafted the 120 countries who participated in its drafting still did not agree on the question of compensation for mental damage and it was decided that the case law established in each country on this matter in relation to the Warsaw Convention would remain in force.

In recent cases from various jurisdictions courts, there was still no award compensation for mental damage alone; however, in 2017 in the US, a court awarded compensation to a passenger for emotional damages resulting from a physical injury. In Israel the case law has been split, with some courts awarding compensation for mental distress (in reliance on the leading precedent from 1984), while other courts have not awarded compensation for mental distress.

In summary, in the judgement which rejected Iberia's appeal it was established that in baggage carriage cases compensation can be awarded for mental anguish regardless of the existence of bodily harm and this pursuant to Article 29 of the Montreal Convention. However, the amount of the total compensation awarded for the damage caused by the delay or the loss of the baggage (pecuniary and/or non-pecuniary) will not exceed the compensation ceiling established in the Convention.

Sincerely,

Fischer Behar Chen Well Orion & Co.

For further information, please contact:

Adv. Shirly Kazir

skazir@fbclawyers.com

+972-3-6941348

.....
The information provided herein is solely for informational purposes and shall not be construed as a legal opinion or legal advice of any sort. All rights reserved to Fischer Behar Chen Well Orion & Co. In order to subscribe to or be removed from the distribution list please e-mail: news@fbclawyers.com