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Legal Liabilities of Airlines in case of Passengers have been Infected by COVID 19 on Board

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Abstract

This research has the purpose to study the legal definition of the term “accident” and liabilities of airlines in case of passengers have been infected by COVID 19 on board. The study found that the Act on International Carriage by Air B.E. 2558 does not clearly define the term “accident”. In order to consider whether it is an accident or not, it has to consider the action or omission of the airlines if the passengers sustained damage in case of death or bodily injury. If the event comes from the condition of the passengers or his own disease, the airline is not liable for such event. However, in case of COVID 19 infection on board may involve with the action or omission of the airline to exercise reasonable care as might be expected from the person in the field to screen the high risks of passengers carrying Corvid 19 decease, therefore, the airline should be liable for damage sustained to the other passengers travelling in the same flight. Thus, the researcher proposes to define the term “accident” as action or omission whether the carrier is willful or negligent which the carrier has a duty to prevent such event to cause harm to the passengers, including the action of the third person that caused damage to the passengers on the condition that the carrier is at fault.

Keywords: accident, legal liability of air carrier

Introduction

Transportation business is the business involving the performance of transporting goods or persons from one place to another in which the carrier company or carrier's agent will get paid from the business. Ways of transportation or Modes of transport are land, water and air transport. However, the air transport is supposed to be the most convenient, fastest and safest way of transportation because of its low accident rate when comparing to others.

For this reason, the number of people using air transport is increasing, especially for across country air services. When the number of people using air transport is increasing, the number of airline business is also growing which causing the competition on fare rates, services, facilities and safety methods among airline companies.

However, the number of plane crash deaths rises in 2020, despite the number of flights plummeting due to the pandemic. (BBC News Thai, 2564, paragraph 1) Dutch aviation consultancy stated that 299 people were killed in commercial crashes worldwide in 2020, rising from 257 in 2019. This is despite a sharp drop in flights due to Covid-19 restrictions. The figures include all deaths from large passenger aircraft accidents - including the deaths from the acts of unlawful interference, like the shooting down of aircraft. The number of plane crash deaths in 2020 is including the shooting down of Ukraine International Airlines flight by Iranian armed forces last January. It also includes the deaths of 98 people in May when a Pakistan International Airlines flight crashed in the city of Karachi. An initial report blamed "human error" for the accident. Moreover, the number of accidents fell to 40 from a total of 86 in 2019. Only five of those 40 accidents proved fatal.

The above figures show that the air transport accident rate is rising which signify that the performance of airlines and crews standard should be revised. The airlines should increase more effective safety methods in order to gain back passenger confidence to the business.

In case of legal liability of the carrier or airline company, the Act on International Carriage by Air B.E. 2558 stipulates some exclusions which allowing the carrier company to take advantage on its customers. The law provides the provision to prevent the carrier company from being sued for a large amount of damage. The injured party can only sue for damage within the amount described by law The International Carriage by Air law was enacted with the intention to protect the carrier or airline business, more than protecting the passenger or the injured party.

The situation of the spread of coronavirus disease 2019 since the end of the year 2019 up until now has caused difficulties for air carriers or transportation businesses. The Airline companies needed to cut off flights because many countries don't allow people from the countries with the risk of infection to enter their countries. Many countries' borders were shut down, not allowing people to get in or out of the countries by all kinds of



transportation in order to prevent the spread of Covid-19. In case of a passenger has been infected by Covid - 19, without knowing, get travelling on board from one country to another causing other passengers to get infected. This is also another concern of the airline. In this case, the airline may be liable if it comes from the airline negligence of not using proper preventive measures for the safety of passengers on board.

The principle of airlines legal liabilities comes from the Act on International Carriage by Air B.E. 2558 which is classified as international law. However, the principle of passenger's rights protection is not clear in many issues, especially for passenger who travels across the country. Such laws and rules of civil aviation have many legal issues which causing many problems on the protection of passenger's rights as followed :

Purposes

1) To study the legal issues on the limitation of liability of airlines in case of passengers have been infected by Covid - 19 on board.

2) To study the principle of international laws, the principle of foreign laws and the principle of Thai laws on the limitation of liability of airlines in case of passengers have been infected by Covid - 19 on board.

3) To introduce the laws concerning legal liabilities of airlines in case of passengers have been infected by Covid - 19

Research Methodology

This article is conducted on the basis of documentary research which compares with international convention, EU regulation, law of United States, Philippine, Japan, and Thai Law on liabilities of air carriers.

Results

For the interpretation of the term "accident" in case of the passengers travelling in the same flight get infected or have a risk to get infected of Covid - 19 due to the airline doesn't have the preventive measures of Covid - 19 or the airline doesn't screen passenger with a risk of being infected or being a carrier of the disease. Will the airlines be liable in this case, or not and how?

The problem issues of the legal liabilities of airlines if the passengers sustained damage in case of death or bodily injury. The Act on International Carriage by Air B.E. 2558, section 10 prescribes that the carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon the condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking. The compensation for damages includes the amount of any damages caused by the carrier.

During the time of Covid - 19 pandemic, when a passenger travels from one country to another without knowing of being infected of Covid - 19 getting on board causing other passengers to get infected. This is also another concern of the airline. In this case, the airline may be liable if it comes from the airline negligence of not using proper preventive measures for the safety of passengers on board. For example, the airline doesn't screen passengers who have a risk of being infected of Covid - 19 from the country of departure such as not having temperature screening or not noticing passengers who have Covid - 19 symptoms. If the airline issues the ticket to the passenger with covid-19 symptoms like coughing, sneezing or having red or irritated eyes and lets him or her to get on board travelling to another country; when the country of destination finds that such passenger being infected, it will cause other passengers in the same flights getting into quarantined and having a risk of being infected too. This circumstances cause damage to the body, mind and liberty of the other passengers on board.

In case of Thai Lion Air and Thai AirAsia X flights to China, after the flights landed in China, it was found that 11 passengers on board of Thai Lion Air SL 117 flight from Bangkok to Guangzhou and Thai AirAsia X flight XJ808 from Bangkok to Tianjin, have been infected of Covid - 19. On July 7, after picking up passengers from Indonesia, the SL 117 had stopped at Don Mueang International Airport at 21.09 hrs. before departing to Guangzhou Baiyun International Airport at 22.14 hrs. The total period of stopping time at Don Mueang International Airport was 1 hr and 5 minutes. It was found that there were six passengers on Thai Lion Air SL 117 were infected. For Thai AirAsia X flight XJ808, a chartered flight from Bangkok to Tianjin, had landed at Don Mueang International Airport at 15.17 hrs. before departing to Tianjin Binhai International Airport at 16.59 hrs. The total period of stopping time at Don Mueang International Airport was 1 hr and 42 minutes. It was found that there were five passengers on Thai AirAsia X flight XJ808 were infected. The total amount of passengers has been infected of Covid - 19 on board of these two flights were 11 persons.



Moreover, there was another case took place in America. On December 20, Daily mail news website reported that the internal flight "UA 591" of "United Airlines", on the way from Orlando, Florida heading to Los Angeles, California had emergency landed at New Orleans Airport on December 14, after a male passenger got a serious illness and died on board. This passenger got sudden serious symptoms. He got severely chills, sweating and difficulty in breathing before passing out down to the plane ground. There were 3 volunteer passengers did the PCR to save this man life and as soon as the plane landed, the medical emergency workers got in for helping. The man's wife had told the medical emergency workers that her husband had symptoms of Covid - 19 since last week. However, she and her husband did not disclose this information to the airlines before checking in for the flight (Thairath Online, 2563, Paragraph 1). In this case, if the airline doesn't have enough strict preventive measures, it may cause harm to other passengers on board. Is this case regarded as an accident took place on board that the carrier should be liable for, according to Section 10 of the Act on International Carriage by Air B.E. 2558, or not?

The Warsaw Convention or Montreal Convention has no clear provision on this issue causing the problem on interpretation of the term "accident". It is not clear that under which condition of the accident will the carrier be liable for damage of passenger on board? The Act on International Carriage by Air B.E. 2558 only defines the term "accident" which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking. In case of passenger of the flight "UA 591" has been infected of Covid - 19, even though the infection could not be identified on board but after the plane landed at its destination and the Covid - 19 test was operated, it was found that such passenger has been infected which causing other passengers at risk of being infected, therefore, other passengers had to go through the Covid - 19 screening process and being under a state quarantine. Is this case regarded as the cause of damage for one's liberty or bodily injury, or not?

Section 10 of the Act on International Carriage by Air B.E. 2558, amendment B.E. 2560 prescribes, "the carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking".

According to Section 10 of the Act on International Carriage by Air B.E. 2558, the carrier is liable for damage sustained in case of death or bodily injury of a passenger. This provision of law follows the principle of strict liability which means if the accident like plane crash, or in case of the plane faces some technical problem for example, the wheels' not working or the plane window cracked, causing harm or injury to the passenger, the carrier will be liable with no need to prove whether the accident occurred from the carrier fault or not.

For Thai judgment, none of the Thai Judgment ever defines or gives a definition of the term "accident". The Convention for the Unification of Certain Rules for International Carriage by Air A.D. 1999 or Montreal Protocol prescribes in Article 17, "The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking".

The Montreal Protocol also follows the principle of strict liability. According to this Montreal Protocol, if a passenger has symptoms of illness due to a relapse of his own disease during travelling on board such as having a relapse from a heart disease or a hernia disease, shall not be regarded as "accident".

According to the United States law, the United States Court has given the definition of the term "accident", including the incidents occurred from a willful act or a willful mind of a wrongdoer to cause damage; for example, hijacking of aircraft, terrorism, illness caused from the passenger's own physical health and sexual harassment. According to the United States Court's interpretation, the term "accident", including a willful or negligent act of the airline and also the act of the third person or the other passengers on board whether the airline, willful or negligent, has taken action or omission being a part to cause such damage. In case of Sar disease is not regarded as "accident" (Polkowska, 2010, p.118).

The Philippine law prescribes about the liability of a carrier in article 1733 of the Civil Code of the Philippines. The article 1733 states that common carriers, from the nature of their business and for reasons of public policy, are bound to observe extra ordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them according to all the circumstances of each case. Moreover, the article 1755 stipulates that a common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances and the article 1756 prescribes that in case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in articles 1733 and 1755

The Philippine legal provisions show that the principles governing the liability of a carrier by air are the same as the principles governing the liability of a common carrier, both using the principles of strict liability



which a carrier is presumed to be at fault in case of death and injury of passengers and also the principles of using the utmost diligence of very cautious persons (PHILIPPINE AIR LINES, INC., Petitioner, v. THE COURT OF APPEAL and JESUS V. SAMSON, Respondents, G.R. No. L-46558, 1981, para. 2)

The European Union has the provisions of law that concerning the passengers' rights protection and that stipulating the principles of the liability of a carrier that a carrier will be liable for death and injury of passengers. Since the European Union is an associate member of the Montreal Protocol, therefore the Montreal Protocol is applied to use in solving the dispute. In case of the European Union, there is a sample case between Denise McDonagh v. Ryanair. The dispute of this case started on April 17, 2010. Ms. McDonagh was a passenger of Ryanair airlines from Faro (Portugal) to Dublin, (Ireland). Before the travel date, the Icelandic volcano Eyjafjallajökull had erupted causing long delay of her flight due to the closure of airspace because of a cloud of volcanic ash from the volcano had covered all over the area. As a result, Ms. McDonagh was not able to return to Dublin (Case C-12/11, 2013, para. 25). For the fact of this case, Ms Denise McDonagh's flight was rescheduled to April 24, 2010 but during the period between 17 - 24 April 2010, Ms Denise McDonagh did not receive assistance by the Ryanair airlines in accordance with Article 9 of Air Transport Regulation (EC) No.261/2004. Therefore, Ms Denise McDonagh had filed a plaint to the Dublin Metropolitan District Court (Ireland) for compensation in the amount of EUR 1,129.41 corresponding to the costs which she had incurred during that period on meals, refreshments, accommodation and transport.

Ryanair Airlines claims that the closure of part of European airspace following the eruption of the Eyjafjallajökull volcano does not constitute "extraordinary circumstances" within the meaning of Regulation No.261/2004 but "super extraordinary circumstances", therefore the Ryanair airlines is not obliged to pay compensation. The Dublin Metropolitan District Court decided to refer this case to the European Union Court of Justice for ruling. The European Union Court of Justice had considered this case abiding to Article 22 of the Montreal Convention and Article 5(1) and Article 9 of Regulation (EC) No.261/2004. The court considered that the words "extraordinary circumstances" in the context of air transport, they refer to an event which is not inherent in the normal exercise of the activity of the carrier concerned and is beyond the actual control of that carrier on account of its nature or origin such as the eruption of volcano, therefore, the air carrier must provide care to air passengers according to the Regulation (EC) No.261/2004 and that the validity of those provision is not affected. The airlines is responsible to provide care to passengers in the event of cancellation of a flight and to pay compensation according to Article 22 of the Montreal Convention. (Pimchanok Pathumarak, 2561, p. 48) As the above judgment, the court had set out the rule that the closure of airspace due to a cloud of volcanic ash from the volcano is only "extraordinary circumstances" not "super extraordinary circumstances" that will release the air carrier from liability to passengers. Therefore, the air carrier will be liable for the duty to provide care for passengers and is obligated to pay for damage compensation. This reflects that the European Union Court has taken the rights of passengers into consideration more than the limitation of the airlines liability.

Discussion

As the result, the researcher has an opinion that in case of passengers have been infected of Covid -19 on board is considered to be the accident occurring during the flight according to the provisions prescribed in the Montreal Convention and the Act on International Carriage by Air B.E. 2558 since the airline has a duty to provide care to passengers from the time they get on board and to ensure them a protection and safety while travelling on the aircraft. If considering from the Philippine law, the airline must use a high level of precaution on screening passengers at risk of being infected of Covid - 19 before allowing them to get on board. If the airlines fail to do so, it will be regarded that the airline is negligent, not following the Covid -19 preventive measures for the safety of all passengers. That is to say, the airlines should have passengers scanning for Covid -19 one more time before letting them getting on board for double checking in order to ensure the safety of all passengers. If the airline doesn't do it and it is found out later that passengers on board have been infected of Covid -19, the airline will be liable for this as it is considered the "accident" during the flight, which conforming to the United States Court judgment on this matter. The United States Court held that in case of passenger has symptoms of illness due to a relapse of his or her own disease during travelling on board such as having a relapse from a heart disease or a hernia disease or other circumstances which come from the internal factor of each passenger such as having ears hurt due to the air pressure, shall not be regarded as "accident". It is only the ordinary event which is different from Covid - 19 because Covid - 19 does not happen from each passenger's own internal factor but from the external factor that come from the other passengers who carried Covid - 19 disease on board. If the airline takes a serious action on screening passengers at the first place, it will prevent passengers with infection of Covid - 19 to get on board.



Conclusions

In case of passengers have been infected of Covid - 19 on board can be interpreted as "accident" under the Section 10 of the Act on International Carriage by Air B.E. 2558 that the air carrier will be liable for damage sustained in this matter.

Recommendations

The researcher proposes to add the definition of the term "accident" into the Act on International Carriage by Air B.E. 2558 to make it clear which will resolve the problem of interpretation of this term in order to provide fair justice to all parties. Therefore, the researcher proposes to define the term "accident" as action or omission whether the carrier is willful or negligent which the carrier has a duty to prevent such event to cause harm to the passengers, including the action of the third person that caused damage to the passengers on the condition that the carrier is at fault. This definition will cover all circumstances that the air carrier will be liable for damage sustained to the passengers.

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