বাংলাদেশ সুপ্রীম কোর্ট
হাইকোর্ট বিভাগ
(বিশেষ মূল অধিক্ষেত্র)

রীট পিটিশন নং ৬০৪৯/২০১১

তানজিন বৃষ্টি

.....দরখাস্তকারীনি।

-বনাম-

বাংলাদেশ সরকার ও অন্যান্য

..... প্রতিপক্ষগণ।

এ্যাডভোকেট মনজিল মোরসেদ সংগে
এ্যাডভোকেট রিপন বাড়ৈ
এ্যাডভোকেট সঞ্জয় মন্ডল

.....দরখাস্তকারীনি পক্ষে।

এ্যাডভোকেট আজমালুল হোসেন কিউসি সংগে
এ্যাডভোকেট মোঃ আজিজ উল্লাহ ইমন
এ্যাডভোকেট ইয়াসমিন আক্তার
এ্যাডভোকেট আব্দুল্লাহ আল হাদী

-----৭নং প্রতিপক্ষ পক্ষে।

এ্যাডভোকেট ওয়ায়েস আল হারুনী, ডেপুটি এটর্নী জেনারেল সংগে
এ্যাডভোকেট ইলিন ইমন সাহা, সহকারী এটর্নী জেনারেল
এ্যাডভেকোট সায়রা ফিরোজ, সহকারী এটর্নী জেনারেল
এ্যাডভোকেট মাহফুজুর রহমান লিখন, সহকারী এটর্নী জেনারেল

.....রাষ্ট্রপক্ষে।

উপস্থিতঃ
বিচারপতি মোঃ আশরাফুল কামাল
এবং
বিচারপতি রাজিক আল জলিল

শুনানীর তারিখঃ ১৩.১১.২০১৯, ২৯.০১.২০২০
এবং রায় প্রদানের তারিখ ঃ ০৮.১০.২০২০

বিচারপতি মোঃ আশরাফুল কামালঃ

দরখাস্তকারীনি কর্তৃক বাংলাদেশের সংবিধানের অনুচ্ছেদ ১০২ এর অধীন দরখাস্ত দাখিলের প্রেক্ষিতে অত্র বিভাগ প্রতিপক্ষগণের উপর নিম্নোক্ত উপায়ে রুলটি ইস্যু করা হয়েছিলঃ-

"Let a Rule Nisi be issued, calling upon Respondents to show cause as to why a direction should not be given upon the respondent No. 1 to place the incident, as reported in Daily Star on 02.07.2011, to the appropriate authority through the Bangladesh Embassy in U.A.E, so that effective steps can be taken against the persons who were instrumental to inflict torture, cruel treatment, torments and thereat to the petitioner and why a direction should not be given upon the respondent No. 7 to pay compensation to the petitioner for the harassment, torture and cruel treatment unleashed upon the petitioner on 28.06.2011 by the Etihad

Airline's people at Abu Dhabi Airport and/or why such other or further order or orders as this Court may fit and propert, shall not be passed."

অত্র রুলটি নিষ্পত্তিতে ঘটনার সংক্ষিপ্ত বর্ণনা এই যে, অত্র দরখাস্তকারীনি এবং তার মা কানাডা যাওয়ার উদ্দেশ্যে ইতিহাদ এয়ার লাইনস এর (Etihad Airlines) এর ঢাকা অফিস হতে টিকেট ক্রয় করেন। যাত্রার দিন বিগত ইংরেজী ২৮.০৬.২০১১ তারিখ দরখাস্তকারীনি এবং তার মা হযরত শাহজালাল আর্ন্তজাতিক বিমান বন্দরে এসে ইতিহাদ এয়ার লাইনস এর কাউন্টার থেকে দুটি বোর্ডিং পাস (Bording Pass) গ্রহণ করেন। তার মধ্যে একটি ঢাকা-আবুধাবী EY253 ফ্লাইটের জন্য, অপরটি আবুধাবী-টরেন্টো EY 141 ফ্লাইটের জন্য। অতঃপর দরখাস্তকারীনি এবং তার মা EY 253 ফ্লাইটটিতে ৫.২৫ স্থানীয় সময়ে আরোহন করেন এবং সকাল ৮.০০ টায় আবুধাবী বিমানবন্দরে পৌছান। তাদের পরবর্তী ফ্লাইটটি (আবুধাবী-টরোন্টো) আবুধাবীর স্থানীয় সময়ে রাত্র ১০.০০ টায় নির্ধারিত ছিল। উক্ত নির্ধারিত সময়ে দরখাস্তকারীনি এবং তার মা টরেন্টোগামী বিমান EY 141-এ আরোহনের জন্য লাইনে দাড়ান। সিকিউরিটি চেক সম্পন্ন করে দরখাস্তকারীনিকে বিমান আরোহনের পূর্বের ওয়েটিং রুমে প্রবেশ করতে দিলেও তার মাকে বোর্ডিং পাসে সীল মারা না থাকায় ঢুকতে দেয়া হয় নি। পরবর্তীতে, ইতিহাদের উপরিল্লিখিত ফ্লাইটের দায়িত্বপ্রাপ্ত ব্যক্তিরা দরখাস্তকারীনি এবং তার মাকে জোরপূর্বক বাংলাদেশের ফেরত ফ্লাইটের টিকেট কাটতে এবং বাংলাদেশে ফেরত আসতে বাধ্য করে। ঢাকায় ফেরত এসে দরখাস্তকারীনি বিগত ইংরেজী ৩০.০৬.২০১১ তারিখ বিমানবন্দর থানায় জিডি এন্ট্রি করেন। অতঃপর বিগত ইংরেজী ০২.০৭.২০১১ তারিখে দৈনিক ডেইলি ষ্টার পত্রিকায় বিষয়টি গুরুত্বের সাথে প্রকাশিত হয়। অতঃপর দরখাস্তকারীনি বিগত ইংরেজী ০৩.০৭.২০১১ তারিখ International Civil Aviation Authority এর নিকট ই-মেইলে অভিযোগ করেন। এছাড়া, দরখাস্তকারীনি বিগত ইংরেজী ০৪.০৭.২০১১ তারিখে ইতিহাদের কান্ট্রি ম্যানেজার, ঢাকা অফিসে দরখাস্ত দাখিল করেন। অতঃপর দরখাস্তকারীনি বিগত ইংরেজী ১৪.০৭.২০১১ তারিখে অত্র রীট পিটিশনটি অত্র বিভাগে দাখিল করলে শুনানী অন্তে রুলটি প্রাপ্ত হন।

১ এবং ৭নং প্রতিপক্ষ হলফান্তে জবাব দাখিল পূর্বক মোকদ্দমায় প্রতিদ্ধন্দ্বিতা করেন।

দরখাস্তকারীনি পক্ষে বিজ্ঞ এ্যাডভোকেট মনজিল মোরসেদ অত্র রীট পিটিশনটি উপস্থাপনপূর্বক বিস্তারিতভাবে যুক্তিতর্ক প্রদান করেন। অপরদিকে ১নং প্রতিপক্ষ পক্ষে বিজ্ঞ ডেপুটি এর্টনী জেনারেল ওয়ায়েস আল হারুনী হলফান্তে জবাব উপস্থাপনপূর্বক বিস্তারিতভাবে যুক্তিতর্ক প্রদান করেন। ৭নং প্রতিপক্ষ পক্ষে এ্যাডভোকেট আজমালুল হোসাইন কিউ.সি হলফান্তে জবাব উপস্থাপনপূর্বক বিস্তারিতভাবে যুক্তিতর্ক প্রদান করেন।

৭নং প্রতিপক্ষের বিজ্ঞ এ্যাডভোকেট আজমালুল হোসেন কিউসি কর্তৃক দাখিলকৃত ১৬ জানুয়ারী ২০১৯ এবং ৭ অক্টোবর, ২০২০ এর লিখিত যুক্তিতর্ক অবিকল নিম্নে অনুলিখন হলোঃ

1. *There is no illegality found as per investigation report as the petitioner and her mother knowingly refused to comply with the travel document verification requirements, refused to accept the reasonable instructions of the Etihad Airways staffs, failed to cooperate with them and acted as potential threat to the safety and security of other passengers by proving themselves as unruly and disruptive passengers which is evident from the investigation report (Annexure-I).*

2. *The place of occurrence was in Abu Dhabi Airport which is outside the territorial jurisdiction of this Hon'ble Court. Moreover, if the petitioners are affected by the decisions of the staffs they must file the complaint case in Abu Dhabi where the occurrence took place.*

3. *As Etihad Airways are not made a party it is bad in law and suffers from defect of parties. 3 personnel have been made parties although none of them are proper parties to this Writ Petition since they have not role in the functionaries of the Republic of Bangladesh.*

4. *Relationship between the parties in contractual and both are private entities. The petitioner could file civil suit if she is affected by the decisions of the Airways staffs.*

5. *Disputed question of facts. Writ petition is decided in a summary basis on affidavit without delving into or deciding any disputed issues of facts.*

6. *The petitioner filed the instant Writ Petition illegally which is of without any lawful authority and by misleading the Hon'ble Court which is abuse of process of the court.*

7. *According to the Convention on International Civil Aviation Security Safeguarding International Civil Aviation Against Acts of Unlawful Interference;*

   Annex 17 to the ICAO Chicago Convention (Convention on International Civil Aviation Security Safeguarding International Civil Aviation Against Act of Unlawful Interference) defines a disruptive passenger as: "A Passenger who fails to respect the rules of conduct at an

airport or on board an aircraft or to follow the instructions of the airport staff or crew members and thereby disturbs the good order and discipline at an airport or on board the aircraft." ***Government of Bangladesh ratified this convention.***

The Tokyo Convention (1963), also known as The Convention on Offences and Certain Other Acts Committed on Board Aircraft, Makes it unlawful to commit "Acts which, whether or not they are offences [against the penal law of a State], may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board." ***Government of Bangladesh ratified this convention.***

Safety and security and considered the airline industry's top priorities. Disruptive passengers have, over the past several years, become more prevalent and unruly passenger incidents are currently a very real and serious threat to both safety and security.

8. *In Lonrho PLC-Vs-Fayed and others [1993] 1WLR p. 1502 it was stated as follows: "If an action is not brought bonafide for the purpose of obtaining relief but for some ulterior or collateral purpose, it may be struck out as an abuse of process of the court." Such approach was accepted by the Hon'ble High Court Division of the Supreme Court of Bangladesh in Shaikh Md. Obaidullah Raihan –Vs- Sayed Shahidul Haque Jamal and others (Writ Petition No. 6200 of 2001). Further, in the case of Dow Hager Lawrence –Vs- Lord Norreys and others [1890] 15 AC 210 the House of Lords dismissed an appeal on the ground that it was vexatious and oppressive and abuse of process.*

Furthermore, the petitioner obtained the Rule Nisi by misleading the true facts. It was decided by a Civil Order No. 5742 of 2001 between M. A. Kabir Chowdhury –Vs- Md. Mahbubur Rahman Miah and others, the Hon'ble Court has an inherent jurisdiction to make such order as may be necessary for the ends of justice. The Hon'ble Court also went to say as follows: "What has been held in

the above cases is that the court has an inherent power under Section 151 of the CPC to set aside its order passed under a misapprehension of facts when true facts and brought to light and that the court had also power under the aforesaid section to vacate an order by misleading the court and practicing fraud upon it."

9. *The Writ Petitioner is the dual citizen of Bangladesh and Canada. The only question is to see whether she had any* ***locus standi*** *and is entitled to get the relief as she prayed for; because* ***Tanzeen Bristy (Writ Petitioner) was boarded by the Guest Service Agent, Mr. Mark Abeledo who greeted and boarded the passengers having Document Verification Unit (DVU) stamp and furthermore, the alleged place of occurrence was in Abu Dhabi Airport and the relationship between the parties was contractual.*** *Moreover, the petitioner and her mother proved themselves as unruly and disruptive passengers. Their belligerent attitude court be detrimental to other passengers on board if they were allowed to fly on that flight.*

10. *In light of the above it is prayed that this Hon'ble Court may kindly discharge the Rule as this Writ Petition is not maintainable and the Hon'ble Court has no jurisdiction to settle a disputed question of fact which took place in Abu Dhabi.*

11. *Disruptive behavior in the air is governed internationally by the Tokyo Convention 1963 (the* ***Convention****). However, this only applies to actions on board the aircraft after the doors have been closed for take-off, so it cannot be relied upon in this case.*

    However, it is worth noting that Bangladesh is a signatory of the Convention (but not the Montreal Protocol) and it therefore stands to reason that the constitutional rights of Bangladesh citizens have been deemed to be compatible with the Convention's provisions.

    Specifically, articles 1(1)(b) and 6(1) provide for the commander of an aircraft to order the physical restraint of a passenger where necessary to "Maintain good order and

discipline on board". The Bangladeshi constitution therefore recognizes the need to impinge on an individual's human rights in the context of ensuring safety and good order on an aircraft.

It might also be argued that, although the incident occurred in the terminal and not on board the aircraft, there seems to be little material difference between (1) denying a passenger the right to board or (2) waiting for the passenger to board, closing the aircraft doors and then removing the passenger from the aircraft on the basis that they pose a risk to the good order of the fight.

12. *Contractually there seems to be a clear case for Etihad to deny boarding without compensation on the basis that the passenger breached the terms of their contract. Etihad's general conditions of carriage state that it has the right to refuse carriage to passengers who*

> *"use threatening, abusive, insulting, harassing or indecent words or behave in a threatening, abusive or insulting manner to ground staff or members of the crew prior to or during boarding the aircraft or disembarkation from or on a connecting flight or on board the aircraft before take-off"*
>
> *or,*
>
> *"You do not appear to have valid or lawfully acquired travel documents or your appear in our opinion not to meet requisite visa requirements. You seek to enter a country through which you may be in transit for which you do not have valid travel documents (or meet the visa requirements), you destroy your travel documents during flight or between check-in and boarding or refuse to surrender your travel documents to the flight crew, against receipt, or allow us to copy your travel documents when so requested".*

On the available information it seems that the passenger did not comply with these requirement and that Etihad was therefore contractually entitled to deny boarding.

13. *As to the existence of a tortuous duty owned by the airline to the passenger, the English court have suggested that in situations of disruptive passenger behavior, it is the passenger who is breaching their duty to the airline. In R. v. Lawrence Charles Oliver the court found that:*

> *"It seems to us that travelling on an aeroplane places a special duty on passengers to co-operate with reasonable orders from the cabin and flight crew and to behave in an orderly manner. The safety of the aircraft itself and of the other passengers may be put in jeopardy by a passenger's unreasonable or disruptive behavior. A relatively small incident may have catastrophic consequences which may not always be foreseen."*

The same principle will apply if the passenger is found to be unreasonable and disruptive prior to boarding and the only way to deal with the situation is to deny boarding to ensure the safety of the aircraft and of the other passengers.

14. *Further, any duty of care that Etihad owes to the disruptive passenger would be outweighed by its duty to all other passengers on the flight. The failure of an airline to ensure that a passenger has the correct documentation and till not disrupt the flight is likely to amount to a breach of the airlines duty to its other passengers.*

This supported by the fact that airlines are usually fined by national authorities when they admit a passenger who does not have the correct travel documentation. The current fine for an airline admitting an individual with inadequate documentation to the UK is £2000 (under section 40(2) of the immigration and Asylum Act 1999).

অত্র রীট পিটিশন এবং এর সাথে সংযুক্ত সকল সংযুক্তি, ১ এবং ৭নং প্রতিপক্ষের জবাব এবং এর সাথে সংযুক্ত সকল সংযুক্তি পর্যালোচনা করা হলো। দরখাস্তকারীনি, ১ এবং ৭ নং প্রতিপক্ষের বিজ্ঞ এ্যাডভোকেটগণের যুক্তিতর্ক শ্রবণ করা হলো ।

প্রথমে আমরা দেখবো আকাশ পথে যাত্রী, লাগেজ এবং পণ্য পরিবহনের আন্তর্জাতিক কনভেনসনসমূহ।

আকাশ পথে যাত্রী, লাগেজ এবং পণ্যের আন্তর্জাতিক পরিবহনের সময় ক্ষয়ক্ষতির দায়-দেনা নির্ধারণ করে বিশ্ব প্রথম যে কনভেশনটি গ্রহণ করেছিল এটি স্বাক্ষরিত হয়েছিল ১২ই অক্টোবর, ১৯২৯ সালে। গুরুত্বপূর্ণ বিধায় উক্ত কনভেনশনটি নিম্নে অবিকল অনুলিখন হলোঃ

Convention for the Unification of Certain Rules Relating to International Carriage by Air, Signed at Warsaw on 12 October 1929

(Warsaw Convention)

Chapter I - Scope – Definitions

Article 1

1. This Convention applies to all international carriage of persons, luggage or goods performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

2. For the purposes of this Convention the expression "international carriage" means any carriage in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to this Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purposes of this Convention.

3. A carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party.

Article 2

1. This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

2. This Convention does not apply to carriage performed under the terms of any international postal Convention.

Chapter II - Documents of Carriage

Section I - Passenger Ticket

Article 3

1. For the carriage of passengers the carrier must deliver a passenger ticket which shall contain the following particulars:-

(a) the place and date of issue;

(b) the place of departure and of destination;

(c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the carriage of its international character;

(d) the name and address of the carrier or carriers;

(e) a statement that the carriage is subject to the rules relating to liability established by this Convention.

2. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to the rules of this Convention. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this Convention which exclude or limit his liability.

Section II - Luggage Ticket

Article 4

1. For the carriage of luggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a luggage ticket.

2. The luggage ticket shall be made out in duplicate, one part for the passenger and the other part for the carrier.

3. The luggage ticket shall contain the following particulars:-

(a) the place and date of issue;

(b) the place of departure and of destination;

(c) the name and address of the carrier or carriers;

(d) the number of the passenger ticket;

(e) a statement that delivery of the luggage will be made to the bearer of the luggage ticket;

(f) the number and weight of the packages;

(g) the amount of the value declared in accordance with Article 22(2);

(h) a statement that the carriage is subject to the rules relating to liability established by this Convention.

4. The absence, irregularity or loss of the luggage ticket does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to the rules of this Convention. Nevertheless, if the carrier accepts luggage without a luggage ticket having been delivered, or if the luggage ticket does not contain the particulars set out at (d), (f) and (h) above, the carrier shall not be entitled to avail himself of those provisions of the Convention which exclude or limit his liability.

Section III - Air Consignment Note

Article 5

1. Every carrier of goods has the right to require the consignor to make out and hand over to him a document called an "air consignment note"; every consignor has the right to require the carrier to accept this document.

2. The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of Article 9, be none the less governed by the rules of this Convention.

Article 6

1. The air consignment note shall be made out by the consignor in three original parts and be handed over with the goods.

2. The first part shall be marked "for the carrier," and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the goods. The third part shall be signed by the carrier and handed by him to the consignor after the goods have been accepted.

3. The carrier shall sign on acceptance of the goods.

4. The signature of the carrier may be stamped; that of the consignor may be printed or stamped.

5. If, at the request of the consignor, the carrier makes out the air consignment note, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7

The carrier of goods has the right to require the consignor to make out separate consignment notes when there is more than one package.

Article 8

The air consignment note shall contain the following particulars:-

(a) the place and date of its execution;

(b) the place of departure and of destination;

(c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character;

(d) the name and address of the consignor;

(e) the name and address of the first carrier;

(f) the name and address of the consignee, if the case so requires;

(g) the nature of the goods;

(h) the number of the packages, the method of packing and the particular marks or numbers upon them;

(i) the weight, the quantity and the volume or dimensions of the goods;

(j) the apparent condition of the goods and of the packing;

(k) the freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it;

(l) if the goods are sent for payment on delivery, the price of the goods, and, if the case so requires, the amount of the expenses incurred;

(m) the amount of the value declared in accordance with Article 22 (2);

(n) the number of parts of the air consignment note;

(o) the documents handed to the carrier to accompany the air consignment note;

(p) the time fixed for the completion of the carriage and a brief note of the route to be followed, if these matters have been agreed upon;

(q) a statement that the carriage is subject to the rules relating to liability established by this Convention.

Article 9

If the carrier accepts goods without an air consignment note having been made out, or if the air consignment note does not contain all the particulars set out in Article 8(a) to (i) inclusive and (q), the carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability.

Article 10

1. The consignor is responsible for the correctness of the particulars and statements relating to the goods which he inserts in the air consignment note.

2. The consignor will be liable for all damage suffered by the carrier or any other person by reason of the irregularity, incorrectness or incompleteness of the said particulars and statements.

Article 11

1. The air consignment note is prima facie evidence of the conclusion of the contract, of the receipt of the goods and of the conditions of carriage.

2. The statements in the air consignment note relating to the weight, dimensions and packing of the goods, as well as those relating to the number of packages, are prima facie evidence of the facts stated; those relating to the quantity, volume and condition of the goods do not constitute evidence against the carrier except so far as they both have been, and are stated in the air consignment note to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the goods.

Article 12

1. Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the goods by withdrawing them at the aerodrome of departure or destination, or by stopping them in the course of the journey on any landing, or by calling for them to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air consignment note, or by requiring them to be returned to the aerodrome of departure. He must not

exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

3. If the carrier obeys the orders of the consignor for the disposition of the goods without requiring the production of the part of the air consignment note delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air consignment note.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the consignment note or the goods, or if he cannot be communicated with, the consignor resumes his right of disposition.

Article 13

1. Except in the circumstances set out in the preceding Article, the consignee is entitled, on arrival of the goods at the place of destination, to require the carrier to hand over to him the air consignment note and to deliver the goods to him, on payment of the charges due and on complying with the conditions of carriage set out in the air consignment note.

2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the goods arrive.

3. If the carrier admits the loss of the goods, or if the goods have not arrived at the expiration of seven days after the date on which they ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

Article 14

The consignor and the consignee can respectively enforce all the rights given them by Articles 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of

another, provided that he carries out the obligations imposed by the contract.

Article 15

1. Articles 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air consignment note.

Article 16

1. The consignor must furnish such information and attach to the air consignment note such documents as are necessary to meet the formalities of customs, octroi or police before the goods can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his agents.

2. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

Chapter III - Liability of the Carrier

Article 17

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered luggage or any goods, if the occurrence which caused the damage so sustained took place during the carriage by air.

2. The carriage by air within the meaning of the preceding paragraph comprises the period during which the luggage or goods are in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

3. The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods.

Article 20

1. The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

2. In the carriage of goods and luggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Article 22

1. In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 125,000 francs. Where, in accordance with the law of the Court seised of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

2. In the carriage of registered luggage and of goods, the liability of the carrier is limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery

and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the consignor at delivery.

3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.

4. The sums mentioned above shall be deemed to refer to the French franc consisting of 65 « milligrams gold of millesimal fineness 900. These sums may be converted into any national currency in round figurers.

Article 23

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

Article 24

1. In the cases covered by Articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention.

2. In the cases covered by Article 17 the provisions of the preceding paragraph also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

Article 25

1. The carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the Court seised of the case, is considered to be equivalent to wilful misconduct.

2. Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused as aforesaid by any agent of the carrier acting within the scope of his employment.

Article 26

1. Receipt by the person entitled to delivery of luggage or goods without complaint is prima facie evidence that the same have been

delivered in good condition and in accordance with the document of carriage.

2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within three days from the date of receipt in the case of luggage and seven days from the date of receipt in the case of goods. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the luggage or goods have been placed at his disposal.

3. Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

4. Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his estate.

Article 28

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.

2. Questions of procedure shall be governed by the law of the Court seised of the case.

Article 29

1. The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

2. The method of calculating the period of limitation shall be determined by the law of the Court seised of the case.

Article 30

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article 1, each carrier who accepts passengers, luggage or goods is subjected to the rules set out in this Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

2. In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

3. As regards luggage or goods, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Chapter IV - Provisions Relating to Combined Carriage

Article 31

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

Chapter V - General and Final Provisions

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to

jurisdiction, shall be null and void. Nevertheless for the carriage of goods arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of Article 28.

Article 33

Nothing contained in this Convention shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Convention.

Article 34

This Convention does not apply to international carriage by air performed by way of experimental trial by air navigation undertakings with the view to the establishment of a regular line of air navigation, nor does it apply to carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

Article 35

The expression "days" when used in this Convention means current days not working days.

Article 36

The Convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

Article 37

1. This Convention shall be ratified. The instruments of ratification shall be deposited in the archives of the Ministry for Foreign Affairs of Poland, which will notify the deposit to the Government of each of the High Contracting Parties.

2. As soon as this Convention shall have been ratified by five of the High Contracting Parties it shall come into force as between them on the ninetieth day after the deposit of the fifth ratification. Thereafter it shall come into force between the High Contracting Parties who shall have ratified and the High Contracting Party who deposits his instrument of ratification on the ninetieth day after the deposit.

3. It shall be the duty of the Government of the Republic of Poland to notify to the Government of each of the High Contracting Parties the date on which this Convention comes into force as well as the date of the deposit of each ratification.

Article 38

1. This Convention shall, after it has come into force, remain open for accession by any State.

2. The accession shall be effected by a notification addressed to the Government of the Republic of Poland, which will inform the Government of each of the High Contracting Parties thereof.

3. The accession shall take effect as from the ninetieth day after the notification made to the Government of the Republic of Poland.

Article 39

1. Any one of the High Contracting Parties may denounce this Convention by a notification addressed to the Government of the Republic of Poland, which will at once inform the Government of each of the High Contracting Parties.

2. Denunciation shall take effect six months after the notification of denunciation, and shall operate only as regards the Party who shall have proceeded to denunciation.

Article 40

1. Any High Contracting Party may, at the time of signature or of deposit of ratification or of accession declare that the acceptance which he gives to this Convention does not apply to all or any of his colonies, protectorates, territories under mandate, or any other territory subject to his sovereignty or his authority, or any territory under his suzerainty.

2. Accordingly any High Contracting Party may subsequently accede separately in the name of all or any of his colonies, protectorates, territories under mandate or any other territory subject to his sovereignty or to his authority or any territory under his suzerainty which has been thus excluded by his original declaration.

3. Any High Contracting Party may denounce this Convention, in accordance with its provisions, separately or for all or any of his colonies, protectorates, territories under mandate or any other

territory subject to his sovereignty or to his authority, or any other territory under his suzerainty.

Article 41

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this Convention to call for the assembling of a new international Conference in order to consider any improvements which may be made in this Convention. To this end he will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such Conference.

This Convention done at Warsaw on the 12th October, 1929, shall remain open for signature until the 31st January, 1930.

Additional Protocol

Additional Protocol (With reference to Article 2)

The High Contracting Parties reserve to themselves the right to declare at the time of ratification or of accession that the first paragraph of Article 2 of this Convention shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority."

উপরিল্লিখিত ওয়ারস কনভেনশনকে আমাদের অধিক্ষেত্রে বলবৎ এবং কার্যকর করার জন্য The Carriage By Air Act, 1934 প্রণীত হয়। বাংলাদেশের সংবিধানে অনুচ্ছেদ ১৪৯ মোতাবেক উক্ত আইনটি এখনও অব্যাহত এবং কার্যকর আছে। উক্ত আইনটি নিম্নে অবিকল অনুলিখন হলোঃ

The Carriage By Air Act, 1934

(ACT NO. XX OF 1934)

[19th August, 1934]

An Act to give effect in Bangladesh to a Convention for the unification of certain rules relating to international carriage by air.

WHEREAS a Convention for the unification of certain rules relating to international carriage by air (hereinafter referred to as the Convention) was, on the 12th day of October, 1929, signed at Warsaw;

AND WHEREAS it is expedient that Bangladesh should accede to the convention and should make provision for giving effect to the said convention in Bangladesh;

AND WHEREAS it is also expedient to make provision for applying the rules contained in the Convention (subject to exceptions, adaptations and modifications) to carriage by air in Bangladesh which is not international carriage within the meaning of the Convention; It is hereby enacted as follows:-

Short title, extent and commencement

1. (1) This Act may be called the Carriage By Air Act, 1934.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint.

Application of the Convention to Bangladesh

2. (1) The rules contained in the First Schedule, being the provisions of the Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall, subject to the provisions of this Act, have the force of law in Bangladesh in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.

(2) The Government may, by notification in the official Gazette, certify who are the High Contracting Parties to the Convention, in respect of what territories they are parties, and to what extent they have availed themselves of the Additional Protocol to the Convention, and any such notification shall be conclusive evidence of the matters certified therein.

(3) Any reference in the First Schedule to the territory of any High Contracting Party to the Convention shall be construed as a reference to all the territories in respect of which he is a party.

(3A) Any reference in the First Schedule to agents of the carrier shall be construed as including a reference to servants of the carrier.

(4) Notwithstanding anything contained in the Fatal Accidents Act, 1855, or any other enactment or rule of law in force in [Bangladesh], the rules contained in the First Schedule shall, in all cases to which those rules apply, determine the liability of a carrier in respect of the death of a passenger, and the rules contained in the Second Schedule shall determine the persons by whom and for whose benefit and the manner in which such liability may be enforced.

(5) Any sum in francs mentioned in rule 22 of the First Schedule shall, for the purpose of any action against a carrier, be converted into [Taka] at the rate of exchange prevailing on the date on which the amount of damages to be paid by the carrier is ascertained by the Court.

Provisions regarding suits against High Contracting Parties who undertake carriage by air

3. (1) Every High Contracting Part to the Convention who has not availed himself of the provisions of the Additional Protocol thereto shall, for the purposes of any suit brought in a Court in Bangladesh in accordance with the provisions of rule 28 of the First Schedule to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that Court and to be a person for the purposes of the Code of Civil Procedure, 1908.

(2) The [Supreme Court] may make rules of procedure providing for all matters which may be expedient to enable such suits to be instituted and carried on.

(3) Nothing in this section shall authorize any Court to attach or sell any property of a High Contracting Party to the Convention.

Application of Act to carriage by air which is not international

4. The Government may, by notification in the official Gazette, apply the rules contained in the First Schedule and any provision of section 2 to such carriage by air, not being international carriage by air as defined in the First Schedule, as may by

specified in the notification, subject however to such exceptions, adaptations and modifications, if any, as may be so specified.

FIRST SCHEDULE

(See section 2)

RULES

CHAPTER I

SCOPE –DEFINITION

1. (1) These rules apply to all international carriage of persons, luggage or goods performed by aircraft for reward. They apply also to such carriage when performed gratuitously by an air transport undertaking.

(2) In these rules "High Contracting Party" means a High Contracting Party to the Convention.

(3) For the purposes of these rules the expression "international carriage" means any carriage in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power in not a party to the Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purpose of these rules.

(4) A carriage to be performed by several successive air carriers is deemed, for the purposes of these rules to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it has been agreed upon under the form of a single contract or of a series of contracts, and it does not, lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party.

2. (1) These rules apply to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in the rule 1.

(2) These rules do not apply to carriage performed under the terms of any international postal Convention.

CHAPTER II

DOCUMENTS OF CARRIAGE

Part I. − Passenger ticket

3. (1) For the carriage of passengers the carrier must deliver a passenger ticket which shall contain the following particulars:−

(a) the place and date of issue;

(b) the place of departure, and of destination;

(c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the carriage of its international character;

(d) the name and address of the carrier or carriers;

(e) a statement that the carriage is subject to the rules relating to liability constained in this Schedule.

(2) The absence, irregularity or loss of the passenger the ticket does not effect the existence or the validity of the contract of carriage, which shall none the less be subject to these rules. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this Schedule which exclude or limit his liability.

Part II. − Luggage ticket

4. (1) For the carriage of luggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a luggage ticket.

(2) The luggage ticket shall be made out in duplicate, one part for the passenger and the other part for the carrier.

(3) The luggage ticket shall contain the following particulars:−

(a) the place and date of issue;

(b) the place of departure and of destination;

(c) the name and address of the carrier or carriers;

(d) the number of the passenger ticket;

(e) a statement that delivery of the luggage will be made to the bearer of the luggage will be made to the bearer of the luggage ticket;

(f) the number and weight of the packages;

(g) the amount of the value declared in accordance with rule 22(2);

(h) a statement that the carriage is subject to the rules relating to liability contained in this Schedule.

(4) The absence, irregularity or loss of the luggage ticket does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to those rules. Nevertheless, if the carrier accepts luggage without a luggage ticket having been

delivered, or if the luggage ticket does not contain the particulars set out at (d) (f) and (h) of sub-rule (3), he carrier shall not be entitled to avail himself of those provisions of this Schedule which exclude or limit his liability.

Part III. −Air consignment note

5. (1) Every carrier of goods has the right to require the consignor to make out and hand over to him a document called an "air consignment note"; every consignor has the right to require the carrier to accept this document.

(2) The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of rule 9, be none the less governed by these rules.

6. (1) The air consignment note shall be made out by the consignor in three original parts and be handed over with the goods.

(2) The first part shall be marked "for the carrier", and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the goods. The third part shall be signed by the carrier and handed by him to the consignor after the goods have been accepted.

(3) The carrier shall sign an acceptance of the goods.

(4) The signature of the carrier may be stamped; that of the consignor may be printed or stamped.

(5) If, at the request of the consignor, the carrier makes out the consignment note, he shall be deemed, subject to proof to the contrary to have done so on behalf of the consignor.

7. The carrier of goods has the right to require the consignor to make out separate consignment notes when there is more than one package.

8. The air consignment note shall contain the following particulars:−

(a) the place and date of its execution;

(b) the place of departure and of destination;

(c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in cases of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character;

(d) the name and address of the consignor;

(e) the name and address of the first carrier;

(f) the name and address of the consignee, if the case so requires;

(g) the nature of goods;

(h) the number of the packages, the method of packing and the particular marks or numbers upon them;

(i) the weight, the quantity and the volume or dimensions of the goods;

(j) the apparent condition of the goods and of the packing;

(k) the freight, if it has been agreed upon, the date and place of payment and the person who is to pay it;

(l) if the goods are sent for payment on delivery, the price of the goods and, if the case so requires, the amount of the expenses incurred;

(m) the amount of the value declared in accordance with rule 22(2);

(n) the number of parts of the air consignment note;

(o) the documents handed to the carrier to accompany the air consignment note;

(p) the time fixed for the completion of the carriage and a brief note of the route to be followed, if these matters have been agreed upon;

(q) a statement that the carriage is subject to the rules relating to liability contained in this Schedule.

9. If the carrier accepts goods without an air consignment note having been made out, or if the air consignment note does not contain all the particulars set out in rule 8(a) to (i) inclusive and (q), the carrier shall not be entitled to avail himself of the provisions of this Schedule which exclude or limit his liability.

10. (1) The consignor is responsible for the correctness of the particulars and statements relating to the goods which he inserts in the air consignment note.

(2) The consignor will be liable for all damage suffered by the carrier or any other person by reason of the irregularity, incorrectness or incompleteness of the said particulars and statements.

11. (1) The air consignment note is prima facie evidence of the conclusion of the contract, of the receipt of the goods and of the conditions of carriage.

(2) The statements in the air consignment note relating to the weight, dimensions and packing of the goods, as well as those relating to the number of the packages, are prima facieevidence of the facts stated; those relating to the quantity, volume and condition of the goods do not constitute evidence against the carrier except so far as they both have been, and are stated in the

air consignment note to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the goods.

12.(1)Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the goods by withdrawing them at the aerodrome of departure or destination, or by stopping them in the course of the journey on any landing, or, by calling for them to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air consignment note, or by requiring them to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

(2) If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

(3) If the carrier obeys the order of the consignor for the disposition of the goods without requiring the production of the part of the air consignment note delivered to the later, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air consignment note.

(4) The right conferred on the consignor cease at the moment when that of the consignee begins in accordance with rule 13. Nevertheless, if the consignee declines to accept the consignment note or the goods, or if he cannot be communicate with, the consignor resumes his right of disposition.

13.(1) Except in the circumstances set out in rule 12, the consignees is entitled, on arrival of the goods at the place of destination, to require the carrier to hand over to him the air consignment note and to deliver the goods to him, on payment of the charges due and on complying with the conditions of a carriage set out in the air consignment note.

(2) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the goods arrive.

(3) If the carrier admits the loss of the goods, or if the goods have not arrived at the expiration of seven days after the date on which they ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

14. The consignor and the consignee can respectively enforce all the rights given them by rules 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

15.(1) Rules 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of rules 12, 13 and 14 can only be varied by express provision in the air consignment note.

16.(1) The consignor must furnish such information and attach to the air consignment note such documents as are necessary to meet the formalities of customs, octroi or police before the goods can be delivered to the consignee. The consignor is liable to the carrier for any damaged occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his agents.

(2) The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III

LIABILITY OF THE CARRIER

17. The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

18.(1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered luggage or any goods, if the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The carriage by air within the meaning of the preceding paragraph comprises the period during which the luggage or goods are in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

(3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed, subject to proof of the contrary, to have been the result of an event which took place during the carriage by air.

19. The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods.

20. (1) The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

(2) In the carriage of goods and luggage the carrier is not liable if he proves that the damaged was occasioned by negligent pilot age or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

21. If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may exonerate the carrier wholly or partly from his liability.

22. (1) In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 125,000 francs. Where damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract the carrier and the passenger may agree to a higher limit of liability.

(2) In the carriage of registered luggage and of goods, the liability of the carrier is limited to a sum of 250 francs per kilogram, unless the consignor has made at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that sum is greater than the actual value to the consignor at delivery.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.

(4) The sums mentioned in this rule shall be deemed to refer to the French franc consisting of 65½ milligrams gold of millesimal fineness 900.

23. Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in these rules shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provision of this Schedule.

24.(1) In the cases covered by rules 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Schedule.

(2) In the cases covered by rule 17 the provision of sub-rule (1) also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

25. (1) The carrier shall not be entitled to avail himself of the provisions of this Schedule which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as in the opinion of the Court equivalent to wilful misconduct.

(2) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused as aforesaid by any agent of the carrier acting within the scope of his employment.

26. (1) Receipt by the person entitled to delivery of luggage or goods without complaint is prima facie evidence that the same have been delivered in good condition and in accordance with the document of carriage.

(2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within three days from the date of receipt in the case of luggage and seven days from the date of receipt in the case of goods. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the luggage or goods have been placed at his disposal.

(3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing dispatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

27. In the case of the death of the person liable, an action for damages lies in accordance with these rules against those legally representing his estate.

28. An action for damages must be brought at the option of the plaintiff, either before the Court having jurisdiction where the carrier is ordinary, resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.

29. The right of damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

30. (1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in sub rule (4) or rule 1, each carrier who accepts passengers, luggage or goods is subjected to the rules set out in this Schedule, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

(2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards luggage or goods, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carrier will be jointly and severally liable to the passenger or to the consignor or consignee.

CHAPTER IV

PROVISIONS RELATING TO COMBINED CARRIAGE

31.(1) In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Schedule apply only to the carriage by air, provided that the carriage by air falls within the terms of rule 1.

(2)Nothing in this Schedule shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carries, provided that the provisions of this Schedule are observed as regards the carriage by air.

CHAPTER-V

GENERAL AND FINAL PROVISIONS

32. Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Schedule, whether by deciding the law to be applied, or by altering the ruler as to jurisdiction, shall be null and void. Nevertheless for the carriage of goods arbitration clauses are allowed, subject to these rules, if the arbitration is to take place in the territory of one the High Contracting Parties within one of the jurisdictions referred to in rule 28.

33. Nothing contained in this Schedule shall prevent the carrier either refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Schedule.

34. This Schedule does not apply to international carriage by air performed by way of experimental trial by air navigation undertakings with the view to the establishment of a regular line of air navigation, nor does it apply to carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

35. The expression "days" when used in these rules means current days, not working days.

36. When a High Contracting Party has declared at the time of ratification of or accession to the Convention that the first paragraph of Article 2 of the Convention shall not apply to

international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority, these rules shall not apply to international carriage by air so performed.

SECOND SCHEDULE

(See section 2)

PROVISIONS AS TO LIABILITY OF CARRIERS IN THE EVENT OF THE DEATH OF A PASSENGER

1. *The liability shall be enforceable for the benefit of such of the members of the passenger's family as sustained damage by reason of his death.*
   In this rule their expression "member of a family" means wife or husband, parent, step-parent, grandparent, brother, sister, half-brother, half-sister, child, step-child, grandchild:

   Provided that, in deducing any such relationship as aforesaid any illegitimate person and any adopted person shall be treated as being, or as having been, the legitimate child of his mother and reputed father or, as the case may be of his adopters.

   2. An action to enforce the liability may be brought by the personal representative of the passenger or by any person for whose benefit the liability is under the last preceding rule enforceable, but only one action shall be brought in Bangladesh in respect of the death of any one passenger, and every such action by whomsoever brought shall be for the benefit of all such persons so entitled as aforesaid as either are domiciled in Bangladesh or, not being domiciled there, express a desire to take the benefit of the action.

   3. Subject to the provisions of the next succeeding rule the amount recovered in any such action, after deducting any costs not recovered from the defendant, shall be divided between the persons entitled in such proportions as the Court may direct.

   4. The Court before which any such action is brought may at any stage of the proceedings make any such order appears to the Court to be just and equitable in view of the provisions of the First Schedule to this Act limiting the liability of a carrier and of any proceedings which have been, or are likely to be, commenced outside Bangladesh in respect of the death of the passenger in question.

অতপরঃ "International Civil Aviation Orgnization (ICAO)" নামক জাতিসংঘের বিশেষায়িত সংস্থা ৪ এপ্রিল, ১৯৪৭ সালে তার যাত্রা শুরু করে।

১৯৫৫ সালে International Civil Aviation Orgnization (ICAO) ওয়ারস কনভেনশনকে সংশোধনের নিমিত্তে হেগ প্রটোকল (Hague Protocal) গ্রহণ করে এবং ১৯২৯ সালের ওয়ারস কনভেনশন এবং ১৯৫৫ সালের হেগ প্রটোকল এই দুটিকে একসাথে একটি একক দলিল হিসেবে গণ্য করে পড়া এবং ব্যাখা করার বিষয়ে সিদ্ধান্ত প্রদান করে।

১৯৫৫ সালে হেগে ওয়ারস কনভেনশনটি সংশোধন করা হয়। উক্ত সংশোধনটি আমাদের অধিক্ষেত্রে বলবৎ এবং কার্যকর করার জন্য ***"The Carriage By Air (International Convention) Act, 1966"*** এবং **"The Carriage By Air (Supplementary Convention) Act, 1968"** প্রণীত হয় এবং বাংলাদেশের সংবিধানের অনুচ্ছেদ ১৪৯ মোতাবেক উক্ত আইন দুটি অদ্যবধি আমাদের অধিক্ষেত্রে অব্যহত এবং কার্যকর আছে। উক্ত আইন দুটি নিম্নে অবিকল অনুলিখন হলোঃ

The Carriage by Air (International Convention) Act, 1966

(ACT NO. IX OF 1966)

[18th June, 1966]

An Act to give effect in Bangladesh to the Convention concerning international carriage by air known as "the Warsaw Convention as amended at The Hague, 1955".

WHEREAS it is expedient to give effect in Bangladesh to the Convention concerning international carriage by air known as "the Warsaw Convention as amended at The Hague, 1955", and to enable the rules contained in that Convention to be applied, subject to exceptions, adaptations and modifications, to carriage by air in Bangladesh which is not international carriage within the meaning of the Convention, and to provide for matters connected herewith;

It is hereby enacted as follows:-

Short title, extent and commencement

1. (1) This Act may be called the Carriage by Air (International Convention) Act, 1966.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force at once and shall be deemed to have taken effect on the first day of August, 1963.

Application of the Warsaw Convention, as amended, to Bangladesh

2. (1) The rules contained in the First Schedule, being the provisions of the Convention for the unification of certain rules relating to international carriage by air known as "the Warsaw Convention as amended at The Hague, 1955", hereinafter referred to as the Convention, shall, subject to the provisions of this Act, have the force of law in Bangladesh in relation to any carriage by air to which those rules

apply, irrespective of the nationality of the aircraft performing the carriage.

(2) The Government may, by notification in the official Gazette, certify who are the High Contracting Parties to the Convention, in respect of what territories they are parties, and to what extent they have availed themselves of the Additional Protocol to the Convention, and any such notification shall be conclusive evidence of the matters certified therein.

(3) Notwithstanding anything contained in the Fatal Accidents Act, 1855, or any other law for the time being in force, the rules contained in the First Schedule shall, in all cases to which those rules apply, determine the liability of a carrier in respect of the death of a passenger, and the rules contained in the Second Schedule shall determine the persons by whom and for whose benefit and the manner in which such liability may be enforced.

(4) Any sum in francs mentioned in rule 22 of the First Schedule shall, for the purpose of any action against a carrier, be converted into rupees at the rate of exchange prevailing on the date on which the amount of damages to be paid by the carrier is ascertained by the Court.

(5) Any reference in the First Schedule-

(a) to the territory of any High Contracting Party to the Convention shall be construed as a reference to all the territories in respect of which he is a party; and

(b) to agents of the carrier shall be construed as including a reference to servants of the carrier.

Provisions regarding suits against High Contracting Parties who undertake carriage by air

3. (1) Every High Contracting Party to the Convention who has not availed himself of the provisions of the Additional Protocol thereto shall, for the purposes of any suit brought in a Court in Bangladesh in accordance with the provisions of rule 28 of the First Schedule to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that Court and to be a person for the purposes of the Code of Civil Procedure, 1908.

(2) The [High Court Division] may make rules of procedure providing for all matters which may be expedient to enable such suits to be instituted and carried on.

(3) Nothing in this section shall authorise any Court to attach or sell any property of a High Contracting Party to the Convention.

Application of Act to carriage by air which is not international Repeal, etc.

4. The Government may, by notification in the official Gazette, apply the rules contained in the First Schedule and any provision of section 2 to such carriage by air, not being international carriage by air as defined in the First Schedule, as may be specified in the notification, subject, however, to such exceptions, adaptations and modifications, if any, as may be so specified.

5. The Carriage By Air Act, 1934, shall,-
(a) in so far as it relates to carriage by air to which the rules contained in the First Schedule to this Act may, for the time being, apply, stand repealed; and

(b) to the extent it has not been so repealed, have effect subject to the modification that for the provisions of the Second Schedule to that Act the provisions of the Second Schedule to this Act shall be substituted.

FIRST SCHEDULE
(See section 2)
RULES
CHAPTER I
Scope- Definitions

1. (1)These rules apply to all international carriage of persons, baggage or goods performed by aircraft for reward. They apply also to such carriage when performed gratuitously by an air transport undertaking.

(2) In these rules "High Contracting Party" means a High Contracting Party to the Convention.

(3) For the purposes of these rules the expression "international carriage" means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another State, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of these rules.

(4) Carriage to be performed by several successive air carriers is deemed, for the purposes of these rules, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form

of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

2. (1) These rules apply to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in rule 1.

(2) These rules shall not apply to carriage of mail and postal packages.

CHAPTER II
Documents of Carriage
PART I.- Passenger ticket

3. (1) In respect of the carriage of passengers a ticket shall be delivered containing:

(a) an indication of the places of departure and destination;

(b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, and indication of at least one such stopping place;

(c) a notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage.

(2) The passenger ticket shall constitute prima facieevidence of the conclusion and conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to these rules. Nevertheless, if, with the consent of the carrier, the passenger embarks without a passenger ticket having been delivered, or if the ticket does not include the notice required by sub-rule 1 (c) of this rule, the carrier shall not be entitled to avail himself of the provisions of rule 22.

PART II.- Baggage check

4. (1) In respect of the carriage of registered baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a passenger ticket which complies with the provisions of rule 3, sub-rule (1), shall contain:

(a) an indication of the places of departure and destination;

(b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;

(c) a notice to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to baggage.

(2) The baggage check shall constitute prima facie evidence of the registration of the baggage and of the conditions of the contract of carriage. The absence, irregularity or loss of the baggage check does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to these rules. Nevertheless, if the carrier takes charge of the baggage without a baggage check having been delivered or if the baggage check, unless combined with or incorporated in the passenger ticket which complies with the provisions of rule 3, sub-rule 1(c), does not include the notice required by sub-rule 1 (c) of this rule, he shall not be entitled to avail himself of the provisions of rule 22, sub-rule (2).

PART III.- Air Waybill

5. (1) Every carrier of goods has the right to require the consignor to make out and hand over to him a document called an "air waybill"; every consignor has the right to require the carrier to accept this document.

(2) The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of rule 9, be none the less, governed by these rules.

6. (1) The air waybill shall be made out by the consignor in three original parts and be handed over with the goods.

(2) The first part shall be marked "for the carrier," and shall be signed by the consignor. The second part shall be marked "for the consignee;" it shall be signed by the consignor and by the carrier and shall accompany the goods. The third part shall be signed by the carrier and handed by him to the consignor after the goods have been accepted.

(3) The carrier shall sign prior to the loading of the goods on board the aircraft.

(4) The signature of the carrier may be stamped; that of the consignor may be printed or stamped.

(5) If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

7. The carrier of goods has the right to require the consignor to make out separate waybills when there is more than one package.

8. The air waybill shall contain:

(a) an indication of the places of departure and destination;

(b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;

(c) a notice to the consignor to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to goods.

9. If, with the consent of the carrier, goods are loaded on board the aircraft without an air waybill having been made out, or if the air waybill does not include the notice required by rule 8, paragraph (c), the carrier shall not be entitled to avail himself of the provisions of rule 22, sub-rule (2).

l0. (1) The consignor is responsible for the correctness of the particulars and statement relating to the goods which he inserts in the air waybill.

(2) The consignor shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor.

11. (1) The air waybill is prima facie evidence of the conclusion of the contract, of the receipt of the goods and of the conditions of carriage.

(2) The statements in the air waybill relating to the weight, dimensions and packing of the goods, as well as those relating to the number of packages, are prima facie evidence of the facts stated; those relating to the quantity, volume and condition of the goods do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the goods.

12. (1) Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the

right to dispose of the goods by withdrawing them at the aerodrome of departure or destination, or by stopping them in the course of the journey on any landing, or by calling for them to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air waybill, or by requiring them to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignor and he must repay any expenses occasioned by the exercise of this right.

(2) If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

(3) If the carrier obeys the orders of the consignor for the disposition of the goods without requiring the production of the part of the air waybill delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill.

(4) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with rule 13. Nevertheless, if the consignee declines to accept the air waybill or the goods, or if he cannot be communicated with, the consignor resumes his right of disposition.

13. (1) Except in the circumstances set out in rule 12, the consignee is entitled, on arrival of the goods at the place of destination, to require the carrier to hand over to him the air waybill and to deliver the goods to him, on payment of the charges due and on complying with the conditions of carriage set out in the air waybill.

(2) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the goods arrive.

(3) If the carrier admits the loss of the goods, or if the goods have not arrived at the expiration of seven days after the date on which they ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

14. The consignor and the consignee can respectively enforce all the rights given them by rules 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

15. (1) Rules 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of rules 12, 13 and 14 can only be varied by express provision in the air waybill.

(3) Nothing in these rules prevents the issue of a negotiable air waybill.

16. (1) The consignor must furnish such information and attach to the air waybill such documents as are necessary to meet the formalities of customs, octroi or police before the goods can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his agents.

(2) The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III

Liability of the Carrier

17. The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

18. (1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered luggage or any goods, if the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The carriage by air within the meaning of the preceding sub-rule comprises the period during which the luggage or goods are in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

(3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

19. The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods.

20. The carrier is not liable if he proves that he and his servants or agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

21. If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may exonerate the carrier wholly or partly from his liability.

22. (1) In the carriage of persons the liability of the carrier for each passenger is limited to the sum of two hundred and fifty thousand francs. Where, in accordance with the law of the Court seized of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed two hundred and fifty thousand francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

(2) (a) In the carriage of registered baggage and of goods, the liability of the carrier is limited to a sum of two hundred and fifty francs per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger's or consignor's actual interest in delivery at destination.

(b) In the case of loss, damage or delay of part of registered baggage or goods, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or goods, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to five thousand francs per passenger.

(4) The limits prescribed in this rule shall not prevent the Court from awarding, in accordance with its own law, in addition, the whole or part of the Court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding Court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

(5) The sums mentioned in francs in this rule shall be deemed to refer to a currency unit consisting of sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into national currencies in round figures. Conversion of the sums into national currencies other than

gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of the judgment.

23. (1) Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in these rules shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Schedule.

(2) Sub-rule (1) of this rule shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the goods carried.

24. (1) In the cases covered by rules 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Schedule.

(2) In the cases covered by rule 17 the provisions of sub-rule (1) also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

25. The limits of liability specified in rule 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent it is also proved that he was acting within the scope of his employment.

25A. (1) If an action is brought against a servant or agent of the carrier arising out of damage to which these rules relate, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under rule 22.

(2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.

(3) The provisions of sub-rules (1) and (2) of this rule shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

26. (1) Receipt by the person entitled to delivery of luggage or goods without complaint is prima facie evidence that the same have been delivered in good condition and in accordance with the document of carriage.

(2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of baggage and fourteen days from the date of

receipt in the case of goods. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or goods have been placed at his disposal.

(3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

27. In the case of the death of the person liable, an action for damages lies in accordance with these rules against those legally representing his estate.

28. An action for damages must be brought at the option of the plaintiff, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.

29. The right of damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

30. (1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in sub-rule (4) of rule 1, each carrier who accepts passengers, baggage or goods is subjected to the rules set out in this Schedule, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

(2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards baggage or goods, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

CHAPTER IV

Provisions relating to combined carriage

31. (1) In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of

this Schedule apply only to the carriage by air, provided that the carriage by air falls within the terms of rule 1.

(2) Nothing in this Schedule shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other mode of carriage, provided that the provisions of this Schedule are observed as regards the carriage by air.

CHAPTER V

General and final provisions

32. Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Schedule, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of goods arbitration clauses are allowed, subject to these rules, if the arbitration is to take place in the territory of one of the High Contracting Parties within one of the jurisdictions referred to in rule 28.

33. Nothing contained in this Schedule shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Schedule.

34. The provisions of rules 3 to 9 inclusive relating to documents of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

35. The expression "days" when used in these rules means current days, not working days.

36. For the purposes of these rules the word "territory" means not only the metropolitan territory of a State but also all other territories for the foreign relations of which that State is responsible.

37. When a High Contracting Party has declared at the time of ratification of or of accession to the Convention that the first paragraph of Article 2 of the Convention shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority these rules shall not apply to international carriage by air so performed.

SECOND SCHEDULE
[See section 2(3)]
PROVISIONS AS TO LIABILITY OF CARRIERS IN THE EVENT OF THE DEATH OF A PASSENGER

1. *The liability shall be enforceable for the benefit of such of the members of the passenger's family as sustained damage by reason of his death.*

In this rule the expression "member of a family" means wife or husband, parent, step-parent, grandparent, brother, sister, half-brother, half-sister, child, step-child, grandchild:

Provided that, in deducing any such relationship as aforesaid any illegitimate person and any adopted person shall be treated as being, or as having been, the legitimate child of his mother and reputed father or, as the case may be, of his adopters.

2. An action to enforce the liability may be brought by the personal representative of the passenger or by any person for whose benefit the liability is under the last preceding rule enforceable, but only one action shall be brought in Bangladesh in respect of the death of any one passenger, and every such action by whomsoever brought shall be for the benefit of all such persons so entitled as aforesaid as either are domiciled in Bangladesh, or, not being domiciled there, express a desire to take the benefit of the action.

3. Subject to the provisions of the next succeeding rule the amount recovered in any such action, after deducting any costs not recovered from the defendant, shall be divided between the persons entitled in such proportions as the Court may direct.

4. The Court before which any such action is brought may at any stage of the proceedings make any such order as appears to the Court to be just and equitable in view of the provisions of the First Schedule to this Act limiting the liability of a carrier and of any proceedings which have been, or are likely to be, commenced outside Bangladesh in respect of the death of the passenger in question.

5. (1) Any person competent to bring an action under rule 2 may, instead of bringing such action, apply to the carrier to make payment of the amount which could have been recovered in any such action to the members of the passenger's family mentioned in the certificate granted under rule 6 to be divided between them in the proportions set out in the certificate.

(2) Where an application under sub-rule (1) is not accompanied by a certificate under rule 6, the carrier shall advise the applicant to obtain such certificate.

6. (l) Any person competent to bring an action under rule 2 may apply to the District Judge having jurisdiction to issue a succession certificate following the death of the passenger for the grant of a certificate to the effect that only the persons named therein are the members of the passenger's family for whose benefit the liability is enforceable under rule 1.

(2) A certificate under sub-rule (1) shall set out the proportion in which each member mentioned therein shall receive the amount recoverable; and the proportion shall be such as may be agreed upon

amongst the members or, in the absence of such agreement, as may be determined by the District Judge.

7. For the purpose of the grant of a certificate under rule 6, the District Judge shall publish, or cause to be published, in such newspapers as he may think fit, a copy of the application for such certificate and shall follow, so far as may be, the same procedure as in the case of an application for a succession certificate under the Succession Act, 1925 (XXXIX of 1925).

8. Payment made by the carrier in accordance with the certificate shall give him full and final discharge from his liability.

The Carriage by Air (Supplementary Convention) Act, 1968

(ACT NO. V OF 1968)

[29th May, 1968]

An Act to give effect in Bangladesh to the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person other than the Contracting Carrier.

WHEREAS it is expedient to give effect in Bangladesh to the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person other than the Contracting Carrier, and to provide for matters connected therewith;

It is hereby enacted as follows:-

Short title, extent and commencement

1. (1) This Act may be called the Carriage by Air (Supplementary Convention) Act, 1968.

(2) It extends to the whole of Bangladesh.

3) It shall come into force at once and shall be deemed to have taken effect on the 19th day of September, 1965.

Application of Supplementary Convention

2. (1) The rules contained in the Schedule, being the provisions of the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person other than the Contracting Carrier, hereinafter referred to as the Convention, shall, subject to the provisions of this Act, have the force of law in Bangladesh in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.

(2) The rules contained in the Schedule shall be supplementary to, and form part of the rules contained in the First Schedule to the Carriage By Air Act, 1934 (XX of 1934), or, as the case may be, in the First Schedule to the Carriage by Air (International

Convention) Act, 1966 (IX of 1966), and shall have effect accordingly.

(3) The [Government] may, by notification in the official Gazette, certify who are the Contracting States for the purposes of the Convention and in respect of what territories they are Contracting States; and any such notification shall be conclusive evidence of the matters specified therein.

অতঃপর ১৯৯৯ সালে ওয়ারস কনভেনশনকে (Warsaw Convention) বাতিল করে নতুন এক কনভেনশন তথা মন্ট্রিল কনেভেনশন *(Montreal Convention)* International Civil Aviation Orgnization (ICAO) এর ডিপ্লোমেটিক সভায় গ্রহণ করা হয়। মন্ট্রিল কনেভেনশন ২০০৩ সালের ৪ নভেম্বর থেকে কার্যকর হয়। গুরুত্বপূর্ণ বিধায় মন্ট্রিল কনভেশনটি নিম্নে অবিকল অনুলিখন হলোঃ

CONVENTION

FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

THE STATES PARTIES TO THIS CONVENTION

RECOGNIZING the significant contribution of the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929, hereinafter referred to as the "Warsaw Convention", and other related instruments to the harmonization of private international air law;

RECOGNIZING the need to modernize and consolidate the Warsaw Convention and related instruments;

RECOGNIZING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution;

REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944;

CONVINCED that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests;

HAVE AGREED AS FOLLOWS:

Chapter I

General Provisions

Article 1 — Scope of Application

1. This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

2. For the purposes of this Convention, the expression international carriage means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

3. Carriage to be performed by several successive carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

4. This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

Article 2 — Carriage Performed by State and Carriage of Postal Items

1. This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

2. In the carriage of postal items, the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.

3. Except as provided in paragraph 2 of this Article, the provisions of this Convention shall not apply to the carriage of postal items.

Chapter II

Documentation and Duties of the Parties Relating to the Carriage of Passengers, Baggage and Cargo

Article 3 — Passengers and Baggage

1. In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing:

(a) an indication of the places of departure and destination;

(b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

2. Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.

3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

4. The passenger shall be given written notice to the effect that where this Convention is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.

5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 4 — Cargo

1. In respect of the carriage of cargo, an air waybill shall be delivered.

2. Any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.

Article 5 — Contents of Air Waybill or Cargo Receipt

The air waybill or the cargo receipt shall include:

(a) an indication of the places of departure and destination;

(b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place; and

(c) an indication of the weight of the consignment.

Article 6 — Document Relating to the Nature of the Cargo

The consignor may be required, if necessary to meet the formalities of customs, police and similar public authorities, to deliver a document indicating the nature of the cargo. This provision creates for the carrier no duty, obligation or liability resulting therefrom.

Article 7 — Description of Air Waybill

1. The air waybill shall be made out by the consignor in three original parts.

2. The first part shall be marked „for the carrier"; it shall be signed by the consignor. The second part shall be marked „for the consignee"; it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier who shall hand it to the consignor after the cargo has been accepted.

3. The signature of the carrier and that of the consignor may be printed or stamped.

4. If, at the request of the consignor, the carrier makes out the air waybill, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 8 — Documentation for Multiple Packages

When there is more than one package:

(a) the carrier of cargo has the right to require the consignor to make out separate air waybills;

(b) the consignor has the right to require the carrier to deliver separate cargo receipts when the other means referred to in paragraph 2 of Article 4 are used.

Article 9 — Non-compliance with Documentary Requirements

Non-compliance with the provisions of Articles 4 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 10 — Responsibility for Particulars Documentation

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill of furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.

2. The consignor shall indemnify the carrier against all damage suffered by it, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on its behalf.

3. Subject to the provisions of paragraphs 1 and 2 of this Article, the carrier shall indemnify the consignor against all damage suffered by it, or by any other person to whom the

consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of Article 4.

Article 11 — Evidentiary Value of Documentation

1. The air waybill or the cargo receipt is prima facie evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.

2. Any statements in the air waybill or the cargo receipt relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are prima facie evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill or the cargo receipt to have been, checked by it in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 12 — Right of Disposition of Cargo

1. Subject to its liability to carry out all its obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the instructions of the consignor, the carrier must so inform the consignor forthwith.

3. If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its right of recovery from the consignor, for any damage which may be caused

thereby to any person who is lawfully in possession of that part of the air waybill or the cargo receipt.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor resumes its right of disposition.

Article 13 — Delivery of the Cargo

1. Except when the consignor has exercised its right under Article 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, on payment of the charges due and on complying with the conditions of carriage.

2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage.

Article 14 — Enforcement of the Rights of Consignor and Consignee

The consignor and the consignee can respectively enforce all the rights given to them by Articles 12 and 13, each in its own name, whether it is acting in its own interest or in the interest of another, provided that it carries out the obligations imposed by the contract of carriage.

Article 15 — Relations of Consignor and Consignee or Mutual Relations of Third Parties

1. Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill or the cargo receipt.

Article 16 — Formalities of Customs, Police or Other Public Authorities

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, its servants or agents.

2. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

Chapter III

Liability of the Carrier and Extent of Compensation for Damage

Article 17 — Death and Injury of Passengers — Damage to Baggage

1. 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.

2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

4. Unless otherwise specified, in this Convention the term „baggage“ means both checked baggage and unchecked baggage.

Article 18 — Damage to Cargo

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.

2. However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following:

- *(a) inherent defect, quality or vice of that cargo;*
- *(b) defective packing of that cargo performed by a person other than the carrier or its servants or agents;*
- *(c) an act of war or an armed conflict;*
- *(d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.*

3. The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.

4. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

Article 19 — Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that

could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 20 — Exoneration

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Article applies to all the liability provisions in this Convention, including paragraph 1 of Article 21.

Article 21 — Compensation in Case of Death or Injury of Passengers

1. For damages arising under paragraph 1 of Article 17 not exceeding 100 000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

2. The carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger 100 000 Special Drawing Rights if the carrier proves that:

(a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or

(b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

Article 22 — Limits of Liability in Relation to Delay, Baggage and Cargo

1. In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 150 Special Drawing Rights.

2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger

has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.

3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

4. In the case of destruction, loss, damage or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

5. The foregoing provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.

6. The limits prescribed in Article 21 and in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the

other expenses of the litigation incurred by the plaintiff, including interest. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

Article 23 — Conversion of Monetary Units

1. The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgement, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State.

2. Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this Article may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in Article 21 is fixed at a sum of 1 500 000 monetary units per passenger in judicial proceedings in their territories; 62 500 monetary units per passenger with respect to paragraph 1 of Article 22; 15 000 monetary units per passenger with respect to paragraph 2 of Article 22; and 250 monetary units per kilogramme with respect to paragraph 3 of Article 22. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph 1 of this Article and the conversion method mentioned in paragraph 2 of this Article shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 21 and 22 as would result from the application of the first three sentences of paragraph 1 of this Article. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1 of this Article, or the result of the conversion in paragraph 2 of this Article as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

Article 24 — Review of Limits

1. Without prejudice to the provisions of Article 25 of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Articles 21, 22 and 23 shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, or if the Convention does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 23.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval, the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

3. Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 per cent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

Article 25 — Stipulation on Limits

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

Article 26 — Invalidity of Contractual Provisions

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

Article 27 — Freedom to Contract

Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.

Article 28 — Advance Payments

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

Article 29 — Basis of Claims

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in

contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Article 30 — Servants, Agents — Aggregation of Claims

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.

2. The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

3. Save in respect of the carriage of cargo, the provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 31 — Timely Notice of Complaints

1. Receipt by the person entitled to delivery of checked baggage or cargo without complaint is prima facie evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of Article 3 and paragraph 2 of Article 4.

2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal.

3. Every complaint must be made in writing and given or dispatched within the times aforesaid.

4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

Article 32 — Death of Person Liable

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his or her estate.

Article 33 — Jurisdiction

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.

2. In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft, or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

3. For the purposes of paragraph 2,

(a) „commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air;

(b) „principal and permanent residence" means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard.

4. Questions of procedure shall be governed by the law of the court seized of the case.

Article 34 — Arbitration

1. Subject to the provisions of this Article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled by arbitration. Such agreement shall be in writing.

2. The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in Article 33.

3. The arbitrator or arbitration tribunal shall apply the provisions of this Convention.

4. The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

Article 35 — Limitation of Actions

1. The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

2. The method of calculating that period shall be determined by the law of the court seised of the case.

Article 36 — Successive Carriage

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of Article 1, each carrier which accepts passengers, baggage or cargo is subject to the rules set out in this Convention and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.

2. In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which performed the carriage during which the accident or the delay occurred, save in the case

where, by express agreement, the first carrier has assumed liability for the whole journey.

3. As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier which performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Article 37 — Right of Recourse against Third Parties

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

Chapter IV

Combined Carriage

Article 38 — Combined Carriage

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

Chapter V

Carriage by Air Performed by a Person other than the Contracting Carrier

Article 39 — Contracting Carrier — Actual Carrier

The provisions of this Chapter apply when a person (hereinafter referred to as „the contracting carrier“) as a principal makes a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as „the

actual carrier") performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

Article 40 — Respective Liability of Contracting and Actual Carriers

If an actual carrier performs the whole or part of carriage which, according to the contract referred to in Article 39, is governed by this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

Article 41 — Mutual Liability

1. The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2. The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Articles 21, 22, 23 and 24. Any special agreement under which the contracting carrier assumes obligations not imposed by this Convention or any waiver of rights or defences conferred by this Convention or any special declaration of interest in delivery at destination contemplated in Article 22 shall not affect the actual carrier unless agreed to by it.

Article 42 — Addressee of Complaints and Instructions

Any complaint to be made or instruction to be given under this Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in Article 12 shall only be effective if addressed to the contracting carrier.

Article 43 — Servants and Agents

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under this Convention to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Convention.

Article 44 — Aggregation of Damages

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to that person.

Article 45 — Addressee of Claims

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seized of the case.

Article 46 — Additional Jurisdiction

Any action for damages contemplated in Article 45 must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before a court in which an action may be brought against the contracting carrier, as provided in Article 33, or before the court having jurisdiction at the place where the actual carrier has its domicile or its principal place of business.

Article 47 — Invalidity of Contractual Provisions

Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix

a lower limit than that which is applicable according to this Chapter shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Chapter.

Article 48 — Mutual Relations of Contracting and Actual Carriers

Except as provided in Article 45, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

Chapter VI
Other Provisions

Article 49 — Mandatory Application

Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

Article 50 — Insurance

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State Party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.

Article 51 — Carriage Performed in Extraordinary Circumstances

The provisions of Articles 3 to 5, 7 and 8 relating to the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of a carrier's business.

Article 52 — Definition of Days

The expression „days" when used in this Convention means calendar days, not working days.

Chapter VII
Final Clauses

Article 53 — Signature, Ratification and Entry into Force

1. This Convention shall be open for signature in Montreal on 28 May 1999 by States participating in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 May 1999, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 6 of this Article.

2. This Convention shall similarly be open for signature by Regional Economic Integration Organisations. For the purpose of this Convention, a „Regional Economic Integration Organisation" means any organisation which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorized to sign and to ratify, accept, approve or accede to this Convention. A reference to a „State Party" or „States Parties" in this Convention, otherwise than in paragraph 2 of Article 1, paragraph 1(b) of Article 3, paragraph (b) of Article 5, Articles 23, 33, 46 and paragraph (b) of Article 57, applies equally to a Regional Economic Integration Organisation. For the purpose of Article 24, the references to „a majority of the States Parties" and „one-third of the States Parties" shall not apply to a Regional Economic Integration Organisation.

3. This Convention shall be subject to ratification by States and by Regional Economic Integration Organisations which have signed it.

4. Any State or Regional Economic Integration Organisation which does not sign this Convention may accept, approve or accede to it at any time.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary.

6. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Depositary between the States which have deposited such

instrument. An instrument deposited by a Regional Economic Integration Organisation shall not be counted for the purpose of this paragraph.

7. For other States and for other Regional Economic Integration Organisations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession.

8. The Depositary shall promptly notify all signatories and States Parties of:

- *(a) each signature of this Convention and date thereof;*
- *(b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;*
- *(c) the date of entry into force of this Convention;*
- *(d) the date of the coming into force of any revision of the limits of liability established under this Convention;*
- *(e) any denunciation under Article 54.*

Article 54 — Denunciation

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

Article 55 — Relationship with other Warsaw Convention Instruments

This Convention shall prevail over any rules which apply to international carriage by air:

1. between States Parties to this Convention by virtue of those States commonly being Party to

- *(a) the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention);*
- *(b) the Protocol to Amend the Convention for the Unification of Certain Rules Relating to*

International Carriage by Air Signed at Warsaw on 12 October 1929, Done at The Hague on 28 September 1955 (hereinafter called The Hague Protocol);

(c) *the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier, signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention);*

(d) *the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955 Signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol);*

(e) *Additional Protocol Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by both The Hague Protocol and the Guatemala City Protocol Signed at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); or*

2. within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in sub-paragraphs (a) to (e) above.

Article 56 — States with more than one System of Law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has made such a declaration:

(a) references in Article 23 to „national currency“ shall be construed as referring to the currency of the relevant territorial unit of that State; and

(b) the reference in Article 28 to „national law“ shall be construed as referring to the law of the relevant territorial unit of that State.

Article 57 — Reservations

No reservation may be made to this Convention except that a State Party may at any time declare by a notification addressed to the Depositary that this Convention shall not apply to:

(a) international carriage by air performed and operated directly by that State Party for non-commercial purposes in respect to its functions and duties as a sovereign State; and/or

(b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has been reserved by or on behalf of such authorities.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Montreal on the 28th day of May of the year one thousand nine hundred and ninety-nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all States Parties to this Convention, as well as to all States Parties to the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol, and the Montreal Protocols.

অতঃপর ২০১৯ সালে মনট্রিল কনভেনশন ১৯৯৯ এর দায়-দেনার সীমা পুনরায় সংশোধন করা হয় যা নিম্নে অবিকল অনুলিখন হলোঃ

2019 Revised Limits of Liability Under the Montreal Convention of 1999

Pursuant to the 2019 review of the limits of liability conducted by ICAO under Article 24 of the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montréal on 28 May 1999 (Doc 9740) (Montreal Convention of 1999), the revised limits of liability established under Articles 21 and 22 of the said Convention, in Special Drawing Rights (SDRs), effective as of 28 December 2019, are as set out in the fourth column of the following table:

Montreal Convention of 1999	***Original limit (SDRs)***	***Revised limit (SDRs) as of 30 December 2009***	***Revised limit (SDRs) as of 28 December 2019***
Article 21	100 000	113 100	**128 821**
Article 22, paragraph 1	4 150	4 694	**5 346**
Article 22, paragraph 2	1 000	1 131	**1 288**
Article 22, paragraph 3	17	19	**22**

States Parties to the Montreal Convention of 1999 are accordingly invited to make provisions as necessary in accordance with their domestic legal requirements to give full effect as of 28 December 2019 to the revised limits.

এখন পর্যন্ত ১৩৭টি দেশ মনট্রিল কনভেনশন ১৯৯৯ অনুমোদন করেছে। কিছু দেশ শুধু স্বাক্ষর করেছে। নিম্নে মনট্রিল কনভেনশন ১৯৯৯-এ অনুমোদনকারী এবং স্বাক্ষরকারী দেশসমূহ কে কবে স্বাক্ষর এবং অনুমোদন দিয়েছে তার তালিকা নিম্নে অবিকল অনুলিখন হলোঃ

CONVENTION FOR THE UNIFICATION OF CERTAIN RULE

FOR INTERNATIONAL CARRIAGE BY AIR

DONE AT MONTREAL ON 28 MAY 1999

Entry into force:	*The Convention entered into force on 4 November 2003*.*
Status:	*137 parties.*

State	*Date of signature*	*Date of deposit of instrument of ratification, acceptance (A), approval (AA) or accession (a)*	*Date of entry into force*
Albania	-	*20.10.04 (a)*	*19.12.04*
Argentina (22)	-	*16.12.09 (a)*	*14.02.10*
Armenia	-	*16.04.10 (a)*	*15.06.10*
Australia	-	*25.11.08 (a)*	*24.01.09*
Austria (10)	-	*09.04.04 (a)*	*28.06.04*
Azerbaijan	-	*10.02.15 (a)*	*11.04.15*
Bahamas	*28/5/99*	-	-
Bahrain	-	*02.02.01(a)*	*04.11.03*
Bangladesh	*28.05.99*	-	-
Barbados	-	*02.01.02 (a)*	*04.11.03*
Belgium (1)(15)	*28.05.99*	*29.04.04*	*28.06.04*
Belize	*28.05.99*	*24.08.99*	*04.11.03*
Benin	*28.05.99*	*30.03.04*	*29.05.04*
Bolivia (Plurinational State of)	*28.05.99*	*06.05.15*	*05.07.15*
Bosnia and Herzegovina	-	*09.03.07 (a)*	*08.05.07*
Botswana	-	*28.03.01 (a)*	*04.11.03*
Brazil	*03.08.99*	*19.05.06*	*18.07.06*
Brunei Darussalam (36)	-	*18.03.20 (a)*	*17.05.20*
Bulgaria	-	*10.11.03 (a)*	*09.01.04*
Burkina Faso	*28.05.99*	*25.06.13*	*25.08.13*
Cabo Verde	-	*23.08.04 (a)*	*22.10.04*
Cambodia	*28.05.99*	-	-
Cameroon	*27.09.01*	*05.09.03*	*04.11.03*
Canada (6)	*01.10.01*	*19.11.02*	*04.11.03*
Central African Republic	*25.09.01*	-	-
Chad	-	*12.07.17 (a)*	*10.09.17*
Chile (21)	*28.05.99*	*19.03.09*	*18.05.09*
China (18)	*28.05.99*	*01.06.05*	*31.07.05*
Colombia	*15.12.99*	*28.03.03*	*04.11.03*
Congo	-	*19.12.11(A)*	*17.02.12*
Cook Islands	-	*22.05.07 (a)*	*21.07.07*
Costa Rica	*20.12.99*	*09.06.11*	*08.08.11*
Cote d'Ivoire	*28.05.99*	*04.02.15*	*05.04.15*
Croatia	-	*23.01.08 (a)*	*23.03.08*
Cuba	*28.05.99*	*14.10.05*	*13.12.05*
Cyprus	-	*20.11.02 (a)*	*04.11.03*
Czech Republic (3)	*28.05.99*	*16.11.00*	*04.11.03*
Democratic Republic of the Congo	-	*21.07.14 (a)*	*19.09.14*
Denmark (1)(11)	*28.05.99*	*29.04.04*	*28.06.04*
Dominican Republic	*28.05.99*	*21.09.07*	*20.11.07*
Ecuador	-	*27.06.06 (a)*	*26.08.06*
Egypt	-	*24.02.02 (A)*	*25.04.05*
EI Salvador	-	*07.11.07 (a)*	*06.01.08*
Equatorial Guinea	-	*18.09.15 (AA)*	*17.11.15*
Estonia	*04.02.02*	*10.04.03*	*04.11.03*
Eswatini	*28.05.99*	*23.11.16*	*22.01.17*
Ethiopia	-	*23.04.14(a)*	*22.06.14*
Fiji	-	*10.11.15(a)*	*09.01.16*
Finland (4)	*09.12.99*	*29.04.04*	*28.06.04*
France (1)	*28.05.99*	*29.04.04*	*28.06.04*
Gabon	*28.05.99*	*04.02.14*	*05.04.14*
Gambia	-	*10.03.04*	*09.05.04*
Georgia	-	*20.12.10 (a)*	*18.02.11*
Germany (1)(12)	*28.05.99*	*29.04.04*	*28.06.04*
Ghana	*28.05.99*	*04.06.18*	*03.08.18*
Greece (1)	*28.05.99*	*22.07.02*	*04.11.03*

Guatemala (28)	*-*	*07.06.16(a)*	*06.08.16*
Guyana	*-*	*23.12.14(a)*	*21.02.15*
Honduras	*-*	*25.11.15(a)*	*24.01.16*
Hungary	*-*	*08.11.04(a)*	*07.01.05*
Iceland	*28.05.99*	*17.06.04*	*16.08.04*
India	*-*	*01.05.09(a)*	*30.06.09*
Indonesia	*-*	*20.03.17(a)*	*19.05.17*
Ireland (1)	*16.08.00*	*29.04.04*	*28.06.04*
Israel (24)	*-*	*19.01.11(a)*	*20.03.11*
Italy (1)	*28.05.99*	*29.04.04*	*28.06.04*
Jamaica	*28.05.99*	*07.07.09*	*05.09.09*
Japan (8)	*-*	*20.06.00(A)*	*04.11.03*
Jordan	*05.10.00*	*12.04.02*	*04.11.03*
Kazakhstan	*-*	*02.07.15(a)*	*31.08.15*
Kenya	*28.05.99*	*07.01.02*	*04.11.03*
Kuwait	*28.05.99*	*11.06.02*	*04.11.03*
Latvia	*-*	*17.12.04(A)*	*15.02.05*
Lebanon	*-*	*15.03.05(a)*	*14.05.05*
Lithuania (17)	*28.05.99*	*30.11.04*	*29.01.05*
Luxembourg (2)	*29.02.00*	*29.04.04*	*28.06.04*
Madagascar	*28.05.99*	*28.12.06*	*26.02.07*
Malaysia (20)	*-*	*31.12.07(a)*	*29.02.08*
Maldives	*-*	*31.10.05(a)*	*30.12.05*
Mali	*-*	*16.01.08(a)*	*16.03.08*
Malta	*28.05.99*	*05.05.04*	*04.07.04*
Mauritus	*28.05.99*	*02.02.17*	*03.04.17*
Mexica	*283.05.99*	*20.11.00*	*04.11.03*
Monaco	*28.05.99*	*18.08.04*	*17.10.04*
Mongolia	*-*	*05.10.04(a)*	*04.12.04*
Montenegro (23)	*-*	*15.01.10(a)*	*16.03.10.*
Morocco	*-*	*15.04.10(a)*	*14.06.10*
Mozambique	*28.05.99*	*27.01.14*	*28.03.14*
Namibia	*28.05.99*	*27.09.01*	*04.11.03*
Nepal (33)	*-*	*16.10.18(a)*	*15.12.18*
Netherlands (14)	*30.12.99*	*29.04.04*	*28.06.04*
New Zealand (5)	*13.07.01*	*18.11.02*	*04.11.03*
Niger	*28.05.99*	*31.01.18*	*01.04.18*
Nigeria	*28.05.99*	*10.05.02*	*04.11.03*
North Macedonia	*-*	*15.05.00(a)*	*04.11.03*
Norway	*-*	*29.04.04(a)*	*28.06.04*
Oman	*-*	*28.05.07(a)*	*27.07.07*
Pakistan	*28.05.99*	*19.12.06*	*17.02.07*
Panama	*28.05.99*	*13.09.02*	*04.11.03*
Paraguay	*17.03.00*	*29.03.01*	*04.11.03*
Peru	*07.09.99*	*11.04.02*	*04.11.03*
Philippines (27)	*-*	*19.10.15(a)*	*18.12.15*
Poland	*28.05.99*	*17.01.06*	*18.03.06*
Portugal (1)	*28.05.99*	*28.02.03*	*04.11.03*
Qutar (16)	*-*	*15.11.04(a)*	*14.01.05*
Republic of Korea	*-*	*30.11.07(a)*	*29.12.07*
Republic of Moldova	*-*	*17.03.09(a)*	*16.05.09*
Romania	*18.11.99*	*20.03.01*	*04.11.03*
Russian Federation (30)	*-*	*22.06.17(a)*	*21.08.17*
Rwanda	*-*	*20.11.15(a)*	*19.12.15*
Saint Vincent and the Grenadines	*-*	*29.03.04(a)*	*28.05.04*
Saudi Arabia	*28.05.99*	*15.10.03*	*14.12.03*
Senegal	*28.05.99*	*07.09.16*	*06.11.16*
Serbia	*-*	*03.02.10(a)*	*04.04.10*
Seychelles	*-*	*13.09.10(a)*	*12.11.10*
Sierra Leone	*-*	*25.11.15(a)*	*24.01.16*
Singapore (19)	*-*	*17.09.07(a)*	*16.11.07*
Slovakia	*28.05.99*	*11.10.00*	*04.11.03*
Slovenia	*28.05.99*	*27.03.02*	*04.11.03*
South Africa	*28.05.99*	*22.11.06*	*21.01.07*

Spain (13)	*14.01.00*	*29.04.04*	*28.06.04*
Sri Lanka (34)	*28.05.99*	*19.11.18(a)*	*18.01.19*
Sudan	*27.08.99*	*18.07.17*	*17.10.17*
Sweden (1)	*28.05.99*	*29.04.04*	*28.06.04*
Switzerland	-	*07.07.05*	*05.09.05*
Syrian Arab Republic	-	*18.07.02(a)*	*04.11.03*
Thailand (31)	*28.05.99*	*03.08.17(a)*	*02.10.17*
Togo (29)	-	*27.09.16*	*26.11.16*
Tonga	-	*20.11.03(a)*	*19.01.04*
Tunisia	*28.05.99*	*21.09.18(a)*	*20.11.18*
Turkey (25)	-	*25.01.11*	*26.03.11*
Uganda	-	*28.11.17(a)*	*27.01.18*
Ukraine	-	*06.03.09(a)*	*05.05.09*
United Arab Emirates	*28.05.99*	*07.07.00(a)*	*04.11.03*
United Kingdom (1)	*28.05.99*	*29.04.04*	*28.06.04*
United Republic of Tanzania	-	*11.02.03(a)*	*04.11.03*
United Stated (7)	*28.05.99*	*05.09.03*	*04.11.03*
Uruguay	*09.06.99*	*04.02.08*	*04.04.08*
Vanuatu	-	*09.11.05(a)*	*08.01.06*
Viet Nam (32)	-	*27.09.18(a)*	*26.11.18*
Zambia	*28.05.99*	-	-
	-	-	-
Regional Economic Integration Organisations	-	-	-
European Union (9) (35)	*09.12.99*	*29.04.04 (AA)*	*28.06.04*

** As a result of the third review of limits of liability conducted by ICAO in accordance with Article 24, the rounded revised limits, effective as of 28 December 2019, in Special Drawing Rights (SDRs), are:*

— 22 SDRs per kilogramme in the case of destruction, loss, damage or delay in relation to the carriage of cargo (Article 22, paragraph 3)

— 1 288 SDRs for each passenger in case of destruction, loss, damage or delay with respect to baggage (Article 22, paragraph 2)

— 5 346 SDRs for each passenger in relation to damage caused by delay in the carriage of persons (Article 22, paragraph 1)

— 128 821 SDRs for each passenger for damage sustained in case of death or bodily injury of a passenger (for the first tier) (Article 21, paragraph 1)

(1) Upon signature of the Convention, this State, Member State of the European Community, declared that, "in accordance with the Treaty establishing the European Community, the Community has competence to take actions in certain matters governed by the Convention".

(2) On 3 October 2000, ICAO received from Luxembourg the following declaration: "The Grand Duchy of Luxembourg, Member State of the European Community, declares that in accordance with the Treaty establishing the European Community, the Community has competence to take actions in certain matters governed by the Convention".

(3) Upon deposit of its instrument of ratification, the Czech Republic notified ICAO that "as a Member of the International Monetary Fund, [the Czech Republic] shall proceed in accordance with Article 23, paragraph 1 of the Convention".

(4) By a Note dated 13 July 2000, Finland transmitted a declaration dated 7 July 2000 signed by the Minister for Foreign Trade, setting forth the wording quoted in note (1) above.

(5) Upon deposit of its instrument of accession (deemed to be an instrument of ratification), New Zealand declared "that this accession shall extend to Tokelau".

(6) At the time of ratification, Canada made the following declaration: "Canada declares, in accordance with Article 57 of the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999 and signed by Canada on 1 October 2001, that the Convention does not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by Canada, the whole capacity of which has been reserved by or on behalf of such authorities [Article 57(b)]."

(7) The instrument of ratification of the United States contains the following declaration: "Pursuant to Article 57 of the Convention, the United States of America declares that the Convention shall not apply to international carriage by air performed and operated directly by the United States of America for non-commercial purposes in respect to the functions and duties of the United States of America as a sovereign State."

(8) By a Note dated 24 October 2003 signed by the Minister for Foreign Affairs, Japan informed ICAO "that, in accordance with Article 57(a) of the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999, the Government of Japan declares that this Convention shall not apply to international carriage by air performed and operated directly by the Government of Japan for non-commercial purposes in respect to its functions and duties as a sovereign State."

(9) On 9 February 2010, the Council of the European Union deposited with ICAO a note verbale referring to the entry into force, on 1 December 2009, of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, and stating: "As a consequence, as from 1 December 2009, the European Union has replaced and succeeded the European Community . . . and has exercised all rights and assumed all obligations of the European Community whilst continuing to exercise existing rights and assume obligations of the European Union."

The instrument of approval by the European Community deposited on 29 April 2004 contains the following declaration: "Declaration concerning the competence of the European Community with regard to matters governed by the Convention of 28 May 1999 for the unification of certain rules for international carriage by air (the Montreal Convention):

1. The Montreal Convention provides that Regional Economic Integration Organisations constituted by sovereign States of a given region, which have competence in respect of certain matters governed by this Convention, may become parties to it.

2. The current Member States of the European Community are the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of

the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

3. *This declaration is not applicable to the territories of the Member States in which the Treaty establishing the European Community does not apply and is without prejudice to such acts or positions as may be adopted under the Convention by the Member States concerned on behalf of and in the interests of those territories.*

4. *In respect of matters covered by the Convention, the Member States of the European Community have transferred competence to the Community for liability for damage sustained in case of death or injury of passenger. The Member States have also transferred competence for liability for damage caused by delay and in the case of destruction, loss, damage or delay in the carriage of baggage. This includes requirements on passenger information and a minimum insurance requirement. Hence, in this field, it is for the Community to adopt the relevant rules and regulations (which the Member States enforce) and within its competence to enter into external undertakings with third States or competent organisations.*

5. *The exercise of competence which the Member States have transferred to the Community pursuant to the EC Treaty is, by its nature, liable to continuous development. In the framework of the Treaty, the competent institutions may take decisions which determine the extent of the competence of the European Community. The European Community therefore reserves the right to amend the present declaration accordingly, without this constituting a prerequisite for the exercise of its competence with regard to matters governed by the Montreal Convention.*

Sources:

1) *Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents, Official Journal of the European Union, L 285, 17.10.1997, p. 1;*

2) *Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents, Official Journal of the European Union, L 140, 30.05.2002, p. 2."*

(10) *The instrument of accession by Austria contains the following declaration:*

"The Republic of Austria declares according to Article 57 of the Convention for the Unification of Certain Rules for International Carriage by Air of 28 May 1999 that this Convention shall not apply to:

a) *international carriage by air performed and operated directly by the Republic of Austria for non-commercial purposes in respect to its functions and duties as a sovereign State;*

b) *the carriage of persons, cargo and baggage for the military authorities on aircraft registered in or leased by the Republic of Austria, the whole capacity of which has been reserved on behalf of such authorities."*

(11) *The instrument of ratification by Denmark contains a declaration that until later decision, the Convention will not be applied to the Faroe Islands.*

(12) *The instrument of ratification by Germany was accompanied by the following declaration: "In accordance with Article 57 of the Convention of for the Unification of Certain Rules for International Carriage by Air of 28 May 1999, the Federal Republic of Germany declares that the Convention shall not apply to international carriage by air performed and operated directly by the Federal Republic of Germany for non-commercial purposes in respect to its functions and duties as a sovereign State or to the carriage of persons, cargo and baggage for the military authorities of the Federal Republic of Germany on aircraft registered in or leased by the Federal Republic of Germany, the whole capacity of which has been reserved by or on behalf of such authorities."*

(13) The instrument of ratification by Spain contains the following declarations: "The Kingdom of Spain, Member State of the European Community, declares that in accordance with the Treaty establishing the European Community, the Community has competence to take actions in certain matters governed by the Convention."

"In accordance with the provisions of Article 57, the Convention shall not apply to:

a) international carriage by air performed and operated directly by Spain for non-commercial purposes in respect to its functions and duties as a sovereign State;

b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by Spain, the whole capacity of which has been reserved by or on behalf of such authorities."

(14) The instrument of ratification by the Kingdom of the Netherlands states that the ratification is for the Kingdom in Europe.

By a Note dated 29 April 2004 from the Ministry of Foreign Affairs, the Netherlands transmitted to ICAO the following declaration: "The Kingdom of the Netherlands, Member State of the European Community, declares that in accordance with the Treaty establishing the European Community, the Community has competence to take actions in certain matters governed by the Convention".

By Notes dated 22 April and 8 September 2016, the Kingdom of the Netherlands extended the Convention to the Caribbean part of the Netherlands (the islands of Bonaire, Sint Eustatius and Saba), with effect from 1 October 2016.

(15) By a Note dated 15 July 2004 from the Minister of Foreign Affairs, Belgium transmitted to ICAO the following declaration in accordance with Article 57:
"the Convention does not apply to:

a) international carriage by air performed and operated directly by Belgium for non-commercial purposes in respect to its functions and duties as a sovereign State;

b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by Belgium, the whole capacity of which has been reserved by or on behalf of such authorities."

(16) In its instrument of accession, Qatar confirmed the application of the following declaration in accordance with Article 57:

"the Convention does not apply to:

a) international carriage by air performed and operated directly by that State Party for non-commercial purposes in respect to its functions and duties as a sovereign State, and/or

b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has been reserved by or on behalf of such authorities."

(17) The instrument of ratification by Lithuania contains the following declarations:

". . . in accordance with Article 57 . . . , the Seimas of the Republic of Lithuania declares that this Convention shall not apply to international carriage by air performed and operated directly by the Republic of Lithuania for non-commercial purposes in respect to its functions and duties as a sovereign State; and also shall not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by the Republic of Lithuania, the whole capacity of which has been reserved by or on behalf of such authorities."

". . . in accordance with Article 57 . . . , the Seimas of the Republic of Lithuania declares that this Convention shall not apply to international carriage by air performed and operated directly by the Republic of Lithuania for non-commercial purposes in respect to its functions and duties as a sovereign State; and also shall not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by the

Republic of Lithuania, the whole capacity of which has been reserved by or on behalf of such authorities."

(18) (A) The instrument of ratification by China contains the following declaration:

"The Convention does not apply in the Hong Kong Special Administrative Region of the People's Republic of China until notified otherwise by the Government of the People's Republic of China."

(B) In addition, the Representative of China on the Council of ICAO made the following declaration at the time of deposit of the instrument of ratification:

"The Convention applies in the Macao Special Administrative Region of the People's Republic of China."

(C) By a letter dated 20 October 2006, the Representative of China on the Council of ICAO made the following statement on behalf of the Government of the People's Republic of China (PRC):

"Article 153 of the Basic Law of the Hong Kong Special Administrative Region of the PRC provides that the application to the Hong Kong Special Administrative Region of the PRC of international agreements to which the PRC is or becomes a party shall be decided by the Central People's Government in accordance with the circumstances and needs of the Region and after seeking the views of the Government of the Region.

In consultation with the Government of the Hong Kong Special Administrative Region, the Government of the PRC has decided to apply the Convention in the Hong Kong Special Administrative Region of the PRC from the date of December 15, 2006."

(19) The instrument of accession by Singapore contains the following declaration in accordance with Article 57: "the Convention shall not apply to:

a) international carriage by air performed and operated directly by the Republic of Singapore for non-commercial purposes in respect to its functions and duties as a sovereign State; and

b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by the Republic of Singapore, the whole capacity of which has been reserved by or on behalf of such authorities."

(20) The instrument of accession by Malaysia is accompanied by the following declaration: "Malaysia, in accordance with Article 57 (b) of the Montreal Convention, declares that the Convention shall not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by Malaysia, the whole capacity of which has been reserved by or on behalf of such authorities."

(21) The instrument of ratification by Chile contains the following declaration in accordance with Article 57 (b): "The Republic of Chile declares that the Convention shall not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has been reserved by or on behalf of such authorities."

(22) The instrument of accession by Argentina contains the following "interpretative declaration": "For the Argentine Republic, the term 'bodily injury' in Article 17 of this treaty includes mental injury related to bodily injury, or any other mental injury which affects the passenger's health in such a serious and harmful way that his or her ability to perform everyday tasks is significantly impaired."

(23) The instrument of accession by Montenegro contains the following declaration in accordance with Article 57:

"this Convention shall not apply to:

a) international carriage by air performed and operated directly by Montenegro for non-commercial purposes in respect to its functions and duties as a sovereign State;

b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by Montenegro, the whole capacity of which

has been reserved by or on behalf of such authorities."

(24) The instrument of accession by Israel contains the following declaration in accordance with Article 57:

"The Convention shall not apply to:

a) international carriage by air performed and operated directly by the State of Israel for non-commercial purposes in respect to its functions and duties as a sovereign State; and/or

b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by the State of Israel, the whole capacity of which has been reserved by or on behalf of such authorities."

(25) The instrument of ratification by Turkey contains the following declaration in accordance with Article 57: "The said Convention shall not apply to international carriage by air performed and operated directly by the Republic of Turkey for non-commercial purposes in respect to its functions and duties as a Sovereign State and to the carriage of persons, cargo and baggage for Turkish military authorities on aircraft registered in or leased by the Republic of Turkey, the whole capacity of which has been reserved by or on behalf of such authorities."

(26) The instrument of ratification by Azerbaijan, deemed to be an instrument of accession, contains the following declaration:

"The Republic of Azerbaijan, in accordance with Article 57 of the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on May 28, 1999, declares that the provisions of the Convention shall not apply to:

a) international carriage by air performed and operated directly by the Republic of Azerbaijan for non-commercial purposes in respect to its functions and duties as a sovereign State; and

b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by the Republic of Azerbaijan, the whole capacity of which has been reserved by or on behalf of such authorities."

(27) The instrument of accession by the Philippines contains the following declaration in accordance with Article 57:

"the Convention shall not apply to:

a) international carriage by air performed and operated directly by the Philippines for non-commercial purposes in respect of its functions and duties as a sovereign State; and

b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by the Philippines, the whole capacity of which has been reserved by or on behalf of such authorities."

(28) By a Note dated 25 April 2016 (received by ICAO on 7 June 2016) from the Ministry of Foreign Affairs, Guatemala transmitted to ICAO the following declaration: "The Republic of Guatemala states that the Convention for the Unification of Certain Rules for International Carriage by Air, done in Montreal on 28 May 1999, shall not apply to international air transport operations conducted directly by the State of Guatemala for non-commercial purposes relating to its functions and obligations as a sovereign State, nor to the carriage of persons, cargo or equipment for its military command on aircraft registered in or leased by the State of Guatemala, the full capacity of which has been reserved by or on behalf of said military command."

By a Note dated 25 April 2016 (received by ICAO on 7 June 2016) from the Ministry of Foreign Affairs, Guatemala notified ICAO that "to calculate the value of its national currency in Special Drawing Rights, the Republic of Guatemala, as a member of the International Monetary Fund, shall adhere to the provisions set forth in the third sentence of Article 23(1) of the Convention."

(29) The instrument of ratification by the Togolese Republic contains the following declaration in accordance with Article 57:

"the Convention shall not apply to:

a) international carriage by air performed and operated directly by Togo for non-commercial purposes in respect to its functions and duties as a sovereign State; and

b) the carriage of persons, cargo and baggage for the Togolese military authorities on aircraft registered in Togo or leased by Togo, the whole capacity of which has been reserved by or on behalf of such authorities."

(30) The instrument of accession by the Russian Federation contains the following declaration in accordance with Article 57: "The Russian Federation declares, pursuant to Article 57 of the Convention, that it retains the right not to apply the provisions of the Convention with respect to:

a) international carriage by air performed and operated directly by the Russian Federation for non-commercial purposes in respect to its functions and duties as a sovereign State;

b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by the Russian Federation, the whole capacity of which has been reserved by or on behalf of such authorities."

(31) The instrument of accession by Thailand contains the following declaration in accordance with Article 57:

"the Convention shall not apply to:

a) international carriage by air performed and operated directly by the Kingdom of Thailand for non-commercial purposes in respect to its functions and duties as a sovereign State; and

b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by the Kingdom of Thailand, the whole capacity of which has been reserved by or on behalf of such authorities."

(32) The instrument of accession by Viet Nam contains the following declaration in accordance with Article 57:

"the Convention shall not apply to:

a. international carriage by air performed and operated directly by the Socialist Republic of Viet Nam for non-commercial purposes in respect to its functions and duties as a sovereign State; and/or

b. the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by the Socialist Republic of Viet Nam, the whole capacity of which has been reserved by or on behalf of such authorities."

(33) The instrument of accession by Nepal contains the following declaration in accordance with Article 57:

"the Convention shall not apply to:

a) International carriage by air performed and operated directly by the Government of Nepal for non-commercial purposes in respect to its functions and duties as a sovereign State; and/or

b) The carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by the Government of Nepal, the whole capacity of which has been reserved by or on behalf of such authorities."

(34) At the time of accession, Sri Lanka declared that the terms of the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999 "have been examined and found to be acceptable to the Government of the Democratic Socialist Republic of Sri Lanka subject to reservations declared below as per Article 57 of the Convention:

(a) international carriage by air performed and operated directly by that State Party for non–commercial purposes in respect to its functions and duties as a sovereign State; and/or

(b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State

Party, the whole capacity of which has been reserved by or on behalf of such authorities."

(35) On 31 January 2020, the Delegation of the European Union to Canada forwarded a Note Verbale to the Organization concerning the Agreement on the withdrawal of the United Kingdom from the European Union and the European Atomic Energy Community. In the said Note, it requested the Organization to bring the Annex attached thereto "to the attention of the other parties or participants" to "all conventions/ agreements /arrangements to which the European Union or the European Atomic Energy Community is a signatory, party or participant, and for which [the] Organization is the depositary or Secretariat". The text of the Annex to the said Note Verbale is reproduced below:

"Annex to the Note Verbale on the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

1. On 29 March 2017, the Government of the United Kingdom of Great Britain and Northern Ireland (the "United Kingdom") notified the European Council of the United Kingdom's intention to withdraw from the European Union ("Union") and the European Atomic Energy Community ("Euratom") in accordance with Article 50 of the Treaty on European Union. On 22 March 2019, the European Council decided in agreement with the United Kingdom to extend the period provided for in Article 50(3) of the Treaty on European Union until 12 April 2019. On 10 April 2019, the European Council decided in agreement with the United Kingdom to extend the period provided for in Article 50(3) of the Treaty on European Unon until 31 October 2019. On 29 October 2019, the European Council decided in agreement with the United Kingdom to extend the period provided for in Article 50(3) of the Treaty on European Union

until 31 January 2020. The United Kingdom will therefore cease to be a Member State of the European Union and of Euratom on 1 February 2020.

2. *On 24 January 2020, the Union and Euratom, and the United Kingdom, in accordance with Article 50, paragraph 2, of the Treaty on European Union, signed an Agreement setting out the arrangements for the withdrawal of the United Kingdom from the Union and Euratom ("Withdrawal Agreement")3 . The Withdrawal Agreement will enter into force on 1 February 2020, subject to its prior ratification by the United Kingdom and conclusion by the Union and Euratom.*

   [The text of the Withdrawal Agreement can be consulted in the Official Journal of the European Union of 12 November 2019, C 384 I, p. 1.]

3. *In order to address the specific situation of the withdrawal of the United Kingdom from the Union and Euratom, the Withdrawal Agreement provides for a time-limited transition period during which, save certain very limited exceptions, Union law shall be applicable to and in the United Kingdom and that any reference to Member States in Union law, including as implemented and applied by Member States, shall be understood as including the United Kingdom.*
4. *The Union and Euratom, and the United Kingdom have agreed that Union law within the meaning of the Withdrawal Agreement encompasses international agreements concluded by the Union (or Euratom), or by Member States acting on behalf of the Union (or Euratom), or by the Union (or Euratom) and its Member States jointly.*

5. *Subject to timely ratification and conclusion of the Withdrawal Agreement, the Union and Euratom notify parties to the international agreements*

referred to in point 4 above that, during the transition period, the United Kingdom is treated as a Member State of the Union and of Euratom for the purposes of these international agreements.

6. *It is understood that the principles set out in this Annex also extend to international instruments and arrangements without legally binding force entered into by the Union or Euratom and to international agreements referred to in point 4 above which are provisionally applied.*

7. *The provisions relating to the transition period are laid down in Part Four (Articles 126 to 132) of the Withdrawal Agreement, to be read in conjunction with the other relevant provisions of the Withdrawal Agreement, in particular its Part One.*

8. *The transition period starts on 1 February 2020 and ends on 31 December 2020, but the Withdrawal Agreement foresees the possibility of adopting a single decision extending the transition period for up to 24 months. In the event of an extension, the Union and Euratom will communicate this by a further Note Verbale.*

9. *At the end of the transition period, the United Kingdom will no longer be covered by the international agreements referred to in points 4 and 6 above. This is without prejudice to the status of the United Kingdom in relation to multilateral agreements to which it is a party in its own right."*

(36) *The instrument of accession by Brunei Darussalam contains the following declaration:*

"In accordance with Article 57, the Convention shall not apply to:

a) *international carriage by air performed and operated directly by the Government of Brunei Darussalam for non-commercial purposes in*

respect to its functions and duties as a sovereign State; and

b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by the Government of Brunei Darussalam, the whole capacity of which has been reserved by or on behalf of such authorities.

গুরুত্বপূর্ন বিধায় www.Lexology.com-এর অনলাইন ভার্সনে ৪ সেপ্টেম্বর ২০১৯ তারিখে "শিরোনামে" শীর্ষক প্রতিবেদনটি নিম্নে অবিকল অনুলিখন হলোঃ

Bangladeshi cabinet's approval of legislation to bring about ratification of MC99: A positive step but one with potential pitfalls

Bangladesh *September 4, 2019*

Briefings

On 26 August 2019, the Bangladeshi Cabinet of Ministers approved, in principle, legislation that would ratify the Montreal Convention 1999 (MC99) and bring Bangladesh into the fold with the other 136 state4s that have ratified MC99.

Context of MC99 in Bangladesh

The underlying motivation for the cabinet's approval in to ensure the rights and security of Bangladeshi passengers who travel to international destinations.

It seems to ste3m from the aftermath of the 2018 US Bangla loss, which resulted in more than 30 Bangladeshi passengers' death or injury.

Civil aviation accidents in Bangladesh currently are governed by the Warsaw Convention 1929 as amended by the Hague Protocol 1955 (Amended Warsaw Convention) despite Bangladesh having signed, but not ratified, MC99 in May 1999.

Under the Amended Warsaw Convention, death or bodily injury claims are subject to a br3eakable limit of 250,000 francs, which is usually interpreted in Bangladesh as US$25,000.

Accordingly, the ratification of MC99, which does not prescribe any limits of liability for death or bodily injury, is a radical change for travelers, in particular, Bangladeshi passengers on round-trip tickets to international destinations.

Potential pitfalls in Bangladesh's interpretation

However, the available reports on the terms of the underlying ratifying legislation, the Civil Aviation (Montreal Convention 1999) Act 2019, suggests a cause for concern in relation to the interpretation and implementation of the MC99 terms.

Under article 21 of MC99, a threshold of 113,500 Special Drawing Rights (SDR), equivalent to ca. US$ 160,000, is provided such that the carrier may not re3ly on any defences for claims relating to death/bodily injury up to that threshold.

For any claim above the threshold, limite4d defences are available to the carrier. Notwithstanding the above, the quantum of any death or bodily injury claim is subject to the claimant being able to prove his/her loss in accordance with the applicable law.

Unfortunately, it appears from reports in the media that the Bangladeshi legislators have misunderstood the operation of article 21 of MC99 and have applied the SDR113, 100 threshold as a minimum level compensation for death claims.

In other words the compensation for a death claim resulting from international air carriage would automatically be SDR113, 100 / US$160,000.

Misunderstandings elsewhere

Sadly, this misapprehension of the application of article 21 of MC99 is not uncommon.

Similar misinterpretations have been noted in publications issued by the Civil Aviation Authority of Nepal post implementation of MC99 there.

Similar has occurred in legal proceedings in India but, happily, the Court of Appeal in Kerala has rejected the minimum level of compensation argument.

This position is further complicated by rumours that the legislation will impose penalties on any carrier failing to pay the levels of compensation set by the Civil Aviation (Montreal Convention 1999) Act 2019.

It is alleged that these will be a maximum of 10 years' imprisonment or a fine of BDT100 crore / US$ 11.8 million.

Looking ahead

The final draft of the Civil Aviation (Montreal Convention 1999) Act 2019 has yet to be made public though it will pass into law when it is published in the Bangladeshi Gazette.

The exact date of the act's enactment remains pending but it is to be hoped that the concerns highlighted in this article are addressed before the legislation is passed.

সার্বিক অবস্থাধীনে এটা স্বীকৃত যে, **Convention for the Unification of Certain Rules for International Carriage by Air-Montreal, 28 May 1999**-এ বাংলাদেশ স্বাক্ষরকারী দেশ। উক্ত মনট্রিল কনভেনশনকে আইনগত ভাবে কার্যকর করার জন্য আকাশ পথে পরিবহন (মনট্রিল কনভেনশন) আইনের খসড়া মন্ত্রিপরিষদের বৈঠকে অনুমোদিত হয়ে গেজেট আকারে প্রকাশিত হওয়ার অপেক্ষোয় আছে।

ভারতবর্ষের আকাশে প্রথম বাণিজ্যিক ফ্লাইটটি ১৯১১ সালের ১৮ ফেব্রুয়ারী যাত্রা শুরু করে। গুরুত্বপূর্ণ বিধায় ভারতের আকাশ আইন সমূহ নিম্নে উল্লেখ করা হলো।

১. Air Ship Act, 1911
২. Air Craft Rule (Custom), 1920
৩. Air Craft Act, 1934
৪. Air Craft Rules, 1937
৫. Air Corporation Act, 1953
৬. Air Craft Public Health Rules, 1954
৭. Carriage by Air Act, 1972
৮. Tokyo Convention, 1975
৯. Anti-hijacking Act, 1982
১০. Unlawful Seizure Against be Safety of Civil Aviation 1982.
১১. Air Corporations (Transfer of undertaking and Repeal) Act, 1994
১২. The Air Craft (demonization of obstruction caused by building anti-trees etc.) Rule, 1994
১৩. Air Port Authority Act, 1994
১৪. The Air Craft (Carriage of dangerous Goods) Rules, 2003
১৫. B.A.E.R.A. 2008
১৬. Carriage by Air Act (Amended) 2009
১৭. Domestic implementation of Annexure 17 to Chicago Convention

মুকুল দত্ত গুপ্ত ও অন্যান্য বনাম ইন্ডিয়ান এয়ালাইনস কর্পোরেশন (AIR1962Cal311) এর রায়টি নিম্নে অবিকল অনুলিখন হলোঃ

"IN THE HIGH COURT OF CALCUTTA
Suit No. 611 of 1957
Decided On: 11.08.1961
Appellants: Mukul Dutta Gupta and Ors.
Vs.
Respondent: Indian Airlines Corporation

Hon'ble
Prokash Chandra Mallick, J.

Case Note:

Contract - liability - Rule 115 of Aircraft Rules, 1937 - whether accident caused due to negligence or failure to take ordinary care - investigating officer reported negligence in landing aircraft - there has been breach of Rule 115 - breach of duty imposed by Rule 115 amounts to negligence in law - negligence charged against respondent established on fine evidence - absolute duty imposed by Rules on air carrier and its employees to abide by Rules framed for safety inter alia of passenger and for their benefit - agreement purporting to relieve carrier of its liability for non-compliance would be to relieve air carrier of its statutory duty - agreement cannot be enforced by Court of law.

JUDGMENT

1. The plaintiffs are the widow and minor children of one Sanat Kumar Dutta-Gupta who was killed in an air crash. They have instituted this suit under the Fatal Accidents Act for the recovery of damages against the defendant Corporation. It is pleaded in the plaint that the deceased Sanat Kumar purchased a ticket as a passenger from Dum Dum Airport to Jorhat on the defendant's scheduled route known as the Calcutta-Mohonbari route. On March 21, 1956 at about eleven o'clock in the morning the aircraft crashed while landing at Salami Airport. Sanat Kumar was killed in the crash. The plaintiffs' case is that the death of Sanat Kumar was caused by the negligence of the defendant Corporation or its employees. The particular of negligence are set out in paragraph 5 of the plaint. Leave to furnish further particulars of negligence and/or misconduct however was reserved after discovery. Such further particulars were furnished at the time of the opening of the case by Mr. Dutt Roy the learned counsel for the plaintiff. It is to this effect, that there has been a breach of Rule 115 of the Rules framed under the Indian Aircraft Act. It is pleaded that the defendant is attempting to evade liability by setting up certain conditions of carriage. The plaintiffs' case is that Sanat Kumar had no notice of the said conditions of carriage nor did he accept them and consequently the same are not binding. The validity of the said conditions has also been disputed. Sanat Kumar was only 44 years of age when he was killed. He was in the best of health and well placed in life. He held a permanent employment in Messrs. I. G. N. and Rly. Co. Ltd. a reputed British company and at the time of his death he was drawing a salary of Rs. 700/- per month with prospect of earning unto Rs. 1,500/-per month. The sum of Rs. 3,00,000/- has been claimed as damages.

2. The main defence disclosed in the written statement is that under the contract of carriage the defendant Corporation is relieved of all liability, Sanat Kumar having expressly or impliedly consented to the conditions of carriage. The conditions relied on will be fully stated later. It is, pleaded these conditions of, carriage were binding on Sanat and are also binding on the plaintiffs. All allegations of negligence made in paragraph 5 of the plaint have been denied. It is contended that the defendant had taken all reasonable care and precautions and that the accident was beyond the control of the defendant and could not have been foreseen. On these averments it is submitted that the suit is not maintainable and the same should be dismissed with costs. On these pleadings the following issues were raised:

1. Are the plaintiffs heirs and legal representatives of the deceased?

2. Was there any contract of carriage as alleged in paragraphs 2, 3 and 4 of the Written Statement?

3. (a) Were the conditions of carriage not pointed out to the deceased?

(b) Did the deceased have no notice of the conditions of carriage?

(c) Was the deceased not bound by the conditions of carriage as alleged in paragraph 12 of the plaint?

4. Is the defendant exempt from liability under the terms and conditions of the contract of carriage?

5. Was the accident caused due to the negligence or failure to take ordinary care as alleged in paragraph 5 of the plaint?

6. Was the accident beyond the control of the defendant and could not be foreseen as alleged in paragraph 8 of the written statement?

7. Did the defendant take reasonable care to avoid the accident as alleged in Paragraphs 7 and 9 of the written statement?

8. To what reliefs, if any, the plaintiff is entitled?

3. At the trial, documents disclosed by the parties and embodied in the Brief of Documents have been rendered and marked as Exhibit, parties having dispensed with formal proof. Apart from these the plaintiff Sm. Mukul Dutta-Gupta tendered her own evidence in support of her case. The defendant tendered the evidence of one Pankaj. Kumar Mukerji an employee attached to the Reservation Department of the defendant company and whose duty it was to issue tickets to the passengers. These are all the evidence on record.

4. It is not disputed that if the contract of carriage as printed on the ticket is held to be valid and binding on Sanat Kumar and/or the plaintiffs, then the defendant would not be liable in law. The first point to be considered is Did Sanat Kumar have knowledge of the conditions of carriage and did he accept them? Sanat Kumar is dead and his widow Sm. Mukul Dutta-Gupta who gave evidence could not throw any light on the question. She was not present when the ticket was purchased. The defendant's witness Pankaj Kumar also could not give any direct evidence on the point. He was employed by the defendant Corporation and was at the counter when the ticket was sold. Beyond that he cannot say anything, in cases like these one hardly expects direct evidence on the point. There are, however, facts proved in this case from which certain inferences can be drawn. It is in evidence that the ticket was sold at the office of the defendant Corporation in Hindusthan Buildings. In the office a board was

affixed at the door in which the conditions of carriage are written in bold letters. In the ticket itself if is stated that the ticket was issued subject to the conditions of carriage. The conditions of carriage are Printed inside the cover page of the ticket. It is true they are printed in very small letters. I was unable to read it without the assistance of a magnifying glass, the learned Standing Counsel however could read it without feeling any difficulty. This much, however, is established beyond controversy that the defendant corporation did take steps to bring it to the notice of the passengers that the tickets were being issued subject to certain conditions of carriage. A passenger who was so minded could have been appraised of these conditions, if not from the ticket itself, at least from the Board displayed at the door in which the conditions of carriage have been stated in sufficiently bold letters legible to all. I will however, record my view that having regard to the seriousness of the conditions so far as passengers are concerned the conditions should have been printed in red letters in the ticket in order to attract the attention of the passengers. The tickets issued are not required to be signed by the passengers and hence written acceptance of the terms cannot be proved in the case of passenger transport. In the case of consignment of goods the Consignor or his agent ig required to sign the consignment note in which the conditions of carriage are printed and acceptance can be proved by proving the signature of the Consignor or his agent on the document issued. Not so in the case of passenger ticket.

5. It is contended by Mr. Dutt Roy that the law requires that the passenger must not only have knowledge of the conditions of carriage but it must also be proved that the passenger accepted the same. Certain English authorities have been cited which lays down that it is necessary to prove not only knowledge of the conditions of carriage but also assent to the conditions by the passenger. The learned Standing Counsel on the other hand contended that the carrier is required in law only to take all reasonable step to bring it to the notice of the passengers that the tickets are issued subject to certain conditions of carriage. If the passenger purchases the ticket in such circumstances, he must be deemed to have knowledge of the conditions and impliedly accepted the terms. Actual knowledge of the conditions of carriage and acceptance of the same need not be as indeed it cannot be proved in most cases. Both the learned counsel cited a number of authorities which I do not think necessary to deal with in detail. The law on the point is stated by Anson in his Law of Contract 25th Ed. at Page 149 as under :

"Three general rules have been laid down by the Courts to determine whether the traveller or depositor will be bound by the terms contained in the ticket:

1. If the person receiving the ticket did not see or know that there was any writing on the ticket, then he is not bound by the conditions.

2. If he knew that there was writing, and knew or believed that the writing contained conditions, then he is bound by the conditions even though he did not read them and did not know what they were.

3. If he knew that there was writing on the ticket, but did not know or believe that the writing contained conditions, nevertheless he would be bound if the party delivering the ticket has done all that can reasonably be considered necessary to give notice of the term to persons of the class to which he belongs."

6. In the instant case I am satisfied that the defendant Corporation gave reasonably sufficient notice that the tickets are issued subject to the conditions of carriage. The conditions are displayed on the Board and could be seen by anybody who was so minded. Sanat Kumar must be deemed to have purchased the ticket with such notice and must also be deemed to have accepted them impliedly though not expressly. on the evidence it is impossible to record a finding as to whether Sanat Kumar had actual knowledge of the conditions of carriage or expressly accepted it. There is no evidence one way or the other. If in law, the burden is on the plaintiff to prove that the plaintiff had no actual knowledge of the conditions of carriage or that he did not expressly accept them, the plaintiffs cannot be held to have discharged this burden. If on the other hand the burden is on the defendant to prove that Sanat Kumar had expressly accepted the conditions with full knowledge, the defendant cannot be held to have discharged this burden. However, in the view that I have taken, the question does not arise.

7. The next question to be considered is whether the negligence alleged against the defendant has been Substantiated in evidence. There is not the least doubt that the co-pilot A.M. Rao who actually landed the aircraft was negligent in more ways than one. It appears in evidence that subsequent to the accident an investigation was made as provided for under the Indian Aircraft Rules. The Investigating Officer in his report held that there was negligence in landing the aircraft. In reply to the letter of the plaintiffs solicitor addressed to the Director General of Civil Aviation one Malhotra the Chief. Inspector of Accidents gave the reply on the behalf of the Director General of Civil Aviation. In this reply the plaintiff solicitor was intimated that the copy of the report cannot be supplied. But to meet the requirements of the plaintiffs he sent extracts from the investigation report dated 21-3-1956 which is here-under stated :

Extracts from the Investigation Report on the accident to I. A. C. Dakota VT-CGN at Tezpur on 21-3-1956.

Opinion : The accident was due to failure of the co-pilot, who was not qualified to do the landing to level off the aircraft properly during the landing, thus causing it to bounce. Insufficient or delayed corrective action then caused it to stall on to its port wing and swing off the runway.

All other evidence including copies of correspondence between the pilot and co-pilot on the one hand and the authorities of the Airline Corporation and/or the authorities of the Civil Aviation Department leaves no room for doubt that there was negligence on the part of the co-pilot in landing the plane. Indeed, the learned Standing Counsel very fairly admitted that in the instant case it cannot but be held that the co-pilot was guilty of negligence in landing the plane. I must, therefore, record a finding that there was negligence on the

part of the defendant Corporation in landing the place and this negligence led to the crash which caused the death of Sanat Kumar.

8. On the evidence tendered I must, however, hold that the aircraft was airworthy and held a certificate to that effect, that it was regularly maintained in accordance with the approved maintenance: schedule and that it had the valid certificate of daily inspection. I must also record that subject to what is hereinafter stated, the rules prescribed under the Indian Aircrafts Rules for maintenance and operation of the aircraft have been complied with. It is now to be considered whether Rule 115 of the Aircraft Rules has been complied with in the instant case. Rule 115 of the Aircraft Rules is one of the general rules of air traffic and reads as follows :

"To facilitate the application of the rules for air traffic contained in this Part, the pilot of a mechanically-driven aerodyne shall, save in exceptional circumstances, be placed either in the plane of symmetry of the aerodyne or on the left-hand side of such plane."

9. The pilot in command on the plane was Capt. Bose. Under the Rules there must be a co-pilot for the operation of this class of aircrafts. In the instant case, while Capt. Bose was the pilot in command, Mr. A.M. Rao was the co-pilot. Both of them must have what is known as 'B Licence'. A.M. Rao, though holding a 'B Licence', was not qualified to command a plane. A pilot qualified to command a plane must hold 'the pilot-in-command endorsement' in his licence. Capt Bose, being properly qualified, held such an endorsement, whereas A.M. Rao, not having the qualification, his licence held no such endorsement. At the material time, the seat of the pilot was occupied by A.M. Rao, who had no qualification to command a plane. The learned Standing Counsel contended that all that the Rule requires is that the occupant of the pilot's seat must be a pilot holding a 'B licence'. A.M. Rao held the 'B Licence'. Hence the requirement of Rule 115 has been complied with in the instant case. I am unable to accept this argument of the learned Standing Counsel. The Rule requires that the pilot-in-command of the aircraft must occupy the specified seat in the aircraft. By occupying that seat, the pilot can have proper control of the aircraft and proper look-out. The qualification for being a pilot for flying different classes of aircraft is determined by different rules, and on that determination licences are given. There are different classes of licences wherein is endorsed the qualification for flying different classes of aircraft. In order to fly a double-engined plane, one must not only hold a 'B Licence' but also a pilot-in-command endorsement in one's certificate or licence. A pilot having the requisite qualification selected to command a plane in a particular flight is the pilot referred to in Rule 115. He is required to occupy the seat from which he can control the flight and discharge his duties. The Rule requires that the pilot-in-cOmmand and nobody else can occupy that specified seat. In the instant case, the breach consists in Capt. Bose's not being in occupation of the seat at the material time and in A.M. Rao being in occupation thereof. The fact that A.M. Rao had a 'B Licence' is immaterial. He was not the pilot-in-command nor-held an endorsement to that effect in his licence. In the absence of such endorsement,

he must be held to be incompetent to command a plane and it is useless for the learned Standing Counsel to rely on his flying records in proof of his ability to command a plane. Further, proof of the pudding is in the eating, and the instant case of bad and dangerous landing is the conclusive evidence of the incompetence of A.M. Rao. This, however, is by the way.

10. That there has been a breach of Rule 115 is proved by the other evidence on record. Both the pilot and the co-pilot were called upon to show cause why disciplinary action should not be taken against them, inter alia, for breach of Rule 115. Neither of them contended that there was no breach. They admitted the guilt. For breach of this Rule the licence of both the pilots was suspended for a period of six months. Both of them were dismissed by the defendant Corporation for the same offence. In recommending the dismissal of these pilots, Shri L.C. Jain, Director General of Civil Aviation in India, wrote a letter dated July 21, 1956 to Shri Sankar Prasad,, Chairman of the defendant Corporation which, inter alia, states as follows:

"In their explanations both Capt. Bose and Shri Rao have confessed that it was Shri Rao who occupied the left-hand seat from Gauhati to Tezpur and made the landing which resulted in the accident. Capt Bose during the light acted as a co-pilot and the functions of the commander were performed by Shri Rao.

Since Shri Rao did not possess the PIC. Endorsement his flying as a commander and making the landing was in contravention of Rules 115 and 140 of the Indian Aircraft Rules, 1937.

It is clear that all pilots before flying as pilot-in-command of an aircraft with two or more engines on an air transport service should hold the pilot-in-command endorsement. As Shri Rao did not Possess the requisite PIC Endorsement he flew the aircraft in the capacity of a commander in contravention of the Rules."

On this letter, the Chairman of the Corporation dismissed both the pilots.

11. On a consideration of the entire evidence on record and on a proper construction of the Rule, I find that in the instant case there has been a breach of Rule 115 of the Indian Aircraft Rules. The breach of duty imposed by Rule 115 amounts to negligence in law. I hold that negligence charged against the Corporation has been established on the evidence tendered and as indicated above.

12. A question has been raised whether a breach of Rule 115 is by itself an actionable tort which would entitle a person suffering damage by reason of the breach to sue for damages. It is pointed out by the learned Standing Counsel that the breach of Rule 115 is made an offence in the Rule itself punishable with imprisonment or fine or both. (Vide Rule 161 and Schedule VI of the Aircraft Rules). The Act which creates the duty provides for the remedy, that is, the

manner in which the duty is to be enforced. In such cases, argued the learned Standing Counsel, the duty created by the statute is only a public duty to enure to the benefit of the public in general and not for the benefit of a particular member or class of the general public. In such cases, therefore, there is no breach of duty to any individual or class to be enforced by civil action. The learned Standing Counsel cited the case of Atkinson v. Newcastle and Gateshead Waterworks Co., reported in (1877) 2 Ex D 441, where it was held that the defendant company was not liable in damages for destruction of the plaintiff's house by fire, although the destruction was directly due to the failure of the defendants to perform the duty laid upon them under the Waterworks Clauses Act 1847 to maintain an extra pressure of water in their water pipes for the purpose of extinguishing fire. The statute contained a penal clause and the Court held, on construction of the statute, that the intention of the legislature was that it was to be the only remedy. The other cases cited were Saunders v. Holborn District Board of Works (1895) 1 QB 64; Phillips v. Britannia Hygienic Laundry Co. Ltd. (1923) 2 KB 832; Clarke v. Brims (1947) 1 KB 497; Biddle v. Truvox Engineering Co. (1952) 1 KB 101. Learned counsel for the plaintiff, on the other hand, cited the following cases : Groves v. Wimborne (1898) 2 QB 402; Read v. Croydon Corporation (1938) 4 AH ER 631, in which later case a breach of duty under Section 35 of the same Act as in Atkinson's case (1877) 2 Ex D 441, to supply pure water was held to give a cause of action in damages to the ratepayer injuriously affected thereby. Many other cases were cited on the point which need not be considered.

13. Salmond in his treaties on Torts, 11th Edition, dealing with a number of cases, including the cases cited by learned counsel on either side, summarises the law as follows at page 604:

"The breach of a duty created by statute, if it results in damage to an individual, is prima facie a tort, for which an action for damages will lie at his suit. The question, however, is in every case one as to the intention of the legislature in creating the duty, and no action for damages will lie if, on the true construction of the statute, the intention is that some other remedy, civil or criminal, shall be the only one available. If the statutory duty involves the notion of taking care not to injure, the tort is now spoken of as 'statutory negligence'.

One of the means of determining what the intention of the statute is to ascertain whether the duty is owed primarily to the State or community, and only incidentally to the individual, or primarily to the individual or class of individuals, and only incidentally to the State or community. If the statute imposes a duty for the protection of particular citizens or a particular class of citizen, it prima facie creates at the same time a correlative right vested in those citizens and prima facie, therefore, they will have the ordinary civil remedy for the enforcement of that right--namely, an action for damages in respect of any loss occasioned by the violation of it Thus in (1898) 2 QB 402 the defendant, a manufacturer, was held liable in damages to one of his servants, who had sustained personal injuries through failure of the defendant to perform his statutory duty of fencing dangerous machinery. But this test is not conclusive.

'The duty may be of such paramount importance that it is owed' to all the public. It would be strange if a less important duty, which is owed to a section of the public, may be enforced by an action, while a more important duty owed to the public at large cannot." At page 608 the learned author observes:

"Indeed, it is impossible to lay down any definite principle. The general rule is that 'where an Act creates an obligation and enforces the performance in a specific manner ..... performance cannot be enforced in any other manner.' But in the words of Lord Macnaghten 'whether the general rule is to prevail, or an exception to the general rule is to be admitted, must depend on the scope and language of the Act which creates the obligation and on consideration of policy and convenience'. The result is that the law depends on the interpretation which the courts (with or without the aid of the principles of construction which are now falling into some disfavour) may place on any particular statute. To a person unversed in the science, or art, of legislation it may well seem strange that Parliament has not by now made it a rule to state explicitly what its intention is in a matter which is often of no little importance instead of leaving it to the courts to discover, by a careful examination and analysis of what is expressly said, what that intention may be supposed probably to be."

14. The question to be considered, therefore, is whether the rules in the Aircraft Act imposing duty on the persons curving on aircraft operation was for the protection of a particular class, apart from its being for the ben fit of the general public. This necessitates the examination of the Aircraft Act and the Rules made thereunder. The object of the Aircraft Act, as set out in the preamble was to make provision, inter alia, for the use and operation of aircraft. The Central Government is empowered to make rules by notification regulating, inter alia, the use and operation of aircraft. Extensive power of rule-making is given to the Government, including the power to make rule for the punishment of breach of the rules to be framed. Under this rule-making power the Government framed elaborate and extensive rules to secure safety and efficiency in flying. To secure safety and efficiency in flying, such elaborate provisions are necessary and essential. Even a cursory glance at the various Chapters will indicate how it is felt that the el borata rules are necessary for the purpose of securing safe and efficient flying. Part II of the Rules lays down rules for general conditions of flying. Part III deals with general safety conditions. Part IV deals with the registration and marking of the aircraft. Part V deals with the personnel of aircraft. Part VI lays down the rules of airworthiness. Part VII provides for radio and telegraph apparatus to be kept in each aircraft and their maintenance. Part IX relates to the log book. Part X makes provision for investigation of accidents. Part XI provides for the various things to be kept in the acrodromes. Then comes Part XII which deals with the rules of flying. Rule 115 is a Rule in Part XII Section 3, which section contains four rules, namely, Rules 112 to 115. Rule 112 lays down the general rule of giving way by one class of aircraft to another. Rules 113 to 114 lay down rules to avoid the risk of collision. Rule 115 indicates the seat to be occupied by the pilot. The reason given in the rule itself is "to facilitate the application of the rules of air traffic contained in this Part." It is title that these rules are general in character and

are applicable to all aircrafts, public and private commercial and non-commercial. The learned Standing Counsel, therefore, contended that these Rules were framed for the general benefit of the public and they create no duty in favour of any particular class of citizens. I am not concerned in this case with any rule other than Rule 115 in Part XII. The mandatory provision directing the pilot to occupy a particular place in the plane to secure safe flying is considered so essential that the breach of this rule is visited with punishment of imprisonment or fine or both. But I am unable to hold that it is the only remedy intended by the Rules. I discern in this Rule a further duty to the travelling public, in particular, which gives the travelling public a corresponding right. The travelling public, in my judgment, has, therefore the ordinary civil remedy for enforcement of its breach, namely, an action in damages. I am unable to hold that the punishment provided in the Rules was intended to be the only remedy to secure enforcement of the Rule. Unless there is a dear indication to the contrary in the statute that the punishment Provided in the statute is the only remedy, I would not be justified in holding that a breach of the Rule made, inter alia, to secure the safety of a passenger in a commercial aircraft would not give a cause of action to the passenger damnified by reason of the breach of the Rule.

15. The learned Standing Counsel however rightly pointed out that except for one purpose the discussion becomes academic in this case. Apart from the breach of Statute, there is the case of negligence and there is Overwhelming evidence to prove it. In fact, the learned Standing Counsel did not seriously dispute that there was negligence on the part of the defendant Corporation in the instant case. So far as Rule 115 is concerned his contention is that the breach may be an evidence of negligence which may give a cause of action for damages against the defendant Corporation but that the breach by itself is not an actionable fort. This discussion has only become relevant, according to the learned Standing Counsel because of the case made by the plaintiff against the defendant Corporation to this effect that even if in law the liability in damages for mere negligence can be contracted out, a liability for breach of a statutory duty cannot be contracted out. This aspect of the question will have to be considered later.

16. We now come to the most important point posed in this case, namely, whether the defendant Corporation is exempted from any liability of the Conditions of Carriage, The conditions relied on and also referred to are certain clauses in Condition No. 6. They are set out hereunder :--

"6. Carriage hereunder shall be governed as follows:-

(a) International carriage as defined by the Convention of Warsaw of 12th October, 1929, for the unification of certain rules relating to International Carriage by Air is subject to the rules relating to liability established by the said Convention. The expressions 'High Contracting Parties' and 'High Contracting Party' used in Articles 1 and 28 of the said Convention shall mean States and Territories, which are bound by the said Convention either through ratification or adherence.

(b) In all cases in which the carriage is not governed by the said Convention passenger and

(a) the property and/or baggage of the passenger shall be carried at the passenger's own risk and

(b) the carrier not being common carrier, shall not accept the obligation or liability of a common carrier and (c) shall be exempt from any liability under the law whether to the passenger or to his dependants next of kin and other legal representatives in case of death, injury or loss and/or detention of the property or baggage of the passenger from any cause whatsoever including negligence or default of pilots, agents, flying ground and other staff and/or employees of the carrier and/or breach of statutory and/or other regulations whether in the course of the journey, or prior or subsequent thereto and whether while the passenger, his property and/or his baggage can be on board the aircraft or otherwise.

(c) Acceptance of this ticket shall expressly and automatically imply that the passenger holds the carrier indemnified against all claims, suits, actions, proceedings, damages costs charges and/or expenses in respect of and/or arising out of and/or in connection with such" carriage and/or other ancillary services and/or operations of the carrier, whether caused by and/or occasioned by the act, neglect and/or default of the carrier its servants and/or agents and/or employees as aforesaid or otherwise however and that, the passenger renounces for himself, his heirs, dependants, next of kin and/or other legal representative all rights and/or claims against the carrier for compensation for damage injury and/or death sustained on board the aircraft and/or in the course of any of the operations of flight, embarking or disembarking and/or in the course of any other ancillary operation and/or service of the carrier incidental to the carriage, caused directly and/or indirectly to the passenger and/or his belongings and/or to persons who except for this condition, might have been entitled to make a claim whether such damage be caused and/or occasioned by the act, neglect and/or default of the carrier its servants agents and/or employees or otherwise howsoever.

(d) The obligation of the carrier is expressly limited to the journey between the airports of departure and destination and shall not in any event subsist previous or subsequent thereto, in particular no part or any journey undertaken by the passenger, whether such journey be by land and/or waterbome and/or air-borne, previous or subsequent to the carriage specified on the ticket shall be deemed to form part of such carriage.

(e) The passenger shall comply with all government rules, regulations, present regulations and/or notifications for the time being in force and as may be introduced from time to time and shall fulfil all requirement of the law and shall present all existing and/or entry and/or other documents required by the law and shall not be entitled to any refund of the fare paid in the event of non-performance of the journey arising out of any cause directly and/or indirectly attributable to his failure to comply with such regulations of the Government

and the law, the passenger shall also observe the instructions, of the carrier, its agents, servants and/or employees concerning all matters connected with the carriage hereunder, but no agent, servant and/or employees of the carrier shall have authority to alter and/or modify and/or waive any provisions of this contract."

Clause (a) relates to international carriage which is regulated by the rules framed in the International Convention at Warsaw and since incorporated in the Indian Statute of Carrier by Air Act, 1934. This Statute will have to be referred to and considered later. Clauses (b) and (c) deal with the liabilities of the defendant Corporation in respect to all cases other than those regulated by the Statute of International Carriage. Clause (d) provides that the defendant's obligation is limited to the journey between the airports of departure and destination. Clause (e) provides that the passenger shall comply with the rules and regulations issued by the Government and for the time being in force. The passengers must also observe and carry out and observe all instructions of the defendant or its agents. Mr. Dutt Roy, learned Counsel appearing for the plaintiff, made the comment that under the conditions of carriage the passengers have all obligations and no rights and no remedy whatever. It is the Corporation which has all the rights and privileges and no obligation--not even the obligation to abide by the rules framed by the Government for safety of the air flight and of passengers of that flight.

17. These clauses in the Contract of Carriage by the defendant Corporation were considered by this Court and other High Courts of India which should first be considered. In the case of National Tobacco Co., Ltd. v. Indian Airlines Corporation decided by U. C. Law, J., and reported in MANU/WB/0080/1961 : AIR1961Cal383 , the dispute was whether the defendant Corporation was liable for negligence on the part of its employees in respect to 20 cases of cigarettes delivered at Calcutta to the defendant Corporation for carriage to Madras for reward. The consignment note contained the same conditions of carriage as stated above. The decision of Law, J., has been set out in the head-note which reads as follows :--

"There is no statute for internal air carriage in India. The Indian Airlines Corporation is a common carrier as opposed to a private carrier but it is not a 'common carrier' within the meaning of the Carriers Act, 1865. The liability of the Corporation as a common carrier is governed by the English Common Law as administered in India, the Contract Act, 1872, has no application. As the English Common Law is applicable, the Corporation can exempt itself of all liabilities, including its liability [or negligence, by special agreement."

It was held that the Corporation is a 'Common Carrier' as opposed to private carrier and that the law applicable is the old Common Law of Carrier which prevailed in England. It is held that the common carrier is empowered to exempt himself from liability for negligence by special agreement. In the case of Indian Airlines Corporation v. Keshavlal F, Gandhi, decided by a Division Bench of this Court and reported in MANU/WB/0071/1962 : AIR1962Cal290 ,

the same view was taken. Banerjee, J., in delivering judgment opined that the Airlines Corporation is a Common Carrier and the relationship between the parties to the contract of carriage is to be governed by the Common Law of England governing the rights and liabilities of the Common Carrier. His Lordship further held that the law permitted Common Carriers totally to contract themselves out of liabilities for loss or damage of goods carried as Common Carrier. In the case of Rukmanand Ajitsaria v. Airways (India), Ltd., reported in MANU/GH/0077/1957 : AIR 1960 Gau 71, Sarju Prosad C. J., took the same view. In the case of Indian Airlines Corporation v. Jothaji Moniram, reported in MANU/TN/0190/1959 : AIR1959Mad285 the same view has been expressed by the Madras High Court. All the cited cases are cases of contract of carriage of goods by air.

18. no decision has been cited in which it is held that the Air Corporation is competent in law to contract out of its liability for negligence resulting in the death of a passenger. This is the first case in which the point is raised that by reason of the exemption clause in the Contract of Carriage set out above, the defendant Corporation is relieved of its liability even though the personal injury was caused by negligence and resulted in the death of the passenger. The offending clause in the conditions of carriage has been held to be valid in respect to the contract of carriage of goods in all the cases noticed above. Are the clauses equally valid in respect to the Contract of Carriage of passengers? That is the question to be answered in this case.

19. The learned Standing Counsel contended that there is no Statute Law in India defining the rights and liabilities of a Common Carrier carrying on air transport business within the country. Carriers Act of 1865 defines the rights and liabilities of a Common Carrier engaged in the business of transport of goods by land or by inland navigation. It does not deal with the air transport nor yet transport of passenger. The Carriage by Air Act (Act XX of 1934) regulates international transport by air both of passengers and of goods. It does not regulate the rights and liabilities of carriers engaged in the business of internal transport by air either of passengers or of goods. There is, therefore, no Statute Law regulating internal air transport of passengers or goods. The Rules of Common Law of England is, therefore, the law to be applied in determining the rights and liabilities of a Common Carrier engaged in the business of air transport within the country. In England the rights and liabilities of a carrier by air for hire is no longer governed by the Common Law, Statute Law now governs both international and internal carriage by air. Carriage by Air Act, 1932, regulates international carriages by air. By this Act the rules of air carriage adopted by the Warsaw Convention have been made the rules governing international carriages by air. Powers were given by Carriage by Air Act, 1932 to the Government by an Order in Council to extend the same rules to non-international carriage by air, subject to exceptions, modifications and adaptations. In exercise of that power Carriage by Air (Non-international Carriage U. K. Order, 1952) was Promulgated. The Act and the Order, therefore, cover the entire filed determining the rights and liabilities of a carrier by air for hire. Under the Statute a common carrier of carriage by air is liable

for damages in the event of death or injuries suffered by a passenger due to negligence and the carrier is debarred from contracting out of his liability. The Common Law Rule is, therefore, completely superseded and it no longer determines the liability of a common carrier of carriage by air in England. In India, however, international air carriage is regulated by statute so far as international air carriage is concerned. The internal air carriage is not yet so regulated by Statute. It follows, according to the learned Standing Counsel that the old Common Law Rules, though no longer regulate the right of a common carrier by air in England, nevertheless regulate the rights of a common carrier by air in India in respect to internal air transport.

19a. The argument of the learned Standing Counsel is that in the absence of express statutory provision applicable to a Particular case the Courts of India must apply the English Common Law Rules. There is no authority, however, for such a wide proposition. The Courts of India are not bound to apply the Common Law of England whenever there is no express statutory provision governing the case. The Common Law Rules are only applied in such cases on consideration of justice, equity and good conscience provided it is found applicable to Indian Society and circumstances. In the early stage of British rule in the absence of any law in India the Courts were required to apply laws prevailing in England as rules of justice, equity and good conscience. As and when the laws in India were codified the necessity to adopt the English Common Law became unnecessary and the Privy Council had to warn in many of their later decisions that whenever the law is codified in India one should look to the Code for guidance and not to the English Common Law. It is Only in respect to matters still uncovered by Statute Law, that the Court may have to look to English Common Law for guidance not as such but as rules of justice, equity and good conscience. The rule of Common Law found unsuitable to England and wholly replaced by Statute Law can hardly be considered to be rules of justice, equity and good conscience. The same reason that made it unsuitable for England must be held to be unsuitable for India as well in respect to a particular class of carriage. I find neither reason nor justice in importing into India rules of English Common Law round inapplicable in England and now relegated in the lumber room of archaiel laws. I cannot persuade myself to apply them to India as rules of justice, equity and good conscience after its supersession in, the place of its origin. The case of Secy, of State v. Rukmini Bai,' decided by the Nagpur High Court and reported in MANU/NA/0229/1936is instructive and contains important observations relevant to the points under consideration. The point arose before a Bench consisting of two Additional Judicial Commissioners, namely, Niyogi and Staples, in a dispute between an employer and his workmen. Under the Common Law in a suit by a workman against the employer for negligence there is the defence known as the defence of common employment. In England by the Employers' Liability Act that defence was taken away. There was no such corresponding legislation in India. The question arose whether the defence of common employment was still open in India even though there was no statute in India corresponding to the Employers' Liability Act. There was a difference of opinion between the learned Judicial Commissioners and the matter was

referred under Section 98(2) of the Code of Civil Procedure. Niyogi, A. J. C. Opined that this doctrine of common employment no longer is open in India as well. At page 362, Niyogi, A. J. C. makes the following observation:-

"It is true that the Employers' Liability Act has not statutory force in India and no Court would be justified in extending its provisions to India; nevertheless, any Court in India which takes recourse to Common Law of England and seeks to apply its principles to India cannot afford to ignore the extent to which the Common Law-stands abrogated by Statute. The rule of common employment was felt to be unfair and inequitable in some of its aspects and it was to correct the unjust operation that the statute was enacted. The position in England today is well stated in Halsbury's Laws of England, Vol. 20, page 131; Article 261, in these words:-

'An employer sued by a servant in respect of injury incurred in the course of the employment may still set up as a defence the doctrine of common employment, save in so far' as the doctrine is abrogated by the Employers' Liability Act, 1880.'

It would be clear therefore, that in cases indicated in the statute no employer is entitled to raise the defence of common employment; nor have the Courts of Common Law any jurisdiction or power to entertain such a defence. It therefore appears to me that it is manifestly anomalous and illogical to apply, in the name of justice, equity and good conscience, to India the doctrine of Common Law which is no longer regarded at its source as fair and equitable and enforced as such."

Pollock, J., while considering the reference in his judgment cited a number of cases in which the Courts of India have refused to apply the rules of English Common Law as rules of justice, equity and good conscience. Stone, C. J., in endorsing the view of Pollock, J., made the following observation at page 363:-

"I concede that, there is a strong presumption that any rule of English Law is in accordance with the principles of justice equity and good conscience in England, but I consider that the Court is entitled to examine the rules in order to find out, as Sir Barnes Peacock put in 9 Suth WR 230, Degumburee Dabee v. Eshan Chundur Sein, whether the rules are in accordance with the true principles of equity. The Courts in India had, on several occasions, refused to apply a rule of English law on the grounds that it is not applicable to Indian Society and circumstances."

and again at page 366:-

"But when one in India considers whether a particular branch of the English Common Law should here be applied, one has to ask oneself whether it is, in the language of the Central provinces Act, 'in accordance with the justice, equity and good conscience', and one has, in considering that question, to consider the age in which the application is to be made. Things have been part

of the English Common Law which are not consonant to modern ideas of justice and on which, had a Judge in England to consider the matter now free from authority, a different conclusion would unquestionably be arrived at to what was arrived at in the 15th, 16th or 17th centuries."

With respect I agree with the observations made and recorded above.

20. The learned Standing Counsel has argued that the rules of English Common Law are in existence in England for at least three centuries and this would not have been possible had they not been rules of justice, equity and good conscience. This argument loses all its force when it is remembered, that the rules of English Common Law have been found to be unsuitable in England itself, so far as air transport is concerned and an air carrier in England is now debarred by statute from altogether contracting out of its liability for negligence causing death of an air passenger. The Statute has imposed an absolute liability on a common carrier by air to pay compensation in case a passenger dies as a result of misadventure in respect to air transport. A rule found unsuitable in England cannot logically be held suitable to India as being rules of justice, equity and good conscience. I would. therefore, not look to English Common Law Rules for inspiration and guidance in the instant case. England has rejected it and there is no reason why India should cling to it for no other reason than this that once upon a time in the distant past carriers of England were allowed by common Taw to contract out of their liability for negligence to a passenger. In my judgment, we must look elsewhere to find the rules to be applied in cases like the one we are considering as rules of justice, equity and good conscience.

21. Reference has already been made to the Carriage by Air Act (Act XX of 1934). It purports to adopt Warshaw Convention for the unification of certain rules relating to International Carriage by Air. These rules relating to international carriage are embodied in the First Schedule to the Act and as such are the laws of international carriage in India. This Act also deals with carriage by air other than international carriage. The third preamble of the Act is in the following terms :--

"Whereas it is also expedient to make provisions for applying the rules contained in the Convention (subject to exceptions, adaptations and modifications) to carriage by air which is not international carriage within the meaning of the Convention; it is hereby enacted as follows:"

Then Section 4 empowers the Central Government by a notification in the official Gazette, to apply the rules contained in the First Schedule to non-international carriage. The Legislature, therefore, has indicated its intention in no uncertain terms that the Rules of International Aviation should also be applicable to cases of internal aviation and the Central Government is empowered by notification to extend the application of these rules to internal aviation 'subject to exceptions, adaptation and modification'.

22. Part III of the Rules deals with the liability of a Carrier by air. It makes the Carrier liable in damages both in respect to carriage of goods and passenger. The relevant rules laying down the liability of the Carrier to a passenger are set out hereunder :--

"17. The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operation of embarking or disembarking.

20 (i). The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

22(i). In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 1,25,000 francs. Where damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 1,25,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit or liability.

23. Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in these rules shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract which shall remain subject to the provisions of this Schedule.

25 (1). The carrier shall not be entitled to avail himself of the provisions of this Schedule which exclude or limit his liability if the damage caused by his wilful misconduct or by such default on his part as is in the opinion of the Court equivalent to willful misconduct

2. Similarly the carrier shall not be entitled to avail himself of the said provisions if the damage is caused as aforesaid by any agent of the carrier acting within the scope of his employment."

There are other rules laying down the liability of the carrier for carriage of goods. It is clear that the carrier under the Rules is debarred from contracting altogether out of his liability.

23. No notification has as yet been issued by the Central Government extending the application of these rules to non-international carriage by air in terms of Section 4 of the Carriers Act of 1934. In terms, therefore the statute does not apply to cases of carriage by air within the country. Can the statute, therefore, be left out of consideration in determining the law to be applied in cases of carriage by air within the country? In my judgment it cannot be so ignored. Provisions as to matters of principle in the Act are applicable to cases of non-international carriage by air as rules of justice, equity and good conscience. In my judgment these rules are to be looked into for guidance and not the rules of the English Common Law.

24. Transfer of Property Act, 1882 extended not to the whole of India, but left out certain States including the Punjab and Lower Burma. Suction 1 provides, this Act or any part thereof may by notification in the official gazette be extended to the whole or any part of the said State by the said Government concerned. In a case in Lower Burma which ultimately went up to the Privy Council, the disputed question was the manner in which the accounting was to be made of the mortgagee's claim where the mortgagee was in possession. Section 76 of the Transfer of Property Act, 1882 laid down the rules to be applied in such cases. But the Transfer of Property Act was expressly exempted from its operation to Lower Burma. Nevertheless, Mr. Haldane, as he then was, submitted as counsel before the Privy Council that the principles of Section 76 of the T. P. Act are nevertheless applicable to Lower Burma, as rules of justice, equity and good conscience. Lord Davy in delivering the judgment of the Board reported in Kader Moideen v. Nepean, 25 Ind App 241 made the following observation at 245:

"The Burmese Courts are directed, in the absence of any statutory law applicable to the case, to follow the guidance of justice, equity and good conscience. Mr. Haldsne contended that there is no rule of abstract justice in taking the accounts of a mortgagee in possession, and that the Indian rule which is now embodied in the 76th section of the Transfer of Property Act, 1882, should, though the Act has not been extended to Burma, be followed there in preference to the English practice. The 76th Section (h) provides that a mortgagee's receipts from the mortgaged property shall, after deducting the expenses mentioned in Clauses (c) and (d) and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of his interest on the mortgage money, and so far as such receipts exceed any interest due in reduction or discharge of mortgage money. The expenses mentioned in Clauses (c) and (d) are the Government revenue and the other charges of a public nature, arrear of rent, and repairs. Their Lordships are not prepared to dissent from Mr. Haldane's contentions on this point, but it is really unnecessary for them to express any judicial opinion on it in the present case."

In a number of cases the different provisions of the Transfer of Property Act have been applied in the Punjab as rules of justice, equity and good conscience. The principles of Transfer of property Act regarding mortgage have been applied in Punjab in the case of Jhuman v. Duba by a Division Bench reported in AIR 1923 Lah 646. Principles of Section 55(2) of the Transfer of Property Act have been applied in Punjab by the Punjab High Court in the case of Dala Singh v. Bela Singh reported in AIR 1925 Lah 92. principles of Sections 58(4) and 67 of the Transfer of Property Act have been applied by a Division Bench of the Punjab High Court in the case of Md. Abdullah v. Md. Yasin, reported in AIR 1933 Lah 151. In the case of Tarachand v. Sher Singh reported in AIR 1936 Lah 944, it is held that the right to future maintenance is not transferable . The principles of Section 6(dd) of the Transfer of Property Act were applied as rules of justice, equity and good conscience. See also the

judgment in the case of Was Deb v. Firm Dhiru Mal Baijnath, reported in AIR 1940 Lah 291.

25. In my judgment, the rules of justice, equity and good conscience applicable to internal carriage by air in India are not the rules of common law carrier in England, but the rules to be found in Carriage by Air Act, 1934. The Indian legislature has indicated that it should be applied to non-international air carriage of course "subject to exception, adaptation and modification." The Central Government in exercise of the delegated power of legislation cannot modify the principles embodied in the Rules affecting the liability of the carrier by air, by any notification under Section 4 of the Act.

26. Clear principles to be discerned in the rules are:-

(a) The carrier is liable in damages in the event of death or injury to the passenger in the case of accident.

(b) The carrier is not liable if he proves that he or his agent have taken all necessary measures to avoid the damages or that it was impossible for him or them to take such measures.

(c) Contributory negligence on the part of the passenger will exonerate the carrier from liability wholly or partly depending on the nature of contributory negligence proved.

(d) The carrier is not entitled wholly to contract out of his liability.

In my judgment these principles are more in consonance with the principles of justice than are to be found in the English Common Law. As such these are to be applied as Rules of justice, equity and good conscience rather than the Rules of English Common Law.

27. These rules were carefully framed and represent file combined wisdom of the Jurists of different nations assembled at Warsaw Convention. They are now embodied in the Municipal Statute of different countries including U. K. and India to be the law of the land. Subject to minor alteration to suit local conditions and requirements, these rules have been applied to cartage by air within the country in England. Indian legislature has also incorporated the same rules in a statute regulating international carriage by air. By the same statute the Government is directed to apply them to carriage by air within the country subject of course to exceptions, adaptation and modification. The broad principles of Warsaw Convention in ray judgment should be applied in India as rules of justice, equity and good conscience in respect to Carriage by Air within the country.

28. I realise that my decision is not consistent with the four decisions of this and other High Courts noticed before. It will however appear that the controversy in Court in each of the above four cases was whether the sections relating to bailment in the Contract Act or the Common Law of England will apply to carriage of goods by air. The carriage by Air Act, 1934 having been

found not to apply in terms, the Court was never invited to consider whether the miles framed under the carriage by Air Act, 1934 are applicable as rules of justice, equity and good conscience. Except in the Assam case, attention of the Court appears not to have been drawn to the Preamble and Section 4 of the Act which authorised the Central Government to extend the rules to non-international carriage by notification in the gazette. It appears, however, that in the Assam case reported in AIR 1960 Ass 71, the attention of the Court was drawn to Section 4 of the Act. At page 72 of this Report Sarjoo Prosad, C. J., who delivered judgment makes the following observation:-

"At the outset it may be stated that the liability of the defendant company is not governed by the provisions of the Indian Carriage by Ai Act, 1934 (Act XX of 1934). This Act was brought into being in order to give effect to a convention, for unification of certain rules relating to international carriage by air. Chapter III of the Rules in this Act provides for the liability of the carrier and under Rule 18 of the Rules, the carrier is liable for damage sustained in the event of the destruction or loss or damage to any registered luggage or any goods, if the occurrence, which caused the damage so sustained took place during the carriage by air; which means, in other words, the period during which the luggage or the goods, were in charge of the carrier, whether in an aerodrome or on board an aircraft.

The carrier, however, could plead exemption from liability if under Rule 20 it was able to how that the carrier or its agents had taken all necessary measures to avoid the damage or that in the circumstances, it was impossible for it or them to take such measures. It is further provided under that Rule that the carrier would not be liable if it proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in the navigation thereof, provided in other respects the carrier and its agents had taken necessary measures to avoid the damage or loss. But these Rules, as I said, apply to international carriage by air. The operation of the Rules could be extended by the Central Government to such carriage by air, not being international carriage by air, as defined in the first schedule as might be specified in as notification published by that Central Government under Section 4 of the Act. But the learned counsel for the appellant has conceded that there is no such notification published by the Central Government. The plaintiff, therefore, could not take any advantage of the Rules contained in this Act for the purpose of enforcing the liability of the defendant company.

One would very much wish for the sake of uniformity in all such cases of transport by air that these Rules were extended to apply to other cases also as contemplated by Section 4 and that the Central Government would take appropriate action in the matter."

But my lord was never asked to consider the question whether notwithstanding the absence of notification in that behalf the court should apply the rules as rules of justice, equity and good conscience in respect to carriage of goods by air to India within the country.

29. The exemption clause relied on and set out before is in the widest possible terms. It expressly exempt the carrier from all liabilities including liability for breach of statutory duty. The passenger renounces not only for himself but also for his heirs and representatives all claims otherwise legally recoverable from the carrier by his heirs and representatives under the law. The passenger purports to renounce the rights of the 'dependents' under the Fatal Accidents Act to get compensation in case of death of the passenger. This exception clause has been challenged on the ground that special contract is bad and is not enforceable in law.

30. Before, however, I examine the arguments of Mr. Dutta Roy on this point, I may as well dispose of the contention of the learned Standing Counsel that If this contention of Mr. Dutta Roy is upheld then the contract of carriage becomes void and the deceased Sanat Kumar became a trespasser in law. A trespasser has no right in law against the carrier. The defendant corporation in such event would have no liability either to the deceased or to the dependents of the deceased under the Fatal Accidents Act. The flaw in this argument is that the special conditions sought to be imposed may be bad and as such unenforceable in law but that does not make the contract of carriage void and the passenger a trespasser without any right. The passenger when he paid for the ticket which is accepted by this defendant corporation becomes an invitee for reward and the carrier has accepted him to be lawfully in the aircraft for air carriage If in such a case it transpires that the carrier sought to impose certain terms in the ticket which are unlawful then the only result is that the terms will be ignored and the right of the passenger to travel, or to be in the aircraft is not affected in any way. He remains a passenger for reward, an invitee in law and certainly not a trespasser. I am unable to accept this contention of the learned Standing Counsel.

31. Mr. Dutt Roy has contended that the parties are not competent in law to enter into such a special contract exempting the carrier from liability. The defendant corporation is a creature of statute to wit the Air Corporation Act (XXVII of 1953). Section 7 of the Act provides that the function of the Corporation would be to provide 'safe, efficient, economical and properly co-ordinated air transport service'. The powers of the Corporation to exercise the aforesaid functions have been set out in Sub-section (2) Section 7. SubSection 3(a) of Section 7 provides that 'nothing in the section shall be construed as authorising the disregard by the Corporation of any law for the time being in force. The Corporation, therefore, has been debarred by Section 7 of the Act from disregarding the provisions of the Indian Aircraft Act, 1934 or the Rules made thereunder. The certificate of Air worthiness to every aircraft under the Indian Aircraft Act expressly states that the aircraft shall be flown only in accordance with the conditions for flying machine laid down in part XII of the Indian Aircraft Rules, 1937. The instant special contract virtually authorises the defendant corporation to violate the rules of flying. The defendant corporation had, therefore, no authority to enter into the contract. This is the argument of Mr. Dutt Roy. This argument is not acceptable to me. The defendant corporation is not purporting to enter into a contract for violating the rules of flying. What is

contracted for is that if by reason of such violation the defendant corporation becomes liable in law, that liability is being contracted out. Whether such a contract is hit by the provisions of Section 23 of the Indian Contract Act is a different question which will have to be considered later. But I find no incapacity of the defendant corporation to enter into a contract like the present, either in the Air Corporations Act, 1953 or the Aircraft Act, 1934 or the rules made thereunder.

32. It is next contended that the agreement amounts to a breach of absolute statutory duty imposed by Rule 115 of the Aircraft Rules on the defendant Corporation. This rule was intended inter-alia for the benefit and Protection of the travelling public. This statutory duty for the benefit and protection of the deceased Sanat Kumar cannot be contracted out. The offending special agreement must therefore be held to be void and of no effect. It is contended that Common Law negligence may perhaps be contracted out but not statutory negligence, i.e., a breach of absolute statutory duty. In the case of breach of statutory duty the rule of 'volenti non fit injuria' does not apply. A number of authorities were cited by the respective counsel. In the case of Baddelev v. Earl Granville reported in (1887) 19 QBD 423, it was held that 'Volenti non fit injuria' does not apply to cases of breach of statutory duty imposed on the owner of coal mines for the benefit and protection of the miners. An agreement whereby the servant agreed to waive and condone the commission of the breach wns held void. The owner was held liable. The case of Flower v. London and North Western Rly Co. (1894) 2 QB 65 was a case in which there was a special contract whereby the passenger exempted the Railway Company (defendant) from all liabilities for negligence and breach of duty. The agreement was held not binding and the Railway Co. was held liable. The passenger in this case, however, was a minor. In England the contract by a minor is not void but violable . But the Common Law Courts keep a sharp and vigilant eye on such a contract and if the contract appears to be unfair to the minor the Common Law Judges never give effect to such a contract. In the cited case the contract was held to be one sided and against the minor. This case therefore, cannot be taken a.s a good authority on the point under consideration. Many other cases have been cited by the respective learned counsel but the law on the subject is to be found in Salmond on Tort, 11th Edn. at page 611 :

"Although an action for damages arising from a breach of an absolute statutory duty is known as an action of statutory negligence neither the defence of Volenti non fit injuria' nor common employment affords a good defence. Possibly the ground for this rule is that it is contrary to public policy that where there is a statutory obligation on the employer the workman should contract out of it. Hence, to give statutory force to a 'common law obligation' is by no means an otiose procedure". (u).

This view expressed by Salmond is not agreed to by Pollock in this book on tort as will appear at page 113 of the book. It may be contended that public policy as embodied in the Carriage by Air Act. 1934 and rules made thereunder debars an air carrier from contracting out of his liability totally and

completely and an agreement between the carrier and the passenger to that effect is hit by Section 23 of the Indian Contract Act and not enforceable as being contrary to public policy. I cannot hold the argument to be unsound.

33. The learned Standing Counsel contended that a distinction should be drawn between case of breach that by itself gives a cause of action for damages and one wherein the breach of statutory duty is nothing more than evidence of negligence which may give rise to a cause of action for damages. In the latter case the cause of action for damages is negligence. Liability for negligence, howsoever it may arise whether in breach of a duty imposed by Common Law or Statute Law must be treated on the same footing. It follows that just as liability for negligence under the Common Law can he contracted out, so also a liability for negligence for breach of statutory duty can be contracted out. There is however a difference as noticeable in judicial decision. If there is a positive enactment by the legislature whereby an absolute duty is imposed on a certain individual or class for the benefit and protection of another, a breach of such rule must be treated on the different footing from the breach of a mere common law rule which amounts to negligence in law. In Alford v. National Coal Board (1952) 1 TLR 687 Lord Reid stated that the formulation of a Common Law duty as a statuary regulation has the effect of depriving the infringer of the benefit of the plea of 'Volenti non fit injuria'. Since the rule of 'Volenti non fit injuria' is based upon an implied agreement and the statute imposes a duty independently of contract, how can any party agree to assume a risk that the statute has provided against. If the duty imposed by statute is absolute and is enacted for the benefit and protection of a particular class then the object of the agreement to relieve the party on whom the duty is imposed from all liability would amount to the evasion of the statute. When the object or consideration of an agreement is to evade the law, the agreement is bad Under Section 23 of the Indian Contract Act.

34. I have recorded my finding that an absolute duty is imposed by the Rules on an air carrier and its employees to abide by the rules framed for the safety inter-alia of the passenger and for their benefit. An agreement purporting to relieve the carrier of its liability for non- compliance of such rules would be to relieve the air carrier of its statutory duty. Such an agreement cannot be enforced by any Court of Law.

35. It is next contended by Mr. Dutt Roy that the offending agreement is in conflict with the provisions of Fatal Accidents Act and is bad in law on that ground as well . The Fatal Accidents Act of India is a verbatim copy of the English Statute. The Act makes a person guilty of wrongful act, neglect or default liable to pay compensation to certain named dependents of the person who dies as a result of such wrongful act, neglect or default. Section 1 of the Act reads as follows :

Sect. 1. "Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof the party who would have been liable if

death had not ensued shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

Every such action or suit shall be for the benefit of file wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased;

and in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered after deducting all costs ani expenses, including the costs not recovered from the defendant, shall be divided amongst the before mentioned parties or any of them, in such shares as the Court by its judgment or decree shall direct."

36. The nature of the action under the Fatal Accidents Act has been staged by Clerk and Lindsell in the 11th Ed. Of their treatise on Tort in the following terms at page 98:

"The cause of action given by the Fatal Accidents Act to the Personal representatives or dependants is an entirely different cause of action from that which the deceased person would have had. It is new in its species, new in its quality, new in its principle, in every way new'. "The statute does not in terms say on what principle the action if gives is to be maintainable, nor on what principle the charges are to be assessed; and the only way to ascertain what it does, is to show what it does not mean'. No further indication is given as to the nature of the wrongful act, neglect or default necessary to found the action than that it must be such as would have entitled the deceased to sue if he had not died. The test is to be taken at the moment of death, with the idea fictionally that death has not taken place. If at that moment the right of action of the deceased is barred, e.g. by a contract excluding himself from the right to claim damages, By accord and satisfaction, or by the operation of a statute of limitation, the dependants' right is also barred; if it would have been affected by his own contributory negligence, the damages awarded to his dependants will be proportionately reduced. Where, however, the deceased has made a contract which, while limiting the amount which he can recover, leaves him a cause of action, his dependants' right under the Act is not affected; as he at the time of his death could have brought an action for some damages they can bring an action for their own and quite different damages. The deceased may by his acts deprive his dependants entirely of their remedy, but he cannot (except by contributory negligence) bar their remedy in part."

37. As stated above, the right of the beneficiaries under the Act depends on the existence of any right of the deceased at the time of his death to claim compensation founded on "the wrongful act, neglect or default". If at the moment of his death the right of the deceased is barred, the dependants under

the Fatal Accidents Act have no right to compensation. There are cases decided in England under the Fatal Accidents Act which held that if the deceased by contract excluded himself from the right to claim damages, the dependants will have no claim for compensation under the Fatal Accidents Act. The cases on this point are to be found in the footnote at p. 98 of Clerk and Lindsell's treatise. It leads to this curious result that if the injured party contracted not to claim any compensation, the dependants will have no right to get compensation under the Act, Again if the deceased agreed to a compensation which is very nominal and if before death the nominal compensation was accepted by the deceased, in that event also the dependants will have no claim and no right of action under the Fatal Accidents Act. If, however, the nominal compensation was not accepted at the date of death and the deceased, if alive, could have maintained an action founded on the wrongful act neglect or default, the dependants will have a claim and right of action to recover by way of compensation, not the amount agreed to be accepted by the deceased. It may be much more. The deceased could have limited his own claim to occupation but he had no right to contract on behalf of the dependants to limit their claim under the Act. The law is however clear that the right of action under the Fatal Accidents Act depends upon the existence of the right of action on the part of the deceased had the deceased been alive. Mr. Dutt Roy has read passages from the judgments in the cases noted in Clerk and Lindsell in support of the argument. I have carefully gone through all the authorities referred to in the footnote and read in Court. It appears to me that the law stated in Clerk and Lindsell and set out above is based on authoritative decisions of the English Courts and must be good law in India as well. Certain passages from the judgments read by Mr. Dutt Roy dp appear to support Mr. Dutt Roy's contention. But it is no use relying on isolated passages in the judgments when the decision itself is against the proposition. It cannot be said that the instant agreement runs counter to the provisions of the Fatal Accidents Act.

38. It is next contended by Mr. Dutt Roy that the Special Contract is unreasonable and should not be given effect to. In support of this argument Mr. Dutt Roy has cited a passage from Chesire and Fifoot's Law of Contract 5th Ed. page 113 in support of his argument that the terms of the contract wholly exempting the carrier from liability for acts of negligence are unenforceable in law on the ground that it is unreasonable. Opinion of the learned authors is entitled to respectful consideration. But as the learned authors themselves state in the passage read, that their approach is tentative and not by any means generally accepted by the courts. Much as I dislike the agreement, I am unable to hold that the agreement is not enforceable on the ground of unreasonableness.

39. For reasons given above. I hold that the defendant Corporation cannot exempt itself from liability. Sanat Kumar, had he been alive, would have been entitled to maintain an action for damages for the wrongful act, neglect and default on the part of the employees of the defendant Corporation. Sanat Kumar having died as a result of the fatal accident, the plaintiffs as beneficiaries are entitled to recover compensation under the Fatal Accidents

Act. Their right to get compensation is not derived from Sanat Kumar but is an independent right under the statute. The amount recoverable by the plaintiffs under the Fatal Accidents Act is not necessarily the amount which could have been recovered by the deceased had he been alive.

40. The only point now left for consideration is what amount of compensation is payable. The amount of compensation payable under the Fatal Accidents Act is the financial loss suffered by the beneficiaries. A wife is entitled in law to be maintained throughout by her husband and the husband's estate would be liable to maintain her. Under the Shastric Hindu Law a widow in the event of a partition between the sons after the father's death would be entitled to an equal share in the estate of her husband in lieu of maintenance. Under the present Statute Law of 1956 the widow is entitled to a share equal to that of the sons and daughters. The sons and daughters in a Hindu family are liable to be maintained by the father and in case of the death of the father they are equally entitled to the father's estate. The daughters in a Hindu family have a right to be married out of their father's estate, Each one of them therefore has suffered financial loss as the result of the death of Sanat Kumar.

41. It is proved that Sanat Kumar was 44 years of age at the time of his death. He was a permanent employee of the I. G. N. and Rly. cO. Ltd. a very stable concern of repute. At the time of his death he was getting Rs. 700/- per mouth as his remuneration. He had prospects in life. He belonged to a long lived family. Taking into account all these facts I determine the amount of compensation payable by the defendant to the plaintiffs at Rs. 1,00,000/-. The loss suffered by each one of the plaintiffs I determine to be equal, and the amount of compensation decreed after deduction of costs, if any, is to be divisible equally among the five plaintiffs. The plaintiffs will be entitled to all costs incurred. Certified for two counsel.

42. I hope that the law charges of the plaintiffs would not exceed the amount recoverable on account of costs from the defendant Corporation.

43. I cannot conclude this judgment without acknowledging the help and assistance I received from the Bar. The point is difficult and I freely acknowledge my indebtedness to each one of the learned counsel engaged by either party-- Mr. B.N. Dutt Roy and Mr A.P. Chowdhury who appeared for the plaintiffs and the learned Standing Counsel, Mr. Court Mitter and Mr. Bachawat who appeared for the defendant Corporation.

Manupatra Information Solutions Pvt. Ltd.”

এয়ার কেরিং কর্পোরেশন বনাম শীবেন্দ্র নাথ ভট্টাচার্য (AIR1964Cal396) এর মোকদ্দমাটির রায় নিম্নে অবিকল অনুলিখন হলোঃ

"IN THE HIGH COURT OF CALCUTTA
Second Appeal No. 562 of 1956
Decided On: 25.03.1964
Appellants: ***Air Carrying Corporation***
Vs.
Respondent: ***Shibendra Nath Bhattacharya***
Hon'ble
B.N. Banerjee and D. Basu, JJ.
Case Note:

Civil - Liability - Courts below held that loss of Plaintiff's goods was occasioned by negligence of Defendant Corporation and not act of God and awarded damages - Hence, this Appeal - Whether, Defendant corporation could contract out of their liability for damage caused by negligence - Held, absolute freedom of common carrier could not be imported into India in view of fact that, in United Kingdom itself, in exercise of power conferred by the Carriage of Air Act, 1934, Order in Council was made, namely, Carriage by Air (non international carriage) U. K. Order, 1952, under which carrier was debarred from contracting out of his liability in cases of negligence - However, reversal of said particular rule of common law, would not solve problem because, if rest of common law was enforced, imposing upon inland common carriers by air absolute liability of insurer, without introducing limitations to this liability, injustice to carriers of this class in order to relieve other party to contract could be caused - Appeal allowed.Ratio Decidendi"Common carrier is debarred from contracting out of his liability in cases of negligence."

JUDGMENT

D. Basu, J.

1. This second appeal is directed against a decree of the learned Distant Judge of Darjeeling by which he affirmed the

decree of the learned Subordinate Judge awarding Rs. 1170/- as damages on account of the loss of a consignment of a tea booked by the plaintiff-respondent for carriage by the defendant-appellant, the Air Carrying Corporation, from Darjeeling to Calcutta.

2. The plaintiff's case was that the defendant Corporation failed to deliver the goods at their destination, on account of its negligence. The defence was that the loss was due to an act of God, or the accidental destruction of the air-craft by which the goods were being transported. It is the concurrent finding of both the Courts below that the loss of the plaintiff's goods has been occasioned by the negligence of the defendant Corporation and not an act of God, and the learned Advocate for the defendant-appellant has confined his argument to a question of law, namely, that even assuming that the loss of the goods was due to the negligence of the Corporation, it was not liable in view of the special contract, to wit, the terms of note 2 to the consignment from subscribed by the plaintiff, which exempted the defendant Corporation from any liability for the loss of the goods, whether due to accident, negligence or any other cause. This question of law was agitated before the court of appeal below but was rejected on the ground that Sections 151 and 152 of the Contract Act governed the liabilities of the defendant-Corporation and that even it the consignment form purported to con-tract out of the statutory liability laid down by the aforesaid provisions of the Contract Act, such contract, was invalid and inoperative.

3. On this question of law, however, there is a Division Bench ruling by my learned brother sitting with Niyogi, J., to the effect that the liability of a common carrier by air, other than an international carrier, is governed, in India, not by any of the statutes in force, such as the Carriers' Act, 1865, the Indian Carriage by Air Act, 1934, or the Indian Contract Act, 1872, but by the Common Law of England which acknowledged that a common carrier might exempt himself from liability by a special contract and that by such special contract even liability due to negligence could be excepted : Indian Airline, Corporation v. Keshavlal, MANU/WB/0071/1962 : AIR 1962 Cal 290 .

4. Learned Advocate for the respondent has not been able to lay his hands on any authority contrary to this Division Bench

decision, save that of a Single Judge of this Court, P. C. Mallick, J., in Mukul v. Indian Airlines Corporation, MANU/WB/0075/1962 : AIR1962Cal311 . Before we go into the question in any further details, it may be said at once that the Singh Judge's decision is not binding on this Bench and since we are convinced that the Division Bench has correctly stated the law as it exists today, we might have disposed of the appeal before us, without more.

5. But since it is evident from the authorities referred to in the Division Bench case that the present State of the law in India is a result of legislative accidents and that the resultant position is anomalous, calling for suitable legislation, we consider it necessary to analyse the existing state of the law relating to the subject. At this hour of the day, little authority is required for the proposition that at the beginning of the British Administration in India, it was the English Common Law which governed, in the main, the rights of parties before the Courts.

(a) So far as the settlements of the East India Company, which later developed into the Presidency-towns, were concerned, the position was simple, because the British people claim it as their proud privilege a right to carry their law along with their Flag wherever they go and settle on the face of the earth. The Indian Chief, (1801) 3 Ch, Rob. 12 and, in India, this law came to be extended even to the local inhabitants of these territories because to the English Judges of the Mayors' Courts (established in the Presidency towns by the Letters Patent of 1729), who were directed to give judgment 'according to justice and right', 'justice and right' meant the rules of English law. In 1863, therefore, the Judicial Committee had no hesitation in holding, Advocate-Central v. Ranee Surnomoyee Dossee, 9 Moo Ind App 387 (426-7)(PC), that "the English law, both civil and criminal, has been usually considered to have been made applicable to the Natives, within the limits of Calcutta in the year 1726, by the Charter, 13th Geo. I."

(b) But the position in the territories outside the Presidency towns was not so simple. These were not establishments set up by British traders, but the realm of the Moghul Emperor. In 1785 the administration of these territories came over to the East India Company, by the grant of the Dewani, along with an indigenous system of Courts administering Indian law. And yet the English

law entered through the back-door into these territories as well. Shortly after Warren Hastings substituted these indigenous Courts by the Courts of the Company, two principles came to be established, through various regulations and statutes, which may be expressed best in the language of a much later enactment, namely, section 37 of the Bengal Agra and Assam Civil Courts Act of 1857, which still governs the jurisdiction of the civil Courts of this State outside the Presidency town of Calcutta. These principles are -

(a) that in matters personal, such as succession, inheritance, marriage and the like, the law applicable is the personal law of that party;

(b) that in other matters, the Court shall act according to 'justice, equity and good conscience.' Explaining this latter expression in 1837, the Judicial Committee observed, Waghela v. Masluddin, 14 Ind App 89(96) (PC), that it meant the rules of English law if found applicable to Indian society and circumstances.

6. In matters outside the sphere of personal law, thus the basic law applicable throughout British India was the English common law, the areas outside the Presidency towns being distinguished by the slender thread that the Courts had the liberty of discarding a rule of common law it it was repugnant to the local circumstances.

7. The subsequent development of the law in India has been one of gradual codification of the principles of English Common Law relating to various branches and, today, but for a few solitary instances, the entire realm of general law in India (i. e. relating to matters outside personal law), may be said to be codified. The matter before us, viz., the law of Carriage by internal air carriers is a curious example of the residue that has not yet been touched by legislation. Even after the adoption of the Codes, it has been acknowledged in India that in matters where a Code was silent or in places where a Code was not applicable, Courts in India would act according to the principles of English Common Law with this rider that the Courts had the freedom to differ from those principles where they were not consonant with the immutable

principles of justice, equity and good conscience : Watson v. Ramchand Dutt ILR 18 Cal 10 ; Namdeo v. Narmadabai, MANU/SC/0070/1953 : [1953] 4 SCR 1009 .

8. In the process of codification, the law as to common carriers early received the attention of the Indian legislature, and in 1885 it was codified by enacting the Carriers' Act, 1865. It defined a "common carrier" as "a person, other than the Government, engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately", and laid down the principles and the extent of liability of such common carriers. It is evident that the defendant corporation, which carries on the business of transporting goods on hire for members of the public, would have come within the scope of this definition but for the fact that the definition is confined to transportation by land and inland navigation only and does not extend to air navigation. It is obvious that carriage by air was unknown at that time and, that is why, the Legislature provided for carriage by land and inland navigation only. It is a matter of accident that during the long lapse of one century the Act has not been extended to carriage by air, nor any suitable legislation has been undertaken to codify the principles of common law relating to Inland common carriers by air.

9. In 1872, the Indian legislature codified the general law oo?= contract in the Indian Contract Act. Chapter IX of this Act dealt with bailment and provided the principles of liability of a bailee. In section 148 of the Contract Act, a bailment is defined as "the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the bailor. The person to whom they are delivered is called the bailee." There is no doubt that the foregoing definition of bailment is wide enough to include a bailment for carriage, and a carrier by air on hire would be a bailee. One might expect, therefore, that carriage by air, not being included in the special statute, viz., the Carriers' Act, 1865, would be governed by the provisions of Chapter IX of the Contract Act. But in 1891, when the question of liability of a carrier by sea came up before the

Privy Council, it was held by their Lordships in Irrawady Flotilla Co. v. Bhugwandas, I L R 18 Cal 820) that the entire law as to common carriers was excluded from the scope of the Contract Act of 1872. The reasoning of the Judicial Committee was that 'the subject of common carriers, having been dealt with by a special statute, was not intended to be affected by the general law of contracts, embodied in the Contract Act, 1872, which was not exhaustive of the entire law relating to contracts and did not profess to repeal the Carriers Act of 1865. The result of this decision is clear, viz., that if a common carrier carries its business on land or inland waters, it is governed by the special enactment, viz , the Carriers' Act, 1865, but if it carries on business by air or by sea, it would not be governed by the provisions of the Contract Act, but by the rules of English Common Law until any special legislation to govern the rights and liabilities of such carriers is undertaken by the Legislature. The law relating to carriage of goods by sea from one port in India to any other port, whether in or outside India, has, in fact, been subsequently codified in the Indian Carriage of Goods by Sea Act, 1925. Even carriage by air has been dealt with by the Indian Carriage by Air Act, 1934; but this Act is confined to international carriage by air and does not profess to deal with internal carriers of air-craft flying within the territories of India.

10. The logical result of this history of legislation is that common carriers by air, who carry on their business within the territory of India, are not govern ed by the provisions of the Indian Contract Act of 1872, or of the Carriers' Act, 1885, or the Indian Carriage by Air Act, 1934, but are left in the same position as all common carriers were prior to 1885, viz., that they are to be governed by the rules of English Common Law. In applying Sections 151-152 of the Contract Act, therefore, the Courts below were clearly wrong and acted in disregard of the Privy Council decision in the Irrawady Flotilla case. ILR 18 Cal 620) (ibid).

11. The specific question before us is whether the defendant corporation could contract out of their liability for damage caused by negligence. Were the question to be governed by the provisions of any of the Acts just mentioned, the answer would clearly have been in the negative.

12. But, under the rules of English Common Law, the answer must be in the affirmative. As explained by the House of Lords in Peek v. North Staffordshire, (1863) 10 H L C 473 and by the Privy Council in Alfred William Luddit v. Cinger Coote Airways AIR 1947 P C 151 at common law, a common carrier was an insurer of the goods which he had undertaken to carry for hire, but he could limit his stringent obligations by special contract. This absolute freedom to contract out of liability has, however, been disliked by the Legislature and has been controlled by statutes such as the Railway and Canal Traffic Act, 1854, the Carriage by Air Act. 1932.

13. Since the common law relating to inland carriage by air has not been modified by any statute in India, it follows that the absolute freedom of the carrier to contract out of his liability even in cases of negligence remains and this is the view taken by the Division Bench presided over by my learned brother in the case reported in the MANU/WB/0071/1962: AIR1962Cal290 and in a series of previous decisions of this Court.

14. In a territory outside the Presidency-towns, however, there is an additional question to be answered, namely, whether the above rule of English common law is consonant with the principles of 'justice, equity and good conscience'. The case before Mallick J., in MANU/WB/0075/1962 : AIR1962Cal311 , as well as the case before use relate to such territory. Apparently, there is force in the view taken by Mallick J. that such absolute freedom of a common carrier should not be imported into India in view of the fact that, in the United Kingdom itself, in exercise of the power conferred by the Carriage of Air Act, 1934, an Order in Council has been made, namely, the Carriage by Air (non international carriage) U. K. Order, 1952, under which the carrier has been debarred from contracting out of his liability in cases of negligence. That such a freedom was unreasonable and unsuitable to the conditions of this country was also the view of Sankaran Nair, J., in his minority judgment in Sheik Mahamed v. British India Steam Navigation Co, Ltd. ILR 32 Mad 95 but the view of Sankaran Nair, J., was not acceptable not only to the other two Judges in that case but also to the Division Bench which next considered this question, in Kariadan Kumber v. British Indian

Steam Navigation Co. Ltd. ILR 38 Mad 941 : (AIR 1915 Mad 833). Eventually, the view of Sankaran Nair J. has been expressly dissented from by a Division Bench of the Madras High Court in British India Steam Navigation Co. Ltd. v. T. P. Sokkalal, MANU/TN/0055/1953 : AIR1953Mad3 , observing that "the consensus of authority" of this High Court as well as other High Court was to the contrary.

15. Having regard to this overwhelming consensus of authority referred to in the Madras case, just cited, and the Privy Council decision in the Irrawaddy Flotilla case ILR 18 Cal 620 PC), we do not think it would be be of any use to refer this question to a Full Bench in view of the lone observation of Mallick, J., though forceful. This is a case for legislative intervention and not for a judicial reversal of precedents which, as my learned brother has said, "has acquired the sanctity of stare decisis" MANU/WB/0071/1982 : AIR1982Cal290 . There is, besides, a practical aspect of the matter which also we cannot overlook. A reversal of this particular rule of the common law, that is, as to the freedom of the common carrier to contract out of his liability wilt not solve the problem because, if we enforce the rest of the common law, imposing upon the inland common carriers by air the absolute liability of an insurer, without introducing the limitations to this liability as have been laid down by statutes in the case of other common carriers, we would be causing injustice to the carriers of this class in order to relieve the other party to the contract. On the other hand, if the common law is wiped off, in its entirety, by a judicial verdict there would be no other law applicable to determine the liability of the internal carrier by air is India, so long as the Privy Council decision in the Irrawaddy Flotilla case I LR 18 Cal 620 (PC) (ibid.) stands ; for since the special statutes relating to carriers are clearly inapplicable to such carriers, the only law that could possibly be applied to them is the general law in the Contract Act, hut that Act is inapplicable to common carriers, according to the Privy Council. This decision is binding on all Courts in India as the existing law, under Article 372(1) of the Constitution, except the Supreme Court, which alone is not bound by precedents and is competent to override it.

16. Even as to unreasonableness or the rules of English common law relating to common carriers of the residuary class, with Whom we have to deal in this case, Courts cannot fail to take cognisance of the fact that the Legislature has not intervened for a century and the Courts throughout India have been applying those rules. Even the Central Government, which had been given power, by Section 4 of the Indian Carriage by Air Act, 1934, to extend the provisions of that Act to non-international carriage by air, has not utilised that power, as in England. Nor would it be logical for the Courts to hold, today, that what is good law within the limits of the Presidency towns would be inequitable outside those areas, even though the historical conditions which demarcated the two parts of the country have long disappeared. The real solution is to replace the common law rules by an entire set of new rules, whatever that might be, and that is the task of the legislators, not the Judges.

17. A parallel instance may be of interest in this context. Even, as late as 1962, the Supreme Court painfully observed, State of Rajasthan v. Vidyawati, MANU/SC/0025/1962: AIR 1962 SC 933 that it was a pity that the maxim 'King can do no wrong' was still applicable in the Republic of India as a heritage of English Common Law, even though Monarchical England had done away with it as regards tortuous liability, by enacting the Crown Proceedings Act, 1947. But, at the same time, their Lordships had to add that it was for the Legislature in India to take up appropriate legislation, as contemplated by Article 300 of the Constitution, and that so long as that was not done, it was the duty of the Courts to apply that maxim as a part of the law which was applicable in the days of the East India Company.

18. The question before us is also one which requires legislative intervention) for reasons given earlier. In what lines such legislation shall be undertaken, e. g., whether the provisions of the Carriers' Act, 1865, should be extended to inland carriers by air or the general principles underlying the Contract Act should be extended to them by appropriate amendments, is one for the Legislature to determine. The executive may, as well, issue a notification under Section 4 of the Indian Carriage by Air Act, 1934, to extend the provisions of that Act to inland carriers by air, as has been done in the U. K.

19. But it is not for us to indicate the lines of legislation. It may be mentioned in this context that the Law Commission of India, while revising the Indian Contract Act, 1872, recommended that "laws relating to carriers should be codified and consolidated into one separate statute': Thirteenth Report of the Law Commission, para. 4. But no such codification has yet been made. I have discussed the matter at length only to point out the desirability if appropriate legislation relating to the rights and liabilities of common carriers running the business of non-international carriage by air, and I would direct a copy of this judgment to be forwarded to the Legislative department is the Ministry of Law, Government of India.

20. Subject to these observations, this appeal must be and is accordingly, allowed, and the plain-tiff-respondent's suit dismissed, but without any order as to costs.

B.N. Banerjee, J.

21. I have already expressed my views on the point of law involved in this matter in MANU/WB/0071/1982: AIR 1982 Cal 290. Since my Lord has substantially agreed with that exposition of law with additional reasons of his own, I respectfully agree with the order made by my Lord.

Manupatra Information Solutions Pvt. Ltd."

দিপক ওয়াদওয়া বনাম এরোফ্লট (24(1983) DLT1, (1983) ILR 2 Delhi 880) মোকদ্দমাটির রায় নিম্নে অবিকল অনুলিখন হলোঃ

"IN THE HIGH COURT OF DELHI

Execution Appeal No. 81 of 1981

Decided On: 26.04.1983

Appellants: ***Deepak Wadhwa***
Vs.
Respondent: ***Aeroflot***

Hon'ble

S.S. Chadha, J.

Case Note:

(i) Civil Procedure Code - Section 86--Institution of suits against

foreign State--Transformed principles of International Law Cannot be incorporated in the statutory provisions of Section 86.

(ii) Carriage by Air Act 1972--Discussed--there is no provision relating to sovereign immunity--The procedure to be followed in suits is governed by the provisions of the C.P.C. alone.

The question that arose for the consideration of the court was whether the principle of International Law as transformed from time to time, relating to sovereign immunity, apply in India in face of the provisions contained in Section 86 of the Code of Civil Procedure, 1908. Answering the question in the negative,

Held:

1. AEROFLOT, the Soviet Airline is an alter ego or organ of the Government and the provisions of Section 86 of the Code of Civil Procedure are, Therefore, applicable. The provisions of Section 86 of the Code of Civil Procedure are imperative and a decree passed by a court without requisite certificate of consent would be a nullity. Even the executing court can entertain the question the question whether a decree is a nullity and not in existence by reason of the fact that it was passed by a court without jurisdiction.

2. In the interpretation of statutes, the court always presumes that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. Every word in the statute is required to be given a meaning. The provisions of Section 86 of the C.P.C. alone must be looked into for consideration of claims of the sovereign immunity or else they would be rendered superfluous or insignificant.

3. The institution of suits in India against foreign States are regulated by the statutory provisions contained in Section 86 of the Code of Civil Procedure and the transformed principles of International Law cannot be incorporated in it and, Therefore, have no application in India. The doctrine of restricted immunity based on the distinction between jure imperil or the sovereign acts of a State and jure bastions, or commercial acts is not the positive

International Law of India in view of the statutory provisions contained in Section 86(1). The suit instituted against AEROFLOT was without the requisite certificate of consent of the Central Government. The decree passed is a nulliy and inexecuable.

4. There is no provision in the Carriage by Air Act, 1972 relating to sovereign immunity. The said Act does not confer jurisdiction on the civil court or provide a special procedure in dealing with claims arising out of or under its statutory provisions. The suit has to be determined according to the law of procedure laid down in the Code of Civil Procedure.

JUDGMENT

S.S. Chadha, J.

(1) The question raised in tins case is whether the principles of International Law as transformed from time to time about sovereign immunity apply in India in face of the provisions contained in Section 86 of the Code of Civil Procedure, 1908.

(2) Mr. Deepak Wadhwa, plaintiff/decree-holder obtained from this Court on May 28, 1981 an ex-parte decree for the recovery of Rs. 4,32,066 with costs against Aeroflot (Soyiet Airlines). He took out on July 22, 1981 the execution of the decree and prayed for the issue of warrants of attachment of the amount lying in the current account No. 30/84011 with State Bank of India, Main Branch, Parliament Street, New Delhi in the name of Aeroflot and then calling the amount for payment to the decree-holder. A show cause notice was issued to the judgment-debtor who filed an application, being E.A. 174181, for declaring that the suit instituted by the decree-holder was incompetent, invalid and untenable and the decree is non-est. inexecutable and a nullity. The plea is that Aeroflot (Soviet Airlines) is a General Department of International Air Services of the U.S.S.R.; that it is a Governmental organisation of the Union of Soviet Socialist Republics and all its belongings are the property of the U.S.S.R.; that it is a foreign State within the meaning of the expression as used in Section 86 of the Code of Civil Procedure, 1908 (for short called the Code); that it could not be sued except with the consent of the Central Government certified in writing by a Secretary to

that Government as provided in sub-section (1) of Section 86 and that the requisite consent has not been obtained. Similarly no' decree can be executed against the property of a foreign State except with the consent of the Central Government by a Secretary to that Government, as provided in sub-section (3) of Section 86.

(3) The defense of the decree-holder is two-fold. Firstly, he says that the petition under Section 86 of the Code is not maintainable since the suit filed by the plaintiff is under a special procedure prescribed under the Carriage by Air Act, 1972. The decision as to how to regulate the rights and liabilities of the carriers in international flights was made on October 12, 1929 in a Convention for the unification of certain rules relating to international carriage by air which Convention was signed at Warsa on October 12, 1929 which was amended by the Hague Protocol on September 28, 1955 and our Parliament had enacted Act 69 of 1972 i.e. the Carriage by Air Act, 1972 (for short called the Act) to give effect to the aforesaid Convention for the international carriage. The provisions of the aforesaid convention have been embodied in the Schedules to the Act and have the force of law in India in relation to any carriage by air to which these rules apply irrespective of the nationality of the aircraft performing the carriage. Since U.S.S.R. is a party to the convention of Warsa, accordingly, the provisions of the Act are applicable to the facts of the present case as the suit is under a special enactment and not under an ordinary law. The Act is a special Act to deal with the rights' and liabilities of the carriers as well as the forum of any action by damages. The contention is that the provisions of Section 7(1) of the Act will prevail over Section 86(1) of the Code. Consequently, the decree obtained by the plaintiff/decree-holder is argued as valid in law and no permission under Section 86 of the Code is required to be obtained for execution. Secondly, it is denied that Aeroflot (Soviet Airlines) is a General Department of International Air Services of the Union of the Soviet Socialist Republics. It is denied that the same is a Governmental Organisation of the Union of Soviet Socialist Republics. Even if it is found that the Airlines Aeroflot is wholly owned by the Government of U.S.S.R., the submission is that as a carrier as distinct from the Government off U.S.S.R., it is placed on the same footing as Air India/Air France/other carriers which are

operating in India. At the bearing, this second defense is developed that the doctrine of sovereign immunity is not applicable to the ordinary commercial transactions, as distinct from the Governmental acts' of a sovereign State. The suit of the plaintiff/ decree-holder arose out of the breach of contract for the carriage of the decree-holder and his goods from Delhi to Frankfurt by Aeroflot (Soviet Airlines) by flight No. SE-558. The decree-holder claimed in the suit Rs. 25,066.60 as cost of the articles contained in the attache case vide Baggage Ticket No. S.V. No. 47163 not delivered back to the decree- holder and Rs. 7,000 as refund of the airfreight charges from Delhi to Frankfurt one way as the Journey was not allowed to be performed. In addition, the decree-holder claimed Rs. 4 lacs as damages in the form of 10 per cent loss of profit on firm contracts, 12 per cent incentives which was to be given to the decree-holder by Government of India on exports and 30 per cent loss of profits of replenishment licenses, caused on account of the inability of the decree-holder to reach for the purposes of entering into binding contracts with the intending purchasers at the destination in time because of the facts, neglects and defaults of AEROFLOT.

(4) Let me first clear the ground. Firstly, evidence has been led by affidavits and a certificate under the seal of the Embassy of the Union of Soviet Socialist Republics in India has also been filed to the effect that Aeroflot 'Soviet Airlines' is the governmental organisation and all its belongings including aircraft are the property of the Union of Soviet Socialist Republics. There is no rebuttal by the decree-holder. My attention is also invited to Article 6 of the Constitution (Fundamental Law) of the Union of Soviet Socialist Republics as amended. It provides, inter alia, that air transport are State property, that is, belong to the whole people. Aeroflot thus, is an alter ego or organ of the Government. Secondly, the provisions of Section 6 of the Code are imperative and a decree passed by a Court without requisite certificate of consent would be a nullity. (See "Gaekwar Baroda State Railway V. Hafiz Habib -ul-Haq and others" MANU/PR/0027/1938). Thirdly, it is settled position of law that the question whether a decree is a nullity and not in existence by reason of the fact that it was passed by a Court without jurisdiction can be entertained even by the executing Court. Where there is inherent lack of jurisdiction

in a Court, a decree passed by i't is a nullity. The executing Court can see whether a decree to be executed is an operative decree capable of execution. A decree passed by a Court without the requisite certificate would be by a Court which has no jurisdiction at all to entertain it. In the absence of the consent of the Central Government as prescribed by sub-section (1) of Section 6 of the Code. the suit could not have been entertained at .all. It would be a case of total absence of competence and hence the decree by the Court would be nullity.

(5) The doctrine of sovereign immunity is that a sovereign State should not be sued or could not be impleaded in the Courts of another sovereign State against its will. The doctrine grants immunity to a foreign Government or its Department of State or anybody which can be regarded as an alter ego or organ of the Government. Every sovereign State respects the independence of every other sovereign State and as a consequence declines to exercise by means of any of its' Courts jurisdiction over the person of any sovereign or over the public property of any State. Mr. P. R. Mirdul, the learned counsel for the decree-holder invites my attention to the extent of sovereign immunity granted by various nations. He contends that the extent of sovereign immunity differ in its application from nation to nation and even there has been transformation in i't from time to time. Some countries granted absolute immunity while other granted Limited immunity. England with most other countries adopted the rule of absolute immunity over a century back. It was adopted because it was considered to be the rule of International Law at that time. In the Parliament Beige (1874) All E.R. 104, Brett, C.J. said that "The excerption of the person of every sovereign from adverse suit is admitted to be a part of the law of nations so also his property. The universal agreement which has made these propositions part of the law of nations has been an implied agreement". Lord Atkin in "Campania Naviera Vascongada V. Steamship Cristina and all persons claiming an interest therein" 1938 (1) All. E.R. 719 in the classic re-statement of the doctrine said

"THAT the Courts of a country will not implead a foreign sovereign, that is, they will not by their process make him against his will a party to legal proceedings, whether the proceedings

involve process against his person or seek to recover from him specific property or damages".

(6) The counsel urges that there has since been a transformation of functions of a State. They are no longer restricted to the traditional functions of a sovereign. The State has entered into commercial activities. This transformation in the function of a, sovereign State has modified the rule of the international law relating to absolute immunity. Most of the countries have replaced it by a doctrine of restrictive immunity. This doctrine gives immunity to acts of a Governmental nature, described in Latin as jure imperil, but no immunity to acts of a commercial nature, jure gestations .Reference is made by the counsel to the development in this modern rule of law in the English Courts. In "Rahimtoola V. The Nizam of Hyderabad and others" 1957 (3) All. E.R. 441, Lord Denning said that if the dispute concerns, for instance, the commercial transactions of a foreign Government, whether carried on by its own departments or agencies or by setting up separate legal entities, and it arises properly within the territorial jurisdiction of English Courts, there is no ground for granting immunity. Again in "Thai-Europe Tanioca Service Ltd. V. Government of Pakistan" 1975 (3) All. Er 961, It was stated that a foreign sovereign has not immunity when it enters into a commercial transaction with a trader in England. In "Trandtex Trading Corporation Ltd. V. Central Bank of Nigeria" 1977 (1) All. E.R. 881 there is a detailed discussion of the transformation of the rule of international law which form part of English law. The doctrine of restrictive immunity was adopted by the Court of Appeal. The House of Lords accepted it in "Congreso del Fartido" 1981 (2) All E.R. 1064. It was held that actions, whether commenced in personam or in rem, were to be decided according to the restrictive theory of sovereign immunity so that a sovereign State had no absolute immunity as regards commercial or trading transactions'.

(7) The submission of the counsel is that most of the European countries as well as the United States of America have abandoned the doctrine of absolute immunity and adopted the resfricS've immunity. The problems arising out of claims to sovereign immunity arose in U.S.A. in different ways than those

dealt with by English Courts. They were called upon to deal with claims to immunity on behalf of State owned (?r operated vessels at P earlier times. The American Courts' have reached different conclusions on the interest required of a foreign sovereign before his plea of immunity could be allowed by those Courts. There has now been an increasing tendency to distinguish between the public and the commercial activities of foreign States. The Italian Courts have consistently applied their normal jurisdiction rules with respect to foreigners or foreign sovereign States unless the defendant concerned could show that he or i't was acting in a sovereign capacity. The Belgian Courts have also adopted a most restrictive view of the sovereign act with the result, that they have deflated an approach much in line with that of Italian Courts'. The' French Courts in its recent decisions have been in line with the general accepted distinctions between acts jure imperil and acts jure gestations. The Federal Republic Courts have held recently that unrestricted immunity can no longer be regarded as a rule of customary international law. The thrust of the argument of the counsel for the decree-holder is that the Courts in India should also grant immunity with respect to causes of action arising cut of a foreign State's, public or Governmental action and no immunity with respect to those arising out of its commercial activities such as running an international airlines.

(8) I will trace the development of doctrine in India. The question of sovereign, immunity came to be considered in India in the early last century primarily whether the Rulers, Chiefs and Princes had a status rendering them exempt from the jurisdiction of the Courts. Certain Rulers were held to be sovereign or semi-sovereign and immunity was granted even though they were acting, in their capacity of traders carrying on business in British territory. There is a circular order dated March 4, 1836 of the old Sadar Diwani Adalat of Bengal which declared that "civil claims against independent chiefs, whether by their subjects or by others, cannot be taken cognizance of by the Courts". This was not altered by the first Civil Procedure Code of the year 1859. When the Code was enacted in 1877, the Courts in England had already recognised the absolute privilege enjoyed by independent sovereigns and their ambassadors in the Courts in England, in accordance with the principles of international law. Section 433 of

the Code of 1877 did not grant an absolute immunity. It was made dependent upon he consent of the Government certified by the signatures of one of its Secretaries which could be given only under specified conditions. The consent was not to be given unless (a) the Prince, Chief, ambassador or envoy has instituted a suit in such Court or (b) the Prince, Chief, ambassador or envoy himself or another trades within the local limits of the jurisdiction of such Courts' or (c) the subject matter of the suit is Immovable property situated within the local limits and in possession of the Prince, Chief, ambassador or envoy. Commercial activity carried on was considered even at that time as one of the considerations for granting the consent. 'This modified or conditional privilege is based upon essentially the same principle as the absolute privilege, the dignity and independence of the Ruler which would be endangered by allowing any person to sue him at pleasure and the political inconveniences and complications which would be the result. Section 433 constituted a modification of the international rule turn Indian purposes' "as expressed by Strachey, J. in "Chandulal Khoshaiji v. Awad Bin Umar Sultan Nawaz Jung Bahadur" 1896 (21) Bom 351. The Code of 1882 enacted the same provisions as of the Code of 1877. Under the unamended Code of 1908 any such Prince or Chief, and any ambassador or envoy of a foreign State could be sued with the requisite consent, but not without such consent, in a competent Court in India. Again the same three conditions were specified in Section 86(2) of the Code. The giving of the consent was circumscribed and made dependent on the satisfaction about the existence of one of the conditions. There was a legislative extension of the jurisdiction over a sovereign though under the Intel national Law even at that time, there was absolute immunity. The sovereigns, whether their powers in their States be absolute or limited, could not be sued in England On their obligations whether ex contracts, quasi ex contracts or ex delicto. In the objects and reasons contained in Clause 30 while enacting Act 104 of 1976 the principle enunciated by Strachey, J. is restated. The concept of the Ruler of a foreign State was over-emphasised in the Code and that was the reason to amend it to "Foreign State". No absolute immunity provided. The suit could' still be instituted with the consent of the Central Government obtained in the prescribed manner and given on satisfaction of one of the conditions including the commercial activity of the

sovereign. Whatever the principle of international law may have been the Courts in India were concerned with the statutory form given in Section 433 of the Code of 1877, in Section 86 of the Code prior to the Code of Civil Procedure (Amendment) Act, 1951, and now in Sections 86 and 87 of the Code of 1908, as it stands amended by amendment Act 104 of 1976. The Legislature did not think it proper to adopt the rule of international law with the developments from time to time or in entirety as existing on the date of the enactments. As the preamble to Act V of 1908 says, it is an Act to consolidate amend the laws relating to procedure of the Courts of Civil Judicature. Section 86 after the amendment by Act 104 of 1976 reads as follows

"86.(1) No foreign State may be sued in any Court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a Secretary to that Government : Provided that a person may, as a tenant of immovable property, sue without such consent as aforesaid a foreign State from whom he holds or claims to hold the property. (2) Such consent may be given with respect to a specified suit or to several specified suits or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the foreign State may be sued, but it shall not be given, unless it appears to the Central Government that the foreign State; (a) has instituted a suit in the Court against the person desiring to sue it, or (b) by itself or another, trades within the local limits of the jurisdiction of the Court, or (c) is in possession of immovable property situate within those limits and is to be sued with reference to such property or for money charged thereon, or (d) has expressly or impliedly waived the privilege accorded to it by this section. (3) Except with the consent of the Central Government, certified in writing by a Secretary to that Government, no decree shall be executed against the property of any foreign State. (4) The proceeding provisions of this section shall apply in relation to (a) any Ruler of a foreign State; (aa) any Ambassador or Envoy of a foreign State; (b) any High Commissioner of a Commonwealth country; and (c) any such member of the staff of the foreign State or the staff or retinue of the Ambassador or Envoy of a foreign State or of the High Commissioner of a Commonwealth country as the Central

Government may, by general or special order, specify in this behalf, as they apply in relation to a foreign State. (5) The following persons shall not be arrested under this Code, namely : (a) any Ruler of a foreign State; (b) any Ambassador or Envoy of a foreign State; (c) any High Commissioner of a Commonwealth country; (d) any such member of the staff of the foreign State or the staff or retinue of the Ruler. Ambassador or Envoy of a foreign State or of the High Commissioner of a Commonwealth country, as the Central Government may, by general or special order, specify in this behalf. (6) Where a request is made to the Central Government for the grant of any consent referred to in sub-section (1), the Central Government shall, before refusing to accede to the request in whole or in part, give to the person making the request a reasonable opportunity of being heard."

The question of sovereign immunity or privileges in India depends upon the construction of the statutory provisions. Amendments have been made from time to lime in the Code. The Judicial Committee in Baroda's case (supra) had held that the provisions of Section 86 could not be waived. Clause (d) of sub-section (2) of Section 86 was substituted in 1951 which makes it clear that the privilege accorded could be waived either expressly or impliedly .Section 433 of 1877 Code or Section 86 of 1908 Code did not prevent absolutely the suits against foreign Government or a trading Corporation which is an organ of a foreign Government Those suits were made conditional on the consent to be given on the satisfaction of the specified conditions. The trading or commercial activity of the sovereign is one of the conditions on the satisfaction of which the consent to sue can be given. When these provisions were made in the Code of 1877 and later enacted in the Code of 1908, the doctrine of immunity under International Law did not draw any distinction between acts jura imperia and act jura gestations .Those provisions did not completely cover the field of doctrine of immunity under International Law, but adopted a modified doctrine, of immunity in the Code which is codifying Enactment . The provisions of the Code are clear and explicit and thus only those provisions can be looked into for considering the extent. There was, now an opportunity to make amendments in the Code in 1976 when exhaustive amendments were being made and the transformation in the International Law about the doctrine of

sovereign immunity had taken shape. The legislature did not make any amendments in that regard in the Code. The Code specifically deals with the immunity and the extent of it. It must be taken to be exhaustive, of the matter dealt with.

(9) The question whether a foreign State enjoys immunity in respect of a sovereign act but not in respect of a commercial act was raised before the Calcutta High Court in "U.A.R. v. Mirza Ali", MANU/WB/0086/1962 : AIR1962Cal387 . Mr. Sobyasachi Mukerjee (as his Lordship then was) pointed out the 'then current developments of the principles of International Law, the views of Lord Denning and the views of eminent international jurists. The doctrine of restricted immunity based on the distinction between jura imperia and jura bastions was not accepted by the Division Bench as the positive international law of our country. The case was taken to the Supreme Court and is reported as "Ali Akbar v. U.A.R.", MANU/SC/0050/1965 : [1966]1SCR319 . It was contended there that the Code being a codifying enactment and inasmuch as principle of international law has been recognised under Sections 86(1) and 87-A to the extent mentioned in 'those sections, only the relevant provisions of the Code can be looked at and the principles of international law can have no application whatsoever in India. It was also urged that the effect of Section 86(1). is to modify to a certain extent the doctrine of immunity recognised by international law and that it is a modified form of the absolute privilege enjoyed by independent sovereign and their ambassadors in the Courts in England in accordance with the principles of international law. It was held :

"THE effect of the provisions of Section 86(1) appears to be that it makes a statutory provision covering a field which would otherwise be covered by the doctrine of immunity under International law. is not disputed that every sovereign State is competent to make its own laws in relation to the rights and liabilities of foreign States to be sued within its own municipal Courts. Just as an independent sovereign State may statutorily provided for its own rights and liabilities to sue and be sued, so can it provide for the rights and liabilities of foreign States to sue and be sued in its Municipal Courts. That being so, it would be legitimate to hold that the effect of S. 86(1) is to modify to a certain

extent the doctrine of immunity recognised by International Law. This section provides that foreign States can be sued within the Municipal Courts of India with the consent of the Central Government and when such consent Is granted as required by S. 86(1), it would not be open to a foreign State 'to rely on the doctrine of immunity under International Law, because the municipal Courts in India would be bound by the statutory provisions, such as those contained in the Code of Civil Procedure. In substance, S. 86(1) is not merely procedural; it is in a sense a counter-part of S. 84. Whereas S. 84 confers a right on a foreign State to sue, S. 86(1) in substance impedes a liability on foreign States to be sued, though this liability is circumvented and safeguarded by the limitations prescribed by it. That is the effect of S. 86(1).

(10) The question whether Section 86 is a statutory recognition of the International Law came to be considered by the Bombay High Court in "Indrajit Singhji v. Rajendra Singhji", MANU/MH/0068/1956 : AIR1956Bom45 in a proceeding for the grant of letter of administration and whether it is a "suit" within Section 86 of the Code. It was observed :

" THE Privy Council has held that the consent required under S. 86 cannot be waived and Therefore it would not be treading on safe ground to inquire what is the principle of International Law and to construe S. 86 in the light of that principle. If the language of S. 86 permitted such a construction, perhaps it would not be objectionable to consider rules of International Law because our country also is in the comity of Nations, and there is no reason why we should not as much as other countries give effect to well settled principles of International Law. But if the language of the section is clear and is capable of only one construction in the context in which that language is used. then in our opinion it would be an unjustifiable attempt cm the part of the Court to engraft upon the statutory provision a principle of International law which the Legislature itself did not think it proper to do."

(11) State Immunity Act, 1978 has been enacted. As the preamble says it is an Act to make new provision with respect to proceedings in the United Kingdom by or against other State; to

provide for the effect of judgments given against the United Kingdom in the Courts of the States parties to the European Convention State Immunity; to make new provision with respect to the immunities' and privileges of the heads of State and for connected matters. Once an Act of Parliament has been made it is clear that the immunity from the jurisdiction of the Courts which foreign sovereign States can claim now in United Kingdom is regulated by the State Immunity Act, 1978.

(12) The preamble says that the Code consolidates and amends the laws relating to procedure of the Courts of Civil Judicature in India. There was a legislative extension of the jurisdiction over a sovereign though under the International Law even at the time of enactment of Section 433 of Code of 1877 or Section 86 of the Code of 1908, there was absolute immunity. The suit could be instituted with the consent of the Government obtained in the prescribed manner and given on satisfaction of one of the conditions including the commercial activity of the sovereign. I am unable to persuade myself to agree that the transformed principles of International Law should be read into the statutory provisions and would be applicable in India. In the interpretation of Statutes, the Court always presumes that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. Every word in the statute is required to be given a meaning. Adoption of the construction as suggested by the counsel for the decree-holder would leave without effect clause (b) of sub-section (2) of Section 86. A statute ought to be construed in a manner that, if it can be prevented, no clause, sentence or word shall be superfluous of insignificant. This can only be if the relevant provisions of the Code are only looked into for consideration of the claims of sovereign immunity. The transformed principles of International Law after the enactment of the Code, have no application in India, unless the legislature amends the statutory provisions.

(13) The objection that the special form off procedure prescribed by the Carriage by Air Act, 1972 would prevail over the one prescribed by Section 86 of the Code is not seriously pressed by the counsel for the decree-holder. There is no provision in the

matter of sovereign immunity contained in the Act. The Code deals with procedural matters that is the matters relating to the machinery for the enforcement of substantive rights. These substantive rights may be contractual of flowing from the statutory provisions, including the Act. The Act allows suits to be filed in a civil Court relating 'to the matters under it, but the procedure to be followed in such suit will be governed by the provisions' of the Code. The Act does not confer jurisdiction on the Civil Court or provide a special procedure in dealing with claims arising out of or under the statutory provisions. The suit had to be determined according to the law of procedure laid down in the Code. No foreign State could be sued in any Court otherwise competent to try the suit except with the, consent of the Central Government certified in writing by a Secretary to that Government.

(14) In the result, I hold that the institution of suits in India against foreign State are regulated by the statutory provisions contained in Section 86 of the Code and the transformed principles of International Law cannot be incorporated in it. The suit instituted against Aeroflot was without the requisite certificate and hence the decree passed by this Court is a nullity and thus inexecutable, I make no order as to costs,

Munupatra Information Solutions Pvt. Ltd."

কেরালা হাইকোর্টের রীট আপীল নং ১১৯৭ এবং ১২৩৭/২০১১ এর বিগত ইংরেজী ২৫শে আগষ্ট, ২০১১ তারিখের রায় ইন্ডিয়ান কানুন ওয়েবসাইট থেকে নিম্নে অবিকল অনুলিখন হলোঃ

Kerala High Court
Wa.No. 1197 Of 2011() vs By Adv. Sri.Joseph Kodianthara on 20 July, 2011

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE P.S.GOPINATHAN

THURSDAY, THE 25TH AUGUST 2011 / 3RD BHADRA 1933

WA.No. 1197 of 2011()
AGAINST THE----------WPC.32550/2010 Dated 20/07/2011
JUDGEMENT/ORDER IN

.....

APPELLANT(S): 2ND RESPONDENT IN THE WRIT PETITION

NATIONAL AVIATION COMPANY OF INDIA LTD.
(FORMERLY AIR INDIA CORPORATION AND NOW AIR INDIA LTD.) REP.BY ITS CHAIRMAN AND THE MANAGING DIRECTOR,
CORPORATE OFFICE, AIR INDIA HOUSE,NARIMAN POINT, MUMBAI,THROUGH ITS STATION MANAGER, AIR INDIA LTD, REPRESENTATIVE OFFICE AT M.G.ROAD,ERNAKULAM,KOCHI-682 016.

BY ADV. SRI.JOSEPH KODIANTHARA, SENIOR ADVOCATE
ADV. SRI.HOSANG D.NANAVATI
ADV.SRI.SHARLEEN LOBO
SRI.V.ABRAHAM MARKOS
SRI.MATHEWS K.UTHUPPACHAN
SRI.BINU MATHEW
SRI.TERRY V.JAMES
SRI.B.J.JOHN PRAKASH
SRI.TOM THOMAS (KAKKUZHIYIL)

RESPONDENT(S): / PETITIONERS & 1ST RESPONDENT IN THE WP(C)

1.S/O.SABAN,FISHERMAN,R/AT S.ABDUL SALAM,AGED 48 YEARS, BALEYAPURA, ARIKKADIKADAVATH,PO KUMBALA,KASARGOD DISTRIC T, PIN 671 551.

2.BALEYAPURA,ARIKKADIKADAVATH,PO RAMLA,W/O.ABDULSALAM,R/AT KUMBALA, KASARAGOD DISTRICT,PIN 671 551.

3. RAIHANATH,D/O.ABDUL SALAM,R/AT BALEYAPURA ARIKKADIKADAVATH, P.O. KUMBALA, KASARGOD DISTRICT,PIN 671 551.

W.A.NO.1197/2011

4.BALEYAPURA,ARIKKADIKADAVATH,P.O. RASHEEDA,D/O.ABDUL SALAM,R/AT KUMBALA,KASARGOD DISTRICT,PIN 671 551.

5.BALEYAPURA, NASSIR,S/O.ABDUL SALAM, R/AT ARIKKADIKADAVATH, P.O. KUMBALA,KASARGOD DISTRICT,PIN 671 551.

6.MINISTRY INDIA, REP.BY ITS SECRETARY, UNION OFOF CIVIL AVIATION,NEW DELHI 110 001.

ADV.SRI.KODOTH
SRI.P.PARAMESWARAN NAIR,ASG OF INDIA FOR R6
SREEDHARAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 16/08/2011, THE COURT ON 25/08/2011 ALONG WITH W.A.No.1237/2011 DELIVERED THE FOLLOWING:

C.R.

C.N.RAMACHANDRAN NAIR &
P.S.GOPINATHAN, JJ.

.....

Writ Appeal Nos.1197 & 1237 of 2011

.....

Dated this the 25th day of August, 2011.

JUDGMENT

Ramachandran Nair, J.

An Air India Express on an International Flight from Dubai crashed on landing at the Bajpe International Airport at Mangalore on 22.5.2010 killing 158 and injuring the remaining 10 of the people on board including crew. The cause of the air crash is found to be pilot error and the National carrier does not dispute their liability for payment of compensation to the victims irrespective of whether claim is based on negligence of the carrier or not. Air crash victims on International flights are paid compensation based on International Conventions held periodically and India is a signatory to all such Conventions. The provisions of the last Convention which is the Montreal Convention of 1999 are also adopted in India by incorporation of the same as Third Schedule to the Carriage by Air Act, 1972 (hereinafter called "the Act") and by making necessary amendments to the said Act which came into force from 1.7.2009. The Montreal Convention of 1999 which is now Third Schedule to the Act unlike the previous Conventions namely, the Warsaw Convention 1929 and the Hague Protocol 1955 covered by Schedules I and II of the Act respectively does not fix any upper limit of liability for the carrier towards compensation payable for death or injury suffered by a passenger.

2. The provisions of the Act though make the Air Carrier liable for compensation, no special Forum is constituted under the Act or Rules to determine compensation or to settle dispute between the claimants and the Air Carrier. However, the National carrier which has suffered few air crashes in the past have evolved a mechanism to settle claims through negotiated settlement by engaging qualified Attorneys. Following the practice in the past, the National carrier engaged their Attorneys M/s.Mulla & Mulla and Craigie Blunt and Caroe for receiving claim petitions in the format prescribed by Air India, for negotiations with the claimants and their Lawyers and for settlement of liability. Based on Rule 28 of the Third Schedule to the Act, Air India gave advance compensation of Rs.10 lakhs to the claimants of each of the deceased adult passenger and Rs.5 lakhs to the claimants of each child died in the air crash. As of now, the Attorneys engaged by Air

India has been able to settle the claims of 62 of the victims, of which 56 are cases of death and 6 cases of injury. It is seen from the chart furnished by them that the minimum compensation paid for death is Rs.25 lakhs and the average compensation paid for death is Rs.80 lakhs per person, and in the case of death of 10 well employed persons the settlement made is on payment of compensation of above Rs.1 crore per passenger, of which the award for three ranges from Rs.3 crores to Rs.7.757 crores. The highest compensation of Rs.7.757 crores is said to have been paid to the legal heirs of a Cardiologist who died in the crash. It is seen that handsome compensation is given for injury sustained also and in most cases compensation for injury paid is above Rs.10 lakhs and in one case it goes up to Rs.45.7 lakhs. From the information furnished, it is seen that atleast 6 more cases of death are partly settled and negotiation is said to be continuing for final settlement in respect of claims pertaining to them and the compensation so far paid to each of them ranges from Rs.15 lakhs to Rs.1.4 crores. The statement furnished by Air India shows that as of now above Rs.50 crores is paid thereby settling claims for 62 victims finally and partly settling the claims pertaining to another 6. Counsel for the Air carrier has informed us that negotiations are going on for the settlement of remaining claims. Of course wherever there is no settlement, claimants can file suits in appropriate civil courts in India.

3. Party respondents in Writ Appeal No.1197/2011 who are the appellants in the connected Writ Appeal, are the legal heirs being parents and siblings of Sri.Mohammed Rafi, an unmarried youngster aged 24 who died in the air crash. He was employed in U.A.E. as a salesman on a monthly salary of 2000 Dirhams (around Rs.25,000/-) and met with the tragic end on his return journey to his house in Kerala. Respondent-claimants filed claim petition claiming compensation for the death of Sri.Mohammed Rafi, and towards advance compensation under Rule 28 of the Third Schedule Appellant-Air Carrier initially paid Rs.10 lakhs and thereafter they paid a further sum of Rs.10 lakhs making total advance paid at Rs.20 lakhs. In the course of negotiations, the appellant-Air Carrier offered to settle liability at Rs.35 lakhs. However, the respondent claimants without bargaining for higher amount, approached this court by filing Writ Petition under Article

226 of the Constitution for declaration and direction that in the case of death of a passenger in the air crash, irrespective of age, income, loss of dependency or other factors otherwise relevant in the determination of compensation in tort, the claimants are entitled to be paid a minimum compensation of 1 lakh SDRs. Special Drawing Rights is defined in terms of basket of currencies including US Dollars, Euro, Japanese Yen and British Pound and under the current exchange rate 1 lakh SDR is equivalent of around Rs.70 lakhs. The appellant-Air Carrier raised objection before the learned Single Judge stating that Third Schedule to the Act does not prescribe any minimum and the compensation for death or injury provided therein is without any ceiling limit but on actual proof of damage caused or injury suffered. The learned Single Judge however through a detailed judgment upheld the claim of the respondents holding that minimum compensation payable for the death of a passenger in the air crash is 1 lakh SDRs irrespective of age, income, loss of dependency or other factors otherwise relevant to determine liability for death in accident cases. It is against this judgment of the learned Single Judge, the appellant-Air Carrier has filed this Writ Appeal contending that the 3rd Schedule to the Act incorporating Montreal Convention of 1999 does not provide for any minimum compensation either for death or for injury of passengers in air crash. Appellant's grievance is that insurance coverage is only for compensation legally payable to victims of the accident, and so much so, payments not authorised by the Act and Rules will not be reimbursed by the Insurance Company. They also apprehend adverse impact on premium payable for fresh insurance coverage based on the Single Bench declaring minimum compensation for death of every passenger at 1 lakh SDRs.

4. Party respondents have filed the connected Writ Appeal for enhancement of minimum compensation ordered to be paid by the learned Single Judge vide the impugned judgment from 1 lakh SDRs to 1,13,100 SDRs, which is the revised limit adopted in England which according to the claimants is payable to them under Rule 24(1) of the Third Schedule to the Act. In other words, while the prayer in the Writ Appeal filed by the Air Carrier is to quash the direction issued by the learned Single Judge to pay minimum compensation of 1 lakh SDRs, the prayer in the appeal

filed by the claimants is to enhance the minimum compensation ordered by the learned Single Judge from 1 lakh SDRs to 1,13,100 SDRs in terms of the decision taken by the British Parliament, which is in line with the provisions of the Montreal Convention, the principle of which is adopted in Rule 24(1) of the Third Schedule, though the Government of India has not amended Rule 21(1) substituting the amount.

5. We have heard Shri.Joseph Kodianthara, learned Senior counsel appearing for the appellant-Air Carrier, Shri.Kodoth Sreedharan, learned counsel appearing for the claimants, and the learned Assistant Solicitor General appearing for Union of India.

6. After hearing learned counsel appearing for both sides, and on going through the judgment of the learned Single Judge, what we find is that the controversy is in a narrow region i.e. whether Rule 21 (1) fixes a minimum no fault or strict liability on the Air Company to pay compensation of 1 lakh SDRs in the case of death of each passenger, irrespective of actual damage suffered. The appellant-Air Company however concedes that the Montreal Convention incorporated in the Third Schedule to the Act is a deviation from the Warsaw Convention 1929 and Hague protocol 1955 incorporated in Schedules I & II of the Act limiting the maximum liability of carrier for every passenger at 1.25 lakh and 2.50 lakh gold francs respectively, the liability under the Montreal Convention incorporated in the Third Schedule to the Act for death or injury of passengers is unlimited. However, the Air Company has a specific case that no minimum liability either for death or for injury is prescribed under the Third Schedule to the Act. It is further clarified on behalf of the Air Company that even though minimum is not prescribed under the Third Schedule to the Act, as a matter of practice the Attorneys have adopted norms to give a minimum of Rs.25 lakhs for the death of a child and Rs.30 lakhs for the death of an adult. They have also referred to the statement containing the details of compensation paid to 62 settled cases of death and injury, brief details of which are stated above, and submitted that the negotiators are very reasonable, if not very liberal, in awarding compensation whether it be for death or for injury of passengers.

7. The learned Single Judge has traced the history of development of international law on compensation payable to air crash victims. There is no need to go into all these because Montreal Convention is made law of the land through amendment to the Act in 2009 (S. 4A) and incorporation of Third Schedule which applies to all claims pursuant to accidents in International flights. Further, Government of India in exercise of powers conferred under Section 8 of the Act notified the provisions of the Act and Third Schedule to it applicable to domestic flights as well. So much so, the decision of this court on the scope of the provisions of the Act including Third Schedule to it has not only application for settling claims arising in accidents in International flights but applies to domestic flights also.

8. Since the provisions of Third Schedule to the Act are the provisions of the Montreal Convention, the same apply to claims for or by Indians and Foreigners who perished or survived with injuries in the crash and therefore, the judgment of this Court will apply to other claimants including foreigners. Keeping this in mind we proceed to consider the scope of the relevant provisions and the correctness of the conclusions drawn by the learned Single Judge. For easy reference we extract hereunder the relevant provisions namely, Section 5 of the Act and Rules 17(1), 20, 21,23, 24, 26, 28 and 29 of the Third Schedule to the Act:

"S.5. Liability in case of death:- (1) Notwithstanding anything contained in the Fatal Accidents Act, 1855 or any other enactment or rule of law in force in any part of India, the rules contained in the First Schedule, the Second Schedule and the Third Schedule shall, in all cases to which those rules apply, determine the liability of a carrier in respect of the death of a passenger.

(2) The liability shall be enforceable for the benefit of such of the members of the passenger's family as sustained damage by reason of his death.

Explanation.- In this sub-section, the expression "member of a family" means wife or husband, parent, step-parent, grand parent, brother, sister, half-brother, half-sister, child, step- child and grand-child:

R.17(1) The carrier shall be liable for damages 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.

R.20. If the carrier proves that the damages was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This rule applies to all the liability provisions of these rules, including sub-rule (1) of rule 21.

R.21.(1) For damages arising under sub-rule (1) of rule 17 not exceeding one lakh Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

(2) The carrier shall not be liable for damages arising under sub-rule (1) of rule 17 to the extent that they exceed for each passenger one lakh Special Drawing Rights if the carrier proves that--

(a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or

(b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

R.23. The sums mentioned in terms of Special Drawing Right in these rules shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund and its conversion into national currencies shall, in case of judicial proceedings, be made in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions.

R.24.(1) Without prejudice to the provisions of rule 25 and subject to sub-rule (2), the limits of liability prescribed in rules 21,

22 and 23 shall be reviewed by the depository at five-year intervals, the first such review to take place at the end of the fifth year following the date of coming into force of these rules. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in rule 23.

R.26. Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in these rules shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of these rules.

R.28. Notwithstanding anything contained in any other law for the time being in force, where the aircraft accident results in death or injury of passengers, the carrier shall make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

R.29. In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under these rules or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in these rules without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable."

9. As already stated, the only controversy is whether the Air Carrier is liable to pay minimum compensation of 1 lakh SDRs to the claimants in the case of death of a passenger irrespective of actual damage suffered. The learned Single Judge interpreting Rule 21(1) held that no fault liability or strict liability of the Air Carrier by way of minimum compensation payable for death of a passenger is 1 lakh SDRs irrespective of age, income, loss of dependency or other factors of the deceased otherwise applicable for determining liability in tort. However, the contention raised by

the appellant-Air Carrier is that there is no minimum or maximum compensation payable under any of the provisions of the Third Schedule and the peculiar feature of Montreal Convention incorporated in the Third Schedule to the Act is that there is no upper limit for liability of the Air Carrier for compensation payable to the victims and on proof of damage, the compensation payable for death or injury is without limit. We have already noticed that the deviation made in the Montreal International Convention from the two previous International Conventions held at Warsaw and at Hague is the removal of upper ceiling limit in regard to compensation payable to victims of air crashes. While the Warsaw Convention fixed the maximum limit at 1.25 lakhs Gold Francs, the Hague Protocol increased it to 2.50 lakhs Gold Francs. In other words, no one could claim compensation from the carrier in excess of the limits prescribed in the Conventions, no matter actual proved damages is more than the said amount. However, in supersession of these provisions, the Montreal Convention lifted the ceiling and declared that liability of the carrier is unlimited.

10. What is clear from sub-section (1) of Section 5 of the Act is that inspite of applicability of general law on tort and Fatal Accidents Act for claiming compensation against Air Carrier for death of a passenger in an air accident, the claim for compensation against the Carrier has to be made only in accordance with the provisions of the Act and the relevant Schedule to the Act which in this case is the Third Schedule. What is stated in sub-section (2) of Section 5 which is very significant for the purpose of this case is that the claim shall be enforceable by members of the passenger's family who sustained damage by reason of his death. This provision pre-supposes that the members of the passenger's family would suffer damage on account of death of the passenger and what is to be claimed is the actual damages for the loss sustained by members of the family. This provision certainly excludes the concept of a minimum liability on the Air Carrier for the death of a passenger. Rule 17(1) can certainly be treated as the provision that creates statutory liability on the Air Carrier for the damages sustained in the form of death or bodily injury of a passenger. This Rule explains the scope of an air accident in which damages could be claimed for the loss suffered.

The only condition for eligibility for compensation for death or bodily injury of a passenger is that the accident leading to the claim should be caused while the passenger was on board the air craft or was in the course of any of the operations of embarking or disembarking from the plane. There is no issue in this case on the scope of this provision because the Air Carrier admits liability to pay actual compensation to the respondents-claimants and their contest is only against the direction of the learned Single Judge to grant minimum compensation of 1 lakh SDRs under Rule 21(1), no matter the actual compensation payable going by the age, income and other relevant factors applicable to the deceased may be less. Therefore, what we have to now examine is whether minimum compensation of 1 lakh SDRs is payable in the case of death of a passenger under Rule 21(1) of the Third Schedule as held by the learned Single Judge. In the first place, what we notice is that Rule 21 (1) talks about compensation payable under Sub-rule (1) of Rule 17 which as already stated above provides for compensation not only for death but for bodily injury of a passenger. Therefore, if at all Rule 21 (1) provides for minimum compensation of 1 lakh SDRs, then it applies not only for death of the passenger, but for bodily injury as well. Going by the interpretation placed by the learned Single Judge on Rule 21(1) read with Rule 17(1) minimum compensation of one lakh SDRs is payable to every passenger even for injury sustained, however minor it may be. We are unable to uphold the findings of the learned Single Judge in regard to liability of the Air Carrier to pay minimum compensation of 1 lakh SDRs under Rule 21(1) because the said Rule in the first place does not explicitly provide for it. Secondly, sub-rule (1) of Rule 21 has to be understood with sub-rule (2) thereunder and with reference to other Rules of the Third Schedule. Sub-rules (1) and (2) of Rule 21 make it clear that in any claim for compensation, whether it be for death or injury of the passenger, made under Rule 17 (1) which is in excess of 1 lakh SDRs, the Air Carrier has a defence which is by establishing that the damage was not due to negligence or other willful act or omission of the carrier or it's servants or agents or that such damage was due to negligence or other wrongful act or omission of a third party. Therefore, what is covered by these provisions is that the claimants need not plead or prove any negligence on the Air Carrier for claiming compensation upto any amount. However, if claim made is in

excess of 1 lakh SDRs, then Air Carrier can resist the claim over 1 lakh SDRs by pleading and proving the satisfaction of clauses (a) or (b) of Rule 21(2) explained above. Here again, in order to avoid payment of compensation claimed for death or injury of a passenger in excess of 1 lakh SDRs., the burden of proof to establish want of negligence on the part of itself, it's agents or servants or the proof of negligence or wrong act or omission on the part of a third party causing the accident is on the Air Carrier. So much so, Rule 21 only puts an embargo against the Air Carrier from raising a defence of want of negligence on their side or negligence of third parties causing the accident to resist any claim of compensation for death or injury to a passenger upto 1 lakh SDRs. Even though the learned Single Judge has not considered the scope of Rule 20, what we notice is that sub-rule (1) of Rule 21 is subject to Rule 20, the second part it clearly states that Air Carrier can wholly or partly claim exoneration from liability, if it proves that the damage was caused or contributed by the negligence or other wrongful act or omission of the passenger in respect of whom claim is made. Of course Rule 20 has no application in the case of an air crash where the passenger has no role. Probably this Rule has application in the case of a solitary accident happening to a passenger while on board or while boarding or disembarking the plane for his own fault. However, the position is such that in an appropriate case the Air Carrier has a right to plead and prove contributory negligence, if they want to resist compensation payable under Rule 21(1) even upto 1 lakh SDRs. However, we reiterate that this issue does not arise in this case and we have stated it only for the sake of completeness of the scope of application of the Rules.

11. Rule 28, in our view, also throws some light on the scope of Rule 21(1) because what it provides is payment of advance compensation to meet the immediate economic needs of the victim's family. What is more significant in Rule 28 is that there is a specific statement that advance payment of compensation shall not be treated as a recognition of liability and the advance payments made will be adjusted against damages finally determined. This Rule makes it clear that damages payable is to be determined based on sound principles of law and there is no concept of minimum compensation payable because if minimum is

payable, then certainly Rule 28 could have provided for minimum payment as advance compensation and there is no scope for providing set off of minimum amount against final award. So much so, in our view, the learned Single Judge committed an error in holding that in all cases of death of a passenger irrespective of age, income, status, loss of dependency or other conditions of the deceased passenger, the Air Carrier is liable to pay minimum compensation of 1 lakh SDRs.

12. Counsel for the appellant-Air Carrier has relied on the findings and observations of the United States District Court on the scope of Montreal Convention in the case of BRIGITTE UGAZ, which is as follows:

"Though, the Court has found no "accident" in this case, if the Montreal Convention applies and an "accident" were actually found to have occurred, then carriers are essentially held liable for proven damages up to "100,000 Special Drawing Rights". See Montreal Convention, art. 21. This amounts to approximately $135,000. Montreal Convention, Letter of Transmittal to the Senate, President William J. Clinton, Sept. 6, 2000. However, if damages arising under Article 17 are "not due to the negligence or other wrongful act or omission of the carrier or its servants or agents", then carriers are not liable over that amount. Montreal Convention, art. 21. This provision of the Montreal Convention diverges from the Warsaw Convention and imposes a new legal standard for damages above the Special Drawing Rights, See Kruger v. United Airlines, Inc., 481 F. Supp. 2d 1005, 1008 (N.D. Cal 2007).

13. It is seen from the above that the American District Court also understands the provisions of the Montreal Convention as providing for payment of damages proved up to 1 lakh SDRs without any defence to the carrier to escape from liability. The learned Single Judge has referred to the no fault liability provided under Section 140 of the Motor Vehicles Act, 1988 and also several Court decisions pertaining to award of compensation for road accidents. The principles of law on tort are the same for determining compensation arising out of road accident or railway accident or air accident. The exception to this in the case of air accident victims is that for claims for death or personal injury upto

1 lakh SDRs, cause of accident has no relevance or in other words, negligence need not be looked into. However, unlike the provisions of Motor Vehicles Act and Railway Act which provide for no fault liability of the statutorily fixed minimum amount for death of passengers, the provisions of the Carriage by Air Act and the Third Schedule thereunder do not fix any minimum compensation payable for death of a passenger. So much so, we do not think there is any need for us to go into the decisions or the law discussed on compensation payable to road accident victims. The only decision pertaining to air crash considered by the learned Single Judge is the one rendered by the learned Single Judge of the Andhra Pradesh High Court in K.Bharathi Devi and Others v. GIC,, reported in AIR 1988 AP 361, wherein the issue raised and decided was on IInd Schedule to the Act which is Hague Protocol. Moreover, the question raised was whether the amount received by the claimants under the Personal Accident Insurance Policy could be set off against compensation payable under the Act for damages, and the learned Single Judge of the Andhra Pradesh High Court negatived the plea raised by the Insurance Company. We do not find this issue arising in this case, and so much so, there is no scope for considering the correctness or otherwise of this judgment more particularly because it is not on Third Schedule or on Montreal Convention. In our view, the provisions of the Act including the Third Schedule though imposes certain limitations and disabilities on Air Companies in their defence against claims of compensation made for injury or death of passengers the general law on tort based on which damages has to be determined, is not dispensed with. In other words, subject to the limitations of carrier stated above, compensation has to be claimed by claimants of or by victims of air crash based on sound principles of law on tort applicable in the determination of compensation such as age, income, loss of dependency and all other principles relevant in the determination of compensation for injury or death suffered in air accident.

14. From the discussions above, we draw our conclusions on the scope of the provisions of the Act and Rules contained in the Third Schedule as follows:-

(1) The liability of the carrier for damages payable for the loss suffered on account of death or injury of a passenger in an air accident is unlimited. However, the carrier is liable to pay only actual damages proved by the claimants in the case of death and by the victims in the case of injury. The liability so payable can be determined through negotiated settlement or by civil court of competent jurisdiction. (2) Rule 21(1) of the Third Schedule to the Act or any other provisions of the Act or Rules does not provide for payment of any minimum compensation by the air company for death or injury of a passenger in an air accident. However, we feel the carrier as a matter of goodwill as in this case should offer a reasonable minimum, even if the actual damages payable in law may be low, so that unnecessary litigation is avoided through settlement.

(3) Actual damages payable has to be claimed and proved by the injured or by the claimants for the death of passengers before the Civil Court if no settlement is reached between the claimants and the Air Company.

(4) The carrier is entitled under Rule 20 to plead and prove that the accident is caused on account of contributory negligence of the passenger as defence against damages claimed under Rule 21(1) for injury or for death of such passenger, which of course does not apply to the claims arising from this air crash.

(5) Irrespective of whether the accident is due to the negligence of the carrier or their servants or agents or not, or the accident is caused by third party, the carrier is liable to pay actual proved damages upto 1 lakh SDRs to the claimants of the deceased passenger or to the passenger injured in the accident. Where damages claimed is above 1 lakh SDRs, the carrier can resist the claim in excess of 1 lakh SDRs by pleading and proving that the accident was not caused on account of the negligence of the carrier or their employees or agents or that the accident was caused by the negligence or other wrongful act or omission of a third party. This is subject to the further condition that burden of pleading and establishing this defence is on the carrier, in the absence of which, there will be a presumption of negligence against the carrier entitling the claimant for actual damages irrespective of limit.

15. In view of the findings above, we allow W.A.

No.1197/2011 filed by the Carrier by setting aside the judgment of the learned Single Judge and leaving the matter to be settled through negotiations, if possible. However, if settlement is not reached in negotiations, it is up to the claimants to file suit before appropriate Court claiming actual damages. We however direct the Appellant-Air Carrier to pay compensation reasonably estimated by the Attorneys as payable to respondents and to all other claimants, irrespective of whether there is settlement or not, so that suit if any filed by the claimants in Court is limited to disputed claim amount. In other words, the Appellant-Air Carrier through their Attorneys should determine and pay compensation reasonably payable based on sound principles of law of tort based on details of the victims furnished by the claimants.

In view of our above findings in the Writ Appeal filed by the Air Carrier that respondents are not entitled to minimum damages of 1 lakh SDRs awarded by the learned Single Judge, their claim for payment of minimum compensation at 1,13,100 SDRs as against 1 lakh SDRs awarded by the learned Single Judge based on Rule 24(1) is not tenable. So much so, W.A.No.1237/2011 filed by the claimants lacks any merit and is dismissed. However, the appellant-claimants are free to pursue negotiations with the Attorneys of the Carrier to reach a settlement on actual damages payable, and in the event of failure, they are free to accept the compensation offered by the Carrier and then file suit before appropriate Civil Court for getting higher compensation, if eligible under law.

C.N. RAMACHANDRAN NAIR Judge P.S.GOPINATHAN Judge

pms/jg"

নতুন দিল্লিস্থ জাতীয় ভোক্তা বিরোধী প্রতিকার কমিশনের কনজ্যুইমার মোকদ্দমা নং ১৪০/২০১২ এর আদেশ নিম্নে অবিকল অনুলিখন হলোঃ

National Consumer Disputes Redressal
Triveni Kodkany & 2 Ors. vs Air India Ltd. & 2 Ors. on 10 December, 2018

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI
CONSUMER CASE NO. 140 OF 2012 1. TRIVENI KODKANY & 2 ORS.
1804,

"Rose", Regency Garden, Plot No. 10, Sector -6, Khargarh, Navi Mumbai - 410 210. 2. Ms. Khyati Kodkany (Through Natureal Guardian), 1804, "Rose", Regency Garden, Plot no. 10, Sector - 6, Khargarh Navi Mumbai - 410 210 3. Master Kedar Kodkany (Through Natural Guardian) R/o. 1804, "Rose", Regency Garden, Plot No. 10, Sector - 6, Khargarh, Navi Mumbai - 410 210 .....Complainant(s) Versus 1. AIR INDIA LTD. & 2 ORS. Airlines Hourse, 113, Gurudwara Rakabganj Road,

New Delhi - 110 001. 2. Air India Charters Ltd. 21st Floor, Air India Building, Nariman Point, Mumbai - 400 021. 3. Mr. Rohit Nandan, Chairman & Managing Director Air India Express, Air - India Building, 1st Floor, Nariman Point, Mumbai - 400 021. .....Opp.Party(s)

BEFORE: HON'BLE MR. JUSTICE V.K. JAIN,PRESIDING MEMBER

For the Complainant : Mr. Yeshwant Shenoy, Advocate
Mr. Shashank Moona, Advocate For the Opp.Party : Mr. H.D. Nanawati, Advocate
Mr. Shiv Kumar Suri, Advocate
Mr. Saswat Patnaik, Advocate
Mr. Shikhil Suri, Advocate
Dated : 10 Dec 2018 ORDER JUSTICE V.K.JAIN, PRESIDING MEMBER (ORAL)

JUSTICE V.K.JAIN, PRESIDING MEMBER (ORAL)

Late Mahendra Kodkani, husband of complainant no.1 and the father of complainant no. 2 & 3 and his mother-in-law died in an aircrash at Mangalore on 22.05.2010, while they were travelling in Flight IX 812 of Air India Express from Dubai to Mangalore. According to the complainants, the annual salary of the deceased was INR 60,78,177 at the time he died. Adding 30% for future prospects, the annual income of the deceased, according to the complainants, came to Rs.79,01,630/-. After deducting 25% of the aforesaid income towards his personal and living expenses, the balance amount came to Rs.59,26,223/- per annum. Applying a multiplier of 14, the complainants have arrived at a figure of Rs.8,29,67,122/-. They have also disclosed the income which would have accrued to the deceased as ESOP and after applying a multiplier of 14 to the aforesaid income after deducting personal and living expenses out of that amount, they have alleged that the loss on account of income from ESOP itself came to Rs.8,98,17,000/-. After deducting a sum of Rs.4 Crores which they have received as interim payment, as compensation from the OP and adding a sum of Rs.15 lacs for medical aid, they have claimed a sum of Rs.13,42,84,122/- from the OPs namely Air India Ltd., Air India Charters Ltd. and C.M.D. of Air India Express.

2. The complaint has been resisted by the OPs who have relied upon the provisions contained in Section 5 of the Carriage by Air Act, 1972 and rules framed thereunder. They have submitted that a sum of Rs.40 lacs as already been determined as payable and paid to the parents of the deceased. They have also claimed that relying upon the decision of a Division Bench of

Kerala High Court in W.A. No. 1197 of 2011, they have already offered fair and reasonable compensation to the complainants.

3. In the above referred decision, the Kerala High Court, after examining the provisions of Carriage by Air Act and the rules contained in its third schedule, held as under:

(1) The liability of the carrier for damages payable for the loss suffered on account of death or injury of a passenger in an air accident is unlimited. However, the carrier is liable to pay only actual damages proved by the claimants in the case of death and by the victims in the case of injury. The liability so payable can be determined through negotiated settlement or by civil court of competent jurisdiction.

(2) Rule 21(1) of the Third Schedule to the Act or any other provisions of the Act or Rules does not provide for payment of any minimum compensation by the air company for death or injury of a passenger in an air accident. However, we feel the carrier as a matter of goodwill as in this case should offer a reasonable minimum, even if the actual damages payable in law may be low, so that unnecessary litigation is avoided through settlement.

(3) Actual damages payable has to be claimed and proved by the injured or by the claimants for the death of passengers before the Civil Court if no settlement is reached between the claimants and the Air Company.

(4) The carrier is entitled under Rule 20 to plead and prove that the accident is caused on account of contributory negligence of the passenger as defence against damages claimed under Rule 21(1) for injury or for death of such passenger, which of course does not apply to the claims arising from this air crash.

(5) Irrespective of whether the accident is due to the negligence of the carrier or their servants or agents or not, or the accident is caused by third party, the carrier is liable to pay actual proved damages upto 1 lakh SDRs to the claimants of the deceased passenger or to the passenger injured in the accident. Where damages claimed is above 1 lakh SDRs, the carrier can resist the claim in excess of 1 lakh SDRs by pleading and proving that the accident was not caused on account of the negligence of

the carrier or their employees or agents or that the accident was caused by the negligence or other wrongful act or omission of a third party. This is subject to the further condition that burden of pleading and establishing this defence is on the carrier, in the absence of which, there will be a presumption of negligence against the carrier entitling the claimant for actual damages irrespective of limit.

4. It would thus be seen that the High Court expressly held that the liability of the carrier for damages in an air accident is unlimited though it is liable to pay only actual damages proved by the complainants. The High Court further held that irrespective of whether the accident is due to the negligence of the carrier or not, it is liable to pay damages upto 1 lakh SDRs. It was further held that if the damages claimed were above 1 lakh SDRs, carrier could resist the claim by pleading and proving that the accident was not caused on account of the negligence of the carrier or their employee or that it was caused by the negligence or wrongful act or omission of a third party. The onus of proving the absence of negligence is on carrier and there is a presumption of negligence against the carrier.

5. The learned counsel for the OP states that they are not seeking to prove that the accident or the crash was not caused on account of the negligence of the carrier or their employees or their agent or it was caused by the negligence or other wrongful act or omission of a third party. The question which then remains for adjudication is as to how much was the actual damages suffered on account of the death of the deceased husband of complainant no.1 and father of complainants no.2 & 3.

6. The learned counsel for the OP has handed over to me a calculation based upon the CTC of the deceased who was working with GTL Overseas (Middle East) as 'Regional Director - ME Region' since 01.05.2009. He states that they have considered all the components mentioned in the certificate dated 05.06.2010 issued by GTL Overseas (Middle East) FZ L.L.C except the Transport Allowance amounting to 40,957 AED and Telephone Allowances amounting to Rs.30,000 AED. There is no evidence on record to prove that the Travel Allowance was only a re-imbursement therefore, in my opinion, the aforesaid Allowance being a part of the salary of the deceased, could not have been excluded while computing his salary. As far as Telephone Allowance is concerned, though there is no specific evidence to prove that it was a re-imbursement,

considering the nature of the allowance, I feel that it would be a re-imbursement allowance to the extent of 30,000 AED, depending upon the expenditure incurred by the deceased on making telephone calls clause etc. Therefore, the aforesaid amount has rightly been excluded while arriving at the CTC salary of the deceased. The CTC salary of the deceased, after deduction of Telephone Allowance would come to 4,52,395 AED per year.

7. As far as the variables such as bonus, stocks and ESOP are concerned, they, in my opinion, cannot be considered as an integral part of the salary of the deceased since those variables depend upon a host of factors including (i) the performance of the employer as a whole, (ii) performance of the employee during the relevant year and (iii) the total amount allocated by the employer for payment of bonus and stocks to its employees. Therefore, the variables such as bonus and ESOP cannot be considered for the purpose of calculating the damages suffered by the dependents of the deceased on account of his death.

8. In view of the 2nd schedule to the Motor Vehicles Act, the multiplier of 13 would be applicable since the age of the deceased was above 45 years though it did not exceed 50 years at the time of his death. Applying the multiplier of 13 to the annual salary of 4,52,395 AED, the figure would come to AED 58,81,135.

9. In terms of the decision of the Constitution Bench of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi & Ors. SLP(C) No. 25590 of 2014, since the deceased was on a fixed salary, an addition of 25% is to be made to the aforesaid amount of AED 58,81,135. In view of the decision of Hon'ble Supreme Court in Sarla Verma (SMT) & Ors. Vs. Delhi Transport Corporation & Anr. (2009) 6SCC 121, 20% of the aforesaid amount is required to be deducted towards the personal expenses of the deceased since he was survived by four dependents, his mother, his widow and his two children. After addition of 25% to the amount of AED 58,81,135, and deducting 20% of the said amount for the personal expenses of the deceased, the total resultant amount comes to AED 58,81,135, equivalent to Rupees 7,35,14,187/- at the admitted conversion rate of Rs.12.50 per AED. Admittedly, the OPs paid Rs.40 lacs to the parents of the deceased pursuant to the decision by a Civil Court and they have already paid Rs.4 crores to the complainants. Both the aforesaid amounts are liable to be

deducted from the amount of rupee equivalent of AED 58,81,135. The balance principal amount thus comes to Rs. 2,95,14,187/-.

10. In Balram Prasad Vs. Kunal Saha (2014) 1SCC 384, the Hon'ble Supreme Court had awarded compensation based upon the income of the deceased, alongwith 30% for future prospects on the assumption that a healthy person would have lived upto the age of 70 years. 1/3rd of the income so computed was deducted on account of personal expenses of the deceased. If the total compensation payable by the OPs is computed in terms of the decision of the Hon'ble Supreme Court in terms of Balram Prasad (supra), which was a case of compensation on account of death due to medical negligence, the amount of compensation would be much more than the amount arrived by applying the multiplier in terms of the schedule annexed to the Motor Vehicles Act. However, considering that the complainants themselves have claimed compensation based upon the application of the said schedule, I am restricting the compensation to the amount calculated in terms of the provisions contained in the Motor Vehicles Act.

11. Since the compensation ought to have been paid on the death of late Mahendra Kodkani, the OPs should also pay appropriate interest on the aforesaid amount.

12. Therefore, the complaint is disposed of with the following directions:

(i) The OP No.1 & 2 shall pay an amount of Rs.2,95,14,187/- as compensation, to the complainants.

(ii) The complainants shall be entitled to simple interest @ 9% per annum on the aforesaid principal amount from 22.05.2010 till the date on which Rs.40 lacs were paid by the OPs to the parents of the deceased. The complainants shall also be entitled to interest on the amount of Rs.6,95,14,187/- with effect from the date on which payment of Rs.40 lacs was made to the parents of the deceased till the date the amount of Rs.4 Crores was paid to the complainants. They will also be entitled to interest on the remaining amount with effect from the date on which the amount of Rs.4 Crores was paid to the complainants till the date on which the entire principal amount in terms of this order is actually paid to them.

In the facts and circumstances of the case, there shall be no order as to costs.

....J V.K. JAIN PRESIDING MEMBER

পরিবাহক বা পরিবহনকারী বা ক্যারিয়ার (**carrier**) হল একস্থান থেকে অন্যস্থানে মানুষ বা পণ্য পরিবহনের দায়িত্ব পালনকারী। বর্তমান দিনে সকল পরিবহন লিখিত চুক্তি দ্বারা সম্পন্ন হয় এবং আইনের দ্বারা আরোপিত কর্তব্যের আওতায় এই সকল চুক্তি পরিচালিত হয়।

পরিবাহক বা পরিবহনকারী বা ক্যারিয়ার (**carrier**) তার বাহনে বা যানে পরিবাহিত সকল মানুষ এবং পণ্যের জিম্মাদার। পরিবাহক অর্থের বিনিময়ে নির্ধারিত গন্তব্যে বা গমন পথে মানুষ বা পণ্য পরিবহনের দায়িত্ব প্রকাশ্যে গ্রহণ করে। পরিবাহক তার বাহনে বা যানে পরিবাহিত মানুষ এবং পণ্যের সকল ক্ষয়ক্ষতির সম্পূর্ণ দায়-দায়িত্ব প্রকাশ্যে গ্রহণ করেই পরিবহনের চুক্তি সম্পাদন করে।

যে সকল পরিবাহক বা পরিবহনকারী বা ক্যারিয়ার (**carrier**) আকাশ পথে মানুষ এবং পণ্য পরিবহন করে তারা আকাশ পরিবাহক বা এয়ার ক্যারিয়ার (**Air Carrier**)। আবার যারা আন্তর্জাতিক আকাশ পথে মানুষ এবং পণ্য পরিবহন করে তারা আন্তর্জাতিক পরিবাহক বা **International Carrier**।

আকাশ পথের আন্তর্জাতিক পরিবহন আন্তর্জাতিক আইন তথা আন্তর্জাতিক বিভিন্ন কনভেনশন, প্রটোকল এবং চুক্তির দ্বারা পরিচালিত।

বাংলাদেশে বর্তমানে আন্তর্জাতিক পরিবহনের যে আন্তর্জাতিক আইনটি গ্রহণ করে প্রচলিত ও কার্যকর সেটি হলো ওয়ারস কনভেনশন এবং এর সংশোধিত হেগ প্রটোকল। ওয়ারস কনভেনশন এবং হেগ প্রটোকল অনুযায়ী বাংলাদেশে বর্তমানে প্রচলিত এবং কার্যকর তিনটি আইন যথা **The Carriage by Air Act, 1934, The Carriage by Air (International Convention) Act, 1966** এবং **The Carriage by Air (Supplementary Convention) Act, 1968**।

The carriage by Air (International Convention) Act, 1966 এর ধারা ৩(২)-এ বলা হয়েছে যে, ***The [High Court Division] may make rules of procedure providing for all matters which may be expedient to enable such suits to be instituted and carried on.***

উপরিল্লিখিত ধারা ৩(২) এর বিধান মোতাবেক এটি স্পষ্ট প্রতীয়মান যে, হাইকোর্ট বিভাগকে **The carriage by Air (International Convention) Act, 1966** এর আওতাধীন মোকদ্দমাসমূহ গ্রহণ এবং নিষ্পত্তির ক্ষমতা অর্পন করা হয়েছে এবং উক্ত মোকদ্দমাসমূহ দায়ের ও নিষ্পত্তির লক্ষ্যে কার্যবিধি হাইকোর্ট বিভাগ প্রণয়ন করবেন। অদ্যাবধি উক্ত কার্যবিধি প্রণীত হয়নি।

বৈদেশিক মুদ্রা অর্জনকারী বাংলাদেশী নাগরিকদের প্রতিনিয়তই সমগ্র বিশ্বে পাড়ি জমাতে হয় দেশী এবং বিদেশী আকাশ পথের পরিবহনে। এছাড়াও বৈদেশিক মুদ্রা অর্জনকারী বাংলাদেশী রপ্তানীকারকদের পণ্য প্রতিনিয়তই পরিবহন করা হয় সমগ্র বিশ্বে দেশী-বিদেশী আকাশ পথের পরিবহনে। সুতরাং বৈদেশিক মুদ্রা অর্জনকারী বাংলাদেশী প্রবাসী শ্রমিক, কর্মচারী এবং রপ্তানীকারকদের স্বার্থ রক্ষার্থে এবং তাদের অধিকার আদায়ের নিমিত্তে সংশ্লিষ্ট রুল কমিটি **The carriage by Air (International Convention) Act, 1966** এর আওতায় মোকদ্দমাসমূহ দাখিল এবং নিষ্পত্তির লক্ষ্যে কার্যবিধি অতি দ্রুত প্রণয়ন করবেন এটিই প্রত্যাশা। যতক্ষণ পর্যন্ত উক্ত কার্যবিধি প্রনীত না হচ্ছে ততক্ষণ পর্যন্ত রীট আদালত এতদ্সংক্রান্ত মোকদ্দমা গ্রহণ এবং নিষ্পত্তি উহার বিবেচনামতে ন্যায় বিচারের জন্য সহায়ক হয় এইরূপ যথাযথ পদ্ধতি অনুসরণ করে সিদ্ধান্ত প্রদান করবেন।

ওয়ারস কনভেনশন এবং হেগ প্রটোকল অনুযায়ী বাংলাদেশে বর্তমানে প্রচলিত এবং কার্যকর তিনটি আইন যথা **The Carriage by Air Act, 1934, The Carriage by Air (International Convention)**

Act, 1966 এবং **The Carriage by Air (Supplementary Convention) Act, 1968** এর আলোকে অত্র দরখাস্তকারী অত্র মোকদ্দমা অত্র আকারে এবং প্রকারে অত্র আদালতে দায়ের করতে সম্পূর্ণ হকদার। তেমনিভাবে উক্ত আইন ত্রয় বলে আমরাও অত্র মোকদ্দমাটি নিষ্পত্তি করতে সম্পূর্ণ এখতিয়ান সম্পন্ন। **International law** এর প্রয়োগ এর ক্ষেত্রে বাংলাদেশ **'dualist' approach** অনুসরণ করে বিধায় মন্ট্রিল কনভেনশন জাতীয় সংসদের মাধ্যমে দেশী আইনে রূপান্তরিত না হওয়া পর্যন্ত উল্লিখিত ৩ টি আইনই সংশ্লিষ্ট ক্ষেত্রে প্রযোজ্য দেশী আইন-এ বিষয়টি উল্লেখ করা যেতে পারে।

The Carriage by Air (International Convention) Act, 1966 এর প্রথম তফসিলের চ্যাপ্টার ৩ এর অন্তর্ভুক্ত অনুচ্ছেদ ২৮ এ বলা হয়েছে যে, ***28. An action for damages must be brought at the option of the plaintiff, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.***

দরখাস্তকারীনি এবং তাহার মাতা যেহেতু ইতিহাদ এয়ারওয়েজ এর ঢাকাস্থ অফিস হতে টিকেট ক্রয় করেছেন বিধায় অনুচ্ছেদ ২৮ মোতাবেক দরখাস্তকারীনি এবং তাহার মাতার সহিত ইতিহাদ এয়ারওয়েজের চুক্তি সম্পাদিত হয়েছে ঢাকায়, সেহেতু উপরিল্লিখিত অনুচ্ছেদ ২৮ মোতাবেক দরখাস্তকারীনির ইচ্ছা অনুযায়ী অত্র আদালতে অত্র মোকদ্দমা দায়ের করতে হকদার।

The Carriage by Air (International Convention) Act, 1966 এর প্রথম তফসিলের চ্যাপ্টার ৩ এর অন্তর্ভুক্ত অনুচ্ছেদ ২৯ এ বলা হয়েছে যে, ***29. The right of damages shall be extinguished if an action is not brought within two years, reckoned from***

the date of arrival at the destination or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

দরখাস্তকারীনি উপরিল্লিখিত অনুচ্ছেদ ২৯ মোতাবেক অত্র মোকদ্দমাটি ২ (দুই) বৎসর সময়সীমার মধ্যে দাখিল করায় মোকদ্দমাটি তামাদি দ্বারাও বারিত নয়।

The carriage by Air (International Convention) Act, 1966 এর ধারা ৩-এ বলা হয়েছে যে, ***3. (1) Every High Contracting Party to the Convention who has not availed himself of the provisions of the Additional Protocol thereto shall, for the purposes of any suit brought in a Court in Bangladesh in accordance with the provisions of rule 28 of the First Schedule to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that Court and to be a person for the purposes of the Code of Civil Procedure, 1908.***

The Carriage by Air (International Convention) Act, 1966 এর প্রথম তফসিল এর চ্যাপ্টার ৩ এর অন্তর্ভুক্ত অনুচ্ছেদ ১৭ মোতাবেক পরিবহনকারী সংস্থা তিনটি অবস্থাধীনে এবং তিনটি কারণে যাত্রীর ক্ষয়-ক্ষতির ক্ষতিপূরণ প্রদানে কঠোরভাবে দায়বদ্ধ। এটি পরিবহন সংস্থা বা পরিবহনকারীর **strict liability** বা কঠোর দায়ীতা বা কঠিন দায়বদ্ধতা। এটি এমন এক দায়বদ্ধতা যে দায়বদ্ধতা থেকে কোন অবস্থাতেই পরিবহনকারী তার দায় এড়াতে পারে না। এমনকি অত্র আইন মোতাবেক এই দায়বদ্ধতার নিমিত্তে প্রদত্ত ক্ষতিপূরণ নির্দিষ্ট সীমা পর্যন্ত প্রতিরোধবিহীন। অর্থাৎ আইনে প্রদত্ত নির্দিষ্ট সীমা

পর্যন্ত ক্ষতিপূরণের ক্ষেত্রে বিবাদী হিসেবে পাল্টা মোকদ্দমা উত্থাপন করার সুযোগও পরিবহনকারীর নেই।

যে তিনটি কারণে পরিবহনকারী সংস্থা ক্ষতিপূরণ প্রদানে দায়বদ্ধ তা হলোঃ

(১) যাত্রীর মৃত্যু হলে (Death of a passenger)

(২) যাত্রী আঘাত প্রাপ্ত হলে (Wounding the passenger)

(৩) যাত্রী যে কোন শারীরিক আঘাত প্রাপ্ত হলে (Any other bodyly injury suffered by a passenger)

এবং উপরিল্লিখিত তিনটি কারণ সংঘটিত হতে হবে নিম্ন লিখিত যে কোন একটি অবস্থায় বা স্থানে

(১) বিমানের ভিতরে (On board the air craft)

(২) বিমানে আরোহন প্রক্রিয়ায় থাকা অবস্থায় (In the course of the operation of embarking)

(৩) বিমান হতে অবতরন প্রক্রিয়ায় থাকা অবস্থায় (In the course of the operation of disembarking)

প্রথম কারণ মৃত্যু এবং তৃতীয় কারণ শারীরিক ভাবে আঘাত প্রাপ্ত হওয়া ব্যতীত বাকী সকল আঘাত দ্বিতীয় আঘাতের অন্তর্ভুক্ত। এই দ্বিতীয় আঘাত তথা *যাত্রী আঘাত প্রাপ্ত হলে (Wounding the passenger)* এর অন্তর্ভুক্ত যাত্রী মর্মাঘাত প্রাপ্ত হলে বা যাত্রী ঘা প্রাপ্ত হলে বা যাত্রী মানসিক ভাবে ক্ষতিগ্রস্থ হলে, বা যাত্রীর অবহেলা হলে, বা যাত্রীর হয়রানী হলে, বা যাত্রীর প্রতি অন্যায় হলে, বা যাত্রীর সাথে আইন সম্মত আচরণ করা না হলে ইত্যাদি।

দরখাস্তকারীনি এবং তার মায়ের প্রতি ইতিহাদ কর্তৃপক্ষের মর্মাঘাত অবহেলা, হয়রানীমূলক আচরণ, জোর করে তাদের মালামাল বিমান থেকে নামিয়ে দেওয়া, বাংলাদেশে ফেরত টিকেট কিনতে বাধ্য করা এবং সর্বোপরী বেআইনীভাবে, অন্যায়ভাবে দরখাস্তকারীনি এবং তার মাতাকে টরোন্টো যেতে না

দিয়ে বাংলাদেশে ফেরত পাঠানোর কারণে দরখাস্তকারীনি অত্র মোকদ্দমা দাখিল করেন।

গুরুত্বপূর্ণ বিধায় বিগত ইংরেজী ৩০.০৬.২০১১ তারিখে তানজিন বৃষ্টি কর্তৃক স্বাক্ষরিত অফিসার ইনচার্জ, এয়ারপোর্ট থানা বরাবর দাখিলকৃত সাধারণ ডায়েরীটি নিম্নে অবিকল অনুলিখন হলোঃ

To
Officer in Charge
Airport Police Station
DMP, Dhaka

Subject: General Diary regarding the torture, inhuman and cruel treatment, harassment and threaten by Etihad Airways' staff and authority at the Abu Dhabi Airport.

Dear Sir,
This is to inform you that I, Advocate Nahid Sultana and my dauthter Tanzeen Wahab Brishty were harassed and forcefully returned back to Dhaka. The incident took place on 28th June at Abu Dhabi Airport, flight No. Ey 141. After obtaining the boarding pass when we were about to board onto the plane, one of the Etihad personals told us that my boarding pass has not been stamped. I told him that this is your mistake and also requested him to get it stamped for me, since the queue was very long and my young daughter was with me. Then the Eithad staff started to shout at me and threatened me that he would off-load us if I do not listen to him. When I was going back to Etihad counter to get my boarding pass stamped then I saw another staff of Etihad, the TAS supervisor, Ahmed Wahab M Aibiwani (staff Id: 17863) was yelling at my daughter. They were trying to retain my passport and refused to give it back to me even after several requests. However, I returned to my daughter completely shaken by the ordeal and wanted to find out why they were shouting at my daughter. The TAS supervisor said that he did not like our attitude and would not let us fly on the plane. Their reasoning for off-loading us from the airplane was quote, "I don't like you attitude." The staff then started threatening us by saying that they will call the cops on us, and we shall know the reason only after we go to the police station. They forced us to miss the plane while we were ready to negotiate and then forced us to buy a return ticket and leave. They gave us 3

options that either we purchase a ticket to Toronto through Heathrow the next day or fly to Toronto directly on the 30th June, or return to Bangladesh immediately. Since I was insecured to stay overnight feeling like we could be physically harassed at a place which is operated by them and also threatened that we would be charged with the police case and tortured, I had to opt for the last option and return to Bangladesh as soon as possible. Then they took us to the transfer desk saying that they need our possports and was forcing us to handover our passports to them. We requested them many times to let us make some phone calls but they were refraining us from doing so. One of the guys claimed to be a CID officer and took us to an unknown room full of 6/7 men in uniforms and some men in civilian clothes. There was one guy who refused to disclose his identity, threatened us by saying repeatedly that they will file case against us and would not give us any reason until we go to the police station. That guy apparently is the operations manager of Etihad named Ali El Hassan (staff id 15366). Their inhuman treatment and torture made us seek for some assistance from Bangladesh Embassy and Canadian High Commission in Abu Dhabi and with the assistance of Bangladesh Embassy we returned to Bangladesh on flight EY 258. Etihad office was aware of the whole situation and did not take any necessary step and was not cooperative. Whatever delays that has taken place in filing this general diary is due to the fact that we have been traumatized and being extremely ill mentally and physically.

Therefore, we would like to request you to register this as a general diary at this point.

Sincerely,
Sd/- Illigible
Nahid Sultana
Sd/- Illigible
Tanzeen Bristy
C/O: Md. Abdul Wahab
APT: 14/C, 6/1/A Nakshi Homes
Segunbagicha, Dhaka- 1000.

গুরুত্বপূর্ণ বিধায় বিগত ইংরেজী ২.০৭.২০১১ তারিখে দৈনিক ডেইলি স্টার পত্রিকায় প্রকাশিত "***Passengers made victim of airline staff's fault***" শিরোনামের খবরটি নিম্নে অবিকল অনুলিখন হলোঃ

The Daily Star

FOUNDER EDITOR
LATE S. M. ALI
DHAKA SATURDAY JULY 2, 2011

Passengers made victim of airline staff's fault

Staff Correspondent

Two Bangladesh born women who were en route to Canada by an Etihad Airways flight were allegedly harassed by the airline staffs at Abu Dhabi International Airport, and were forced back to Dhaka at their own cost over a brawl that sparked due to a fault of a staff.

On their return to Dhaka, one of the victims Tanzeen Bristy filed a general diary with Airport Police Station on Thursday, where she described their seven-hour ordeal of harassment in the hands of Etihad staffs.

Bristy, a Canadian citizen, and her mother a permanent resident of that country who did not want to be named, left Shahjalal International Airport by an Etihad flight (EY 141) for Toronto at 5:25am on June 28.

They had a stop over at Abu Dhabi International Airport, where at the check-in counter the clerk stamped Bristy's boarding pass, but forgot to stamp her mother's, which they also did not notice.

When they went to the gate of the aircraft after waiting in a queue for almost an hour, the Etihad staff there asked her mother to get her boarding pass stamped.

Bristy told the staff that they should arrange for her mother's boarding pass to be stamped since it was his colleague's fault to begin with, and she and her mother did not want to return to the back of the line for the airline's own fault.

"I told him that this was their mistake and also requested him to get it stamped for me, since the queue was very long," Bristy told The Daily Star on Thursday.

"Then the Eithad staff started to shout at me and threatened me that he would off-load us from the plane, if I did not listen to him," she added.

She also alleged that a staff yelled at her and tried to seize her mother's passport.

Bristy's mother said, "The staff supervisor said he did not like our attitude and would not let us get on board."

She said he then threatened them saying they would be handed over to police if they did not abide by his orders.

"They forced us to miss the flight, and then forced us to buy return tickets to Dhaka," Bristy said.

She also said, "We had to return to Bangladesh because at one point we were worried about our physical safety if we kept arguing with the rude Etihad staff, as they were taking us from place to place where we did not feel safe at all."

They were not even allowing the two women to make phone calls. A man who claimed himself to be a CID officer took them to a room where six to seven men in uniforms and some other men in civilian clothes kept them confined for about an hour.

Finally after much request they were allowed to make a phone call to Bangladesh. And their family contacted the Bangladesh embassy and the Canadian High Commission in Abu Dhabi.

"With the assistance of Bangladesh Embassy we returned to Bangladesh on flight EY 258," Bristi said.

When The Daily Star contacted Country Manager of Eithad Ashraful Kabir yesterday, he said he received a verbal complaint from the victims about the incident, and once he gets a written complaint he will send that to proper Eithad authorities. He also said after an investigation it will be known what actually happened, and what measures Eithad will take.

A complaint about Eithad's bad service was also raised by another Bangladesh born Canadian citizen Showkat Alam Khan.

Alam arrived in the country on April 11 by a flight of the airline from Canada, but one of his luggage that contained video and still cameras and rare family photographs, went missing.

Alam lodged a compliant with the airline authorities in Dhaka, but his luggage is yet to be recovered.

Asked, Ashraful Kabir said if the luggage is not found, they will come to a settlement as per International Air Transport Association rules.

গুরুত্বপূর্ণ বিধায় বিগত ইংরেজী ০৪.০৭.২০১১ তারিখে দৈনিক ডেইলি স্টার পত্রিকায় প্রকাশিত ***"Airline staff's errant behaviour"*** শিরোনামের খবরটি নিম্নে অবিকল অনুলিখন হলোঃ

The Daily Star
FOUNDER EDITOR
LATE S. M. ALI
DHAKA MONDAY JULY 4, 2011

Airline staff's errant behaviour
Passengers deserve more courtesy

It seems that sometimes airline staff forget that they are paid to serve the passengers. And sometimes their imperious attitude makes them forget that it is their responsibility to ensure that all those that have preferred to fly their airline have a hassle free and safe journey from the time they check in. It doesn't happen all the time. Recently, the unfortunate victims of the fault of a staff of Eithad Airlines in Abu Dhabi airport were a mother and daughter.

The account of the incident, as it has appeared in this newspaper, is that two women expatriate Bangladeshis, flying from Dhaka to Toronto, were prevented from their onward journey since the boarding pass of one of them was not stamped, and their mistake was to ask the person at the boarding counter to have it stamped since they had been already standing in the queue for an hour and would miss their turn if they were to go back to the check-in counter, which could be at a considerable distance in airports as humongous as Abu Dhabi. And in any case, as they reasoned, the fault was that of the staff who failed to ensure that the boarding passes were stamped.

Unfortunately, not only could these two passengers not make it to their final destination, they were forced to return to Bangladesh, but not before being subjected to undeserved and despicably high-handed treatment from the airline staff. Reportedly, they were not even allowed to call their embassy initially. This incident is fairly representative of the situation in many airports and of many airlines, but those don't get reported mostly.

It would do well for the said airline, and indeed all airlines, to remember that they are not doing the passengers any favour.

They operate because of them and not in spite of them. And it is for some of the staff of the airlines to correct their attitude, not otherwise.

We feel that the matter should be thoroughly investigated and the said passengers duly compensated for the agony they were made to undergo.

গুরুত্বপূর্ণ বিধায় বিগত ইংরেজী ০৩.০৭.২০১১ তারিখে তানজিন বৃষ্টি কর্তৃক স্বাক্ষরিত International Civil Aviation Organization (CAO)-এ বরাবর দাখিলকৃত অভিযোগটি নিম্নে অবিকল অনুলিখন হলোঃ

To
International Civil Aviation Organization (CAO)
999 University Street,
Montreal, Quebec H3C 5H7, Canada

Subject: Formal Complaint regarding the financial loss, torture, inhuman and cruel treatment, harassment and threaten by Etihad Airways' staff and authority at the Abu Dhabi Airport.

Dear Sir,
This is to formally complain to you that I, Tanzeen Wahab Brishty and my mother were harassed and forcefully returned back to Dhaka. The incident took place on 28th June at Abu Dhabi Airport, flight No. Ey 141. Just when we were about to board at the final check point, after the staff had already tore apart my boarding pass in half, one of the Etihad personals told us that my mother's boarding pass has not been stamped. I told him that this is your mistake and also requested him to get it stamped for me, since the queue was very long and my mother did not feel secured to be separated from me. Then the Etihad staff started to shout at me and threatened me that he would off-load us if I do not listen to him. When I sent my mother to go back to Etihad counter to get her boarding pass stamped then another staff of Etihad, the TAS supervisor, Ahemd Wahab M Albiwani (staff Id: 17863) started to shout at me. While this is taking place the staffs at the other counter refused to return my mother's passport even after several requests. She literally had to take the passport on her own from the counter desk, and returned to me quite shaken by the ordeal, Meanwhi8le, while this altercation was taking place, I found that all my luggage were out of the plane. When I ask the TAS

supervisor about the reason for off-loading me, he said that he did not like our attitude and would not let us fly on the plane. Their reasoning for off-loading us from the airplane was quote, "I don't like your attitude." The staff then started threatening us by saying that they will call the cops on us, and we shall know the reason only after we go to the police station. They forced us to miss the plane while we were ready to negotiate and then forced us to by a return ticket and leave. They gave us 3 options that either we purchase a ticket to Toronto through Heathrow the next day or fly to Toronto directly on the 30th June, or return to Bangladesh immediately. Since I was insecure to stay overnight feeling like we could be physically harassed at a place which is operated by them and also threatened that we would be charged with the police case and tortured, I had to opt for the last option and return to Bangladesh as soon as possible. Then they took us to the transfer desk saying that they need our passports and was forcing us to handover our passports to them. We requested them many times to let us make some phone calls but they were refraining us from doing so. One of the guys claimed to be a CID officer took us to an unknown room full of 6/7 men in uniforms and some men in civilian clothes. There was one guy who refused to disclose his identity, threatened us by saying repeatedly that they will file case against us and would not give us any reason until we go to the police station. That guy apparently is the operations manager of Etihad named Ali El Hassan (staff id 15366). Their inhuman treatment and torture make us seek for assistance from Bangladesh Embassy and Canadian High Commission in Abu Dhabi, and with the assistance of Bangladesh Embassy we returned to Bangladesh on flight EY 258. Whatever delays that has taken place in filing this official complaint is due to the fact that we have been traumatized and being extremely ill mentally and physically.

We therefore pray that you would look into this matter and take necessary measures in this regard.

Sincerely,

Sd/- Illigible

Tanzeen Bristy

Email: brishty@gmail.com

Address in Bangladesh:

Apt# 14C, 6/1/A Nakshi Homes

Segun Bagicha, Dhaka- 1000

Bangladesh
Phone: +88 01757 390 930
Address in Canada:
Apt# 908, 31 Bales Ave.
Toronto, ON M2N 7L6
Canada
Phone: 1 647 771 9800

গুরুত্বপূর্ণ বিধায় ইতিহাদ এয়ারওয়েজ কর্তৃপক্ষের তদন্ত প্রতিবেদন নিম্নে অবিকল অনুলিখন হলোঃ

INVESTIGATION CONCERNING THE INCIDNET DATED 28 JUNE 2011 INVOLVING TWO BANGLADESHI PASSENGERS, MS NAHID SULTANA AND MS TANZEEM WAHAB BRISTY

Following is the synopsis of the incident took place on 28 june 2011, where two unruly passengers Ms Tanzeem Wahab Bristy and Mrs Nahid Sultana were denied boarding on Ey 141 bound to Toronto.

According to following Etihad staff members:

1. *Ahmed Abdul Wahab Al Diwani, Turn Around Supervisor (TAS) (Respondent No. 6 in petition);*
2. *Lionel Mathias, Document Verification Unit (DVU) Supervisor;*
3. *Hussein EI Sayed, DVU Officer;*
4. *Fashif Faizulla, DVU Officer;*
5. *Fadi Abo Haija, DVU Officer;*
6. *Dhanu Ganesh, DVU Officer;*
7. *Mark Abeledo, Ground Services Officer;*
8. *Shivanthi Waththuhewage, Ground Services Officer;*
9. *Rostislac Eneliyano. Ground Services Officer;*
10. *Maricris Tolosa Cabatbat, Ground Services Officer;*
11. *Ms Maria Melissa Abalayan, Transfer Desk;*
12. *Ms Raiza Abdul Rahim Motlekar, Care Unit Desk; and*
13. *Mr. Ali EI Hassan, Duty Operations Manager (Respondent No. 5 in Petition).*

and as reconfirmed by the CCTV footage the facts are as follows:

1. *On 28 June 2011 tow passengers:*
   - A. *Ms. Nahid Sultana, a Bangladeshi national, holding passport number W0908166; and*

B. *Ms Tanzeen Wahab Bristyl (daughter of Ms Sultana above) a Bangladeshi and Canadian national, holding Canadian passport number BA335320.*

arrived from Dhaka to Abu Dhabi on flight number EY253 to connect with flight number EY141 to Toronto. As confirmed by our staff in Dhaka we upgraded these passengers from Economy to Business class on their flight to Au Dhabi.

2. *At Terminal 3 Gate 30 was allocated to Toronto bound EY 141 and the flight was scheduled to depart at 10.20 AM and Etihad's Document Verification Unit ("DVU") podium was arranged immediately outside Gate 30.*

3. *It is Etihad's regular procedure that ninety minutes prior to boarding of every minutes prior to boarding of every Toronto bound flight, DVU officers ask all the passengers to vacate the Holding Area and to queue outside the Holding Area so the DVU can meet every passenger, verify each passengers' travelling documents (i.e. passports and visas) and stamp their boarding passes before boarding onto the flight. Etihad is obliged by the Canada Border Services Agency to undertake this verification in accordance with the Memorandum of understanding and the Canadian immigration laws. At each check point there is a DVU sign board, displayed in English and Arabic, outlining the reasons for such verifications. If a passenger carried by Etihad to Canada is denied entry into Canada due to irregularities /insufficiency in the travel documents, Etihad will be fined and have to bear the cost of transporting the inadmissible passengers back to their home country.*

4. *Therefore, as a regular procedure, the DVU officers Mr. Hussain EI Sayed and Mr. Kashif Faizullah asked all the passengers to vacate the Holding Area and queue outside the Holding Area for the document verification.*

5. *Ms Sultana refused to leave the Holding Area and informed Mr. EI Sayed that the will remain seated as her passport was in possession of her daughter (Ms Bristy) who was at*

the Duty Free shops. Mr EI Sayed informed Ms Sultana that her presence before the DVU podium would be mandatory to verify her travelling documents.

6. *Ms Bristy arrived at the DVU carrying two passports (one for herself and the other one belonging to Ms Sultana). DVU officer, Mr EI Sayed verified Ms Bristy's passport and stamped her boarding pass confirming the document verification. However, as Ms Sultana did not come to the DVU podium and her travelling documents could not be verified in person, Mr EI Sayed could not stamp Ms Sultana's boarding pass and advised Ms Bristy that Ms Sultana should come to the DVU podium for document verification and obtain a confirmation stamp on her boarding pass.*

7. *Ms Bristy went inside the Holding Area where she met again with Ms Sultana and ignored the DVU officer's advice for document verification and for stamping the boarding pass. A few minutes later when the Guest Service staff started boarding passengers on to the flight EY141 Ms Bristy and Ms Sultana queued to board on to the aircraft knowing that Ms Sultana's documents had not been verified by the DVU and her boarding pass did not have the requisite confirmation stamp.*

8. *The passengers were greeted by the Guest Service Agent, Mr Mark Abeledo. Mr Abeledo checked their boarding passes and boarded Ms Bristy but as Ms Sultana's boarding pass did not contain the DVU stamp he asked Ms Sultana to get the boarding pass stamped by the DVU and for her convenience advised her that she could come straight back to him without standing in the boarding queue again.*

9. *Ms Sultana was about to return to the DVU podium but Ms Bristy started shouting at her mother saying "shut up, let them come here" and told Mr Abeledo that they would not go to the DVU and that the DVU staff should come here and stamp the boarding pass. When Mr. Abeledo tried to explain to her the procedure Ms. Bristy become rude and*

told him "yeah right, stamp my ass!" Then Mr Abeledo advised them that the DVU officer is dealing with a long queue of passengers, he could come to them only after he finishes with other passengers and they could wait. However, Ms Bristy kept yelling at him while holding the queue and causing a delay to other passengers.

10. *Two more Guest Service Agents, Mr Rostislac Eneliyano and Ms Maricris Tolosa Cabatbat came to assist them and Mr Abeledo started to continue boarding other passengers.*

11. *Upon hearing Ms Bristy's yelling, the Turn Around Supervisor (TAS) for this flight, Mr Ahmed Abdul Wahab Al Diwani, came to resolve the issue but Ms Bristy started shouting at him also and said to him "Shut up! I am not talking to you". Mr Al Diwani stayed clam and advised them to wait until the DVU officer finishes the queue and then he could come to them.*

12. *Ms Bristy continued to shout at Mr Al Diwani that they would not wait and asked for his full name. Mr Al Diwani told his name and showed his Etihad identify card ("ID"). Ms Bristy snatched his ID. Mr Al Diwani asked Ms Bristy to return the ID but she refused to return it and continued yelling at him, while making disrespectful remarks against the staff and the airline (Etihad Airways).*

13. *Mr Al Diwani called the police and the Abu Dhabi Airport Company (ADAC") manager, believing that when the police officers made an appearance Ms Bristy would clam down and start cooperating with the airport staff.*

14. *Ms Bristy went to the DVU podium (while holding Al Diwani's ID) along with her mother Ms Sultana and both started yelling at the DVU officer, Mr Faizullah who remained claim and tried to explain to them DVU obligations. At that time, the DVU supervisor, Mr lionel Mathias, came to the DVU podium along with two other DVU supersisors, Mr Dhanu Ganesh and Mr Fadi Abo Haija when they overheard these two passengers shouting, to claim the situation. The DVU officers showed them the*

instruction written on the DVU sign board and told them that they could help them to complete the process.

15. *However, as both of these passengers continued to be rude, refused to obey reasonable instructions of the staff and acted as "unruly" passengers and they were delaying the departure of the flight with their unruly behavior. Ahmed determined that these two passengers can be a treat to safety and security of other passengers during the flight and issued instructions to offload their luggage from the aircraft and to deny them boarding in accordance with the Ground Operations Manual requirements.*

16. *Two senior police officers (in uniform) along with ADAC manager and TAS officer, Ahmed came and asked Ms Bristy about the issue. The police officer took Ahmed's ID from Ms Bristy's hand and returned to Ahmed. Ahmed advised both passengers that they would not be able to take that flight to Toronto due to their unruly behavior and the fact that they had delayed the flight.*

17. *Ms Shivanthi Waththuhewa, Ground Services officer came to both passengers and advised them to calm down but Ms Sultana started yelling again. Ms Waththuhewa confirmed to them their luggage had been offloaded and they would not be able to take that flight; and they should either return to Dhaka, take the next flight to London and fly from there to Toronto; or wait until the next direct flight to Toronto, which would be two days later. Ms Waththuhewa guided them to the Transfer Desk.*

18. *At the Transfer Desk, staff member Ms Maria Melissa Abalayam asked for their passports in order to submit a copy to the CID and police as per standard procedure. However, both passengers refused to give their passports. Ms Abalayam explained to them that as a regular procedure for offloaded passengers the passport copies need to be submitted to the local authority. However, they continued to refuse to give the passports and started walking towards and duty free area. Ms Waththuhewa,*

called the Duty Operations Manager, Mr Ali EI Hassan and the CID officers to control the situation.

19. *A CID officer came and these passengers were escorted to the duty police officer room. Mr EI Hassan met with these passengers at the duty officer room. The CID officer asked Mr EI Hassan to translate room English to Arabic what the passengers were telling the CID officer. Mr. DI Hassan Assisted the passengers in translating their story to the CID officer. During their presence at the duty police officer room a female officer remained present to offer them assistance. Both passengers stayed at the duty police officer room for about 30 minutes and then Mr EI Hassan took them to the Transfer Desk and called the Care Unit Desk staff to assist them.*

20. *Mr EI Hassan also offered to them free hotel stay and food until their next flight, however they declined that offer. Mr EI Hassan also allowed them to use Duty Manager's mobile phone to call their family. Ms Sultana called Bangladesh and spoke with her family members and decided to return to Dhaka.*

21. *At the Care Unit Desk Ms Faiza Abdul Rahim Motlekar met with these passengers and provided assistance to them and then took them to the Transfer Desk where they met again with Ms Shivanthi Waththuhewa.*

22. *The passengers waited near the Transfer Desk for the Bangladeshi Embassy representative. A representative from the Bangladeshi Embassy arrived and met with them.*

23. *Both passengers returned to Dhaka at night on 28 June 2011 on flight EY258.*

Conclusion

24. *In light of the above stated facts and discussions with the staff members who were involved in this incident, we conclude that:*

    a. *Ms Sultana knowingly refused to comply with the travel document verification requirements;*

b. Ms Sultana and Ms Bristy refused to accept staff's reasonable instructions and failed to cooperation with the officers; and

c. Both passengers proved to be unruly passengers while acting as a potential threat to the safety and security of other passengers.

25. Mr Al Diwani's decision to offload them was in accordance with Etihad's Ground Operations Manual.

26. Etihad's staff acted in professional and courteous manner despite the rude and disrespectful behavior of both passengers.

Chris Youlten
Vice President Airport & Network Operations
Etihad Airways
Dated: 04 August 2011

উপরিল্লিখিত সংযুক্তিসমুহ পর্যালোচনায় এটি কাঁচের মত স্পষ্ট যে, ইতিহাদ এয়ারওয়েজ দরখাস্তকারীনির অভিযোগ বিষয়ে যথাযথভাবে অবহিত হওয়া সত্ত্বেও দরখাস্তকারীনির এবং তার মায়ের ক্ষতিপূরণ প্রদানে তথা অর্পিত আইনগত দায়িত্ব পালনে কোনরূপ পদক্ষেপ গ্রহণ করে নাই। বরং একটি তদন্ত প্রতিবেদন অত্র আদালতে দাখিল করে দরখাস্তকারীনি এবং তার মাকে *unruly passenge*r ঘোষণা করে তাঁদের কৃতকর্মের স্বপক্ষে ব্যাখ্যা প্রদান করেন। ইতিহাদ এয়ারওয়েজ কর্তৃপক্ষ দরখাস্তকারীনি এবং তার মাকে ***"Unruly"*** তথা অনিয়ন্ত্রণযোগ্য মর্মে ঘোষণা করে জোরপূর্বক তাদের মালামাল প্লেন থেকে নামিয়ে দিয়ে এবং জোরপূর্বক বাংলাদেশের ফেরত টিকেট কাটতে বাধ্য করে বাংলাদেশে ফেরত পাঠিয়েছে। ইতিহাদ এয়ারওয়েজ এর ভাইস প্রেসিডেন্ট (এয়ারপোর্ট এবং নেটওয়ার্ক অপারেশন) Chris Youlten কর্তৃক স্বাক্ষরিত বিগত ইংরেজী ৪ আগষ্ট, ২০১১ তারিখের উপরিল্লিখিত তদন্ত প্রতিবেদন পর্যালোচনায় এটি স্পষ্ট যে, ২৮ শে জুন ২০১১ তারিখের ঘটনার বিষয়ে ইতিহাদ এয়ারওয়েজ কর্তৃপক্ষ নিজস্ব তদন্ত করে। ইতিহাদের উপরিল্লিখিত নিজস্ব তদন্তে ১৩ জন কর্মকর্তা কর্মচারী স্বাক্ষ্য প্রদান করে। কিন্তু কেন উক্ত তদন্ত রিপোর্ট দরখাস্তকারিনীকে পাঠানো হয় নাই তথা অবহিত করা হয় নাই সে সম্পর্কে কোন ব্যাখ্যা প্রদান করতে সম্পূর্ণ ব্যর্থ হয়েছে।

ইতিহাদ কর্তৃপক্ষের উপরিল্লিখিত তদন্ত প্রতিবেদন পর্যালোচনায় এটি স্পষ্ট যে, কোন ক্ষমতাবলে বা আইনবলে উক্ত তদন্ত দল গঠন করা হয়েছে তার কোন তথ্য নেই। দ্বিতীয়তঃ তদন্ত দলে কতজন সদস্য ছিল তাদের নাম এবং পদবী নেই। সুতরাং এটি নিরাপদে বলা যায় যে, নামবিহীন তদন্ত দলটি আইনের যথাযথ কর্তৃত্ব ব্যতিরেকে গঠিত হয়েছে। তদুপরি তদন্তটি সম্পূর্ণ একপেশে। কারণ তদন্তে অপর পক্ষকে কোন নোটিশ প্রদান করা হয় নাই। সংক্ষুব্ধ পক্ষের অনুপস্থিতিতে নিরপেক্ষ তদন্ত দল বিহীন আলোচ্য তদন্তটি আইনের দৃষ্টিতে কোন তদন্তই নয়। সবেচেয়ে গুরুত্বপূর্ণ যে বিষয়টি তা হলো স্বীকৃত মতেই পুরো

ঘটনাটি CCTV-তে ধারণকৃত এবং CCTV ফুটেজ এর উপর ভিত্তি করেই তথাকথিত তদন্ত করা হয়েছিল। কিন্তু উক্ত CCTV ফুটেজ অত্র আদালতের নির্দেশ ও আদেশ সত্ত্বেও ইতিহাদ কর্তৃপক্ষ দাখিল করতে পারেনি। এক্ষেত্রে ইতিহাদ কর্তৃপক্ষ উহা দাখিল করতে না পারার যে ব্যাখ্যা দিয়েছে তা গ্রহণযোগ্য নয়। এতে ইতিহাদ এয়ারওয়েজের পাল্টা অভিযোগ প্রমাণিত বলে গন্য করা যায় না। বরং দরখাস্তকারীনির বক্তব্য সঠিক বলে প্রমাণিত হয়।

গণপ্রজাতন্ত্রী বাংলাদেশ সরকারের পররাষ্ট্র মন্ত্রণালয়ের প্রশাসন অনুবিভাগ বিষয়টিকে যথাযথ গুরুত্ব প্রদানপূর্বক বিগত ইংরেজী ১৪.১১.২০১৮ তারিখের পত্র মোতাবেক তিন সদস্য বিশিষ্ট তদন্ত দল গঠন করে যা নিম্নে অবিকল অনুলিখন হলোঃ

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
পররাষ্ট্র মন্ত্রণালয়
প্রশাসন অনুবিভাগ
ঢাকা।

এডি-পি১-৮০৪০/১৪২৭ *তারিখ- ১৪ নভেম্বর ২০১৮*

বিষয়ঃ বাংলাদেশী নাগরিক মিজ তানজিন বৃষ্টি কর্তৃক ইত্তেহাদ এয়ারলাইন্স কর্তৃপক্ষ এবং এর সংশ্লিষ্ট কর্মচারীদের বিরুদ্ধে আনীত আনুষ্ঠানিক অভিযোগ তদন্তের নিমিত্ত তদন্ত কমিটি গঠন প্রসঙ্গে।

বাংলাদেশী নাগরিক মিজ তানজিন বৃষ্টি কর্তৃক ২০১১ সালে ইত্তেহাদ এয়ারলাইন্স কর্তৃপক্ষ এবং এর সংশ্লিষ্ট কর্মচারীদের বিরুদ্ধে আর্থিক ক্ষতি, হয়রানি, হুমকি, আমানবিক এবং নিষ্ঠুর আচরনের প্রেক্ষিতে আনীত আনুষ্ঠানিক অভিযোগ দাখিল করেন। এই ধারাবাহিকতায় ১২ নভেম্বর ২০১৮ তারিখে বিষয়টি পররাষ্ট্র মন্ত্রণালয় অবগত হওয়ার প্রেক্ষিতে উক্ত অভিযোগটি তদন্তের নিমিত্ত নিম্নবর্নিত কর্মকর্তাবৃন্দের সমন্বয়ে একটি তদন্ত দল গঠন করা হলঃ

ক্রমিক নং	*কর্মকর্তার নাম ও পদবী*	*অর্পিত দায়িত্ব*
১।	*জনাব মোঃ জাহাঙ্গীর আলম* *মহাপরিচালক (লিগ্যাল এফেয়ার্স)*	*সভাপতি*
২।	*জনাব মুহাম্মদ মীযানুর রহমান* *পরিচালক (পশ্চিম এশিয়া)*	*সদস্য*
৩।	*মিজ তাহসিনা নাসরীন* *সিনিয়র সহকারী সচিব (বিধি ও শৃঙ্খলা)*	*সদস্য সচিব*

০২। উক্ত তদন্ত দল বিষয়টি তদন্ত পূর্বক অনুসন্ধান কার্য সমাপনান্তে আগামী ৩০ (ত্রিশ) কর্ম দিবসের মধ্যে একটি পুর্ণাঙ্গ প্রতিবেদন প্রস্তুত করে পররাষ্ট্র সচিবের নিকট পেশ করবেন।

০৩। মন্ত্রণালয়ের ১২ নভেম্বর ২০১৮ তারিখের আদেশ নং-এডি-পি-৮০৪০/১৩৭৪ এর আংশিক সংশোধনক্রমে ও আদেশ জারি করা হলো।

স্বা/- অস্পষ্ট
১৪.১১.২০১৮
(শেলী সালেহীন)
পরিচালক (সংস্থাপন)

বিতরণঃ

১। মহাপরিচালক, লিগ্যাল এফেয়ার্স, পররাষ্ট্র মন্ত্রণালয়, ঢাকা।

২। পরিচালক, সংস্থাপন, পররাষ্ট্র মন্ত্রণালয়, ঢাকা।

৩। সিনিয়র সহকারী সচিব/সহকারী সচিব (এসএসএ/বিধি ও শৃঙ্খলা), পররাষ্ট্র মন্ত্রণালয়, ঢাকা।

৪। কমিটির সদস্যবৃন্দ।

৫। সংশ্লিষ্ট নথি।

অতঃপর উপরিল্লিখিত তিন সদস্য বিশিষ্ট তদন্ত কমিটির তদন্ত এবং মতামত বিগত ইংরেজী ২০.০৩.২০১৯ তারিখে দাখিল করে যা নিম্নে অবিকল অনুলিখন হলোঃ

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার

পররাষ্ট্র মন্ত্রণালয়

লিগ্যাল অ্যাফেয়ার্স অনুবিভাগ

স্মারক নম্বরঃ ১৯.০০.০০০০.৮৫৫.১৬.০০২.১৭ তারিখ- ২০ মার্চ ২০১৯ খ্রিঃ

রিট পিটিশন নং- ৬০৪৯/২০১১- এর মহামান্য হাইকোর্ট বেঞ্চের আদেশের প্রেক্ষিতে গঠিত তদন্ত কমিটির প্রতিবেদন প্রসঙ্গে।

*মহামান্য সুপ্রীম কোর্টের হাইকোর্ট বিভাগ হতে প্রাপ্ত রিট পিটিশন নং- ৬০৪৯/২০১১ এর আদেশের কপি ডেপুটি এটর্নি জেনারেল অফিস থেকে অত্র মন্ত্রণালয়ে প্রাপ্তির পর পররাষ্ট্র মন্ত্রণালয় কর্তৃক তদন্ত কমিটি গঠন করা হয় **(পতাকা- ক)**। বাংলাদেশ ও কানাডা এর দ্বৈত নাগরিক মিস তানজিন বৃষ্টি কর্তৃক রুজুকৃত রিট পিটিশনের আদেশের ভিত্তিতে মহামান্য সুপ্রীম কোর্টের হাইকোর্ট বিভাগ এর বেঞ্চ এর আদেশ মোতাবেক পররাষ্ট্র মন্ত্রণালয় কর্তৃক গঠিত তদন্ত কমিটি নিম্নোক্ত বিষয়সমূহ বিবেচনাপূর্বক অত্র প্রতিবেদন প্রস্তুত করেছেঃ*

ক। রিট পিটিশন নং- ৬০৪৯/২০১১ এর আর্জি এবং ২ জুলাই ২০১১ খ্রিঃ তারিখের ''The Daily Star'' পত্রিকায় প্রকাশিত প্রতিবেদন-এ বর্ণিত বাংলাদেশী দুই নাগরিককে ইত্তিহাদ এয়ারওয়েজের কর্মকর্তা কর্তৃক নির্যাতন, রুঢ় আচরণ ও নিপড়ন করা হয়েছিলো কিনা;

খ। বোডিং পাস-এ সীল না থাকা নিয়ে মূলত বিরুপ পরিস্থিতির উদ্ভব হয়, এক্ষেত্রে দায়দায়িত্ব কার ছিল;

গ। উল্লিখিত ঘটনায় ইত্তিহাদ এয়ারওয়েজের কর্মকর্তাদের আচরণ পিটিশনার ও তাঁর মার জীবনের প্রতি ও ব্যক্তি স্বাধিনতার প্রতি হুমকি ছিলো কিনা;

ঘ। উক্ত ঘটনায় স্থানীয় দুতাবাস তথা পররাষ্ট্র মন্ত্রণালয়ের ভূমিকা কি ছিল;

*মহামান্য আদালতের নির্দেশ অনুযায়ী প্রতিবেদন দাখিলের জন্য তদন্ত কমিটি কর্তৃক পিটিশনার এর সাথে ও আবুধাবিস্থ বাংলাদেশ দূতাবাসের সাথে যুগপৎ যোগযোগ করা হয়। পিটিশনার মিস তানজিন বৃষ্টি কানাডা প্রবাসী কিন্তু নভেম্বর-ডিসেম্বর ২০১৮-এ তাঁর স্থানীয় মোবাইল ফোন নম্বরঃ ০১৮৪১-৫৯৬৩৭৭-এ কমিটির সদস্য সচিব ও কমিটির সভাপতির বেশ কয়েক বার কথা হয় এবং তিনি সেই সময় বাংলাদেশে অবস্থান করছিলেন মর্মে নিশ্চিত হওয়া যায়। তৎপ্রেক্ষিতে তদন্ত কমিটির নিকট তাঁর বক্তব্য প্রদানের জন্য তাঁকে বাংলাদেশ ও কানাডার ঠিকানায় ১৯.১১.২০১৮, ৩১.১২.২০১৮ এবং ০৬.০১.২০১৯ তারিখে নোটিশ প্রদান করা হয় **(পতাকা-খ)**। তিন দফা লিখিত নোটিশ এবং বেশ কয়েক বার ফোন-এ যোগাযোগ করা হলেও মিজ বৃষ্টি তদন্ত কমিটির সামনে উপস্থিত হননি।*

মহামান্য আদালতের কাছে গ্রহণযোগ্য একটি সুষ্ঠু তদন্ত প্রতিবেদন প্রস্তুতের জন্য মুল পিটিশনার মিজ তানজিন বৃষ্টি ও সংশ্লিষ্ট ব্যক্তিদের স্বাক্ষরিত বক্তব্য আবশ্যক ছিল। কিন্তু

পিটিশনার নিজে এবং তার আইনজীবীর মাধ্যমে তদন্ত কমিটির সম্মুখে উপস্থিত হয়ে বক্তব্য প্রদান করবেন না মর্মে জানান এবং গত ৮/০১/২০১৯ তারিখে পিটিশনার মিজ তানজিন বৃষ্টি কর্তৃক স্বাক্ষরিত একটি বক্তব্য (পাতা-গ) পাওয়া যায় (বক্তব্য তরিখের উল্লেখ নেই)। উক্ত বক্তব্যে ঘটনার দিন (২৮ জুন ২০১১) পিটিশনার মিস তানজিন বৃষ্টির মায়ের বোডিং পাস-এ সীল না থাকা কে কেন্দ্র করে বাকবিতন্ডার এক পর্যায়ে পিটিশনারকে ইতিহাদ এয়ারওয়েজের টরোন্টোগামী ফ্লাইট থেকে অফলোড করা হয় মর্মে উল্লেখ রয়েছে। এসময় তিনি ইতিহাদ এর অফিসিয়ালস এবং এয়ারপোর্টের কর্মকর্তাদের দ্বারা রূঢ় আচরণ ও নির্যাতনের শিকার হন মর্মে তাঁর লিখিত বক্তব্যে উল্লেখ করেন। এছাড়াও তিনি তাঁর বক্তব্য ইতিহাদের কর্মকর্তাদের সার্বিক অসহযোগিতা এবং বিভিন্ন ধরণের হুমকি প্রদানের কথা উল্লেখ করেছেন। এরপর বাংলাদেশের দূতাবাসের প্রতিনিধির সহযোগিতায় তিনি নিরাপদে বাংলাদেশে প্রত্যাবর্তন করেন মর্মে লিখিত বক্তব্য উল্লেখ করেছেন।

কমিটি এ বিষয়ে আবুধাবি মিশনের সাথে যোগাযোগ করে এবং তৎকালীন মিশনে কর্মরত সংশ্লিষ্ট কর্মকর্তাদের সাথে যোগাযোগের এক পর্যায়ে সে সময়ে (২০১১-১২সালে) একটি তদন্ত কমিটি গঠিত হওয়ার কথা জানতে পারে। তদপ্রেক্ষিতে এ বিষয়ে ব্যাপক অনুসন্ধান এর ফলে তার সূত্র ধরে তৎকালীন মন্ত্রণালয়ের মহাপরিচালক মিজ সুলতানা লায়লা হোসেন এর নেতৃত্বে ০২ (দুই) সদস্য বিশিষ্ট একটি তদন্ত কমিটি গঠিত হয়েছিল মর্মে জানা যায়। উক্ত তদন্ত কমিটির সভাপতি মিজ সুলতানা লায়লা (বর্তমানে রাষ্ট্রদুত, মরক্কো) এ বিষয়ে লিখিত বক্তব্য প্রদান করেছেন (পতাকা-ঘ) । উক্ত কমিটি সে সময় তদন্ত কাজ শুরু করে কিন্তু পিটিশনার মিজ তানজিন বৃষ্টি ও তার মা মিজ নাহিদ সুলতানা কে কমিটি কর্তৃক নোটিশ করা হয় এবং টেলিফোনে-এ যোগাযোগের মাধ্যমে তদন্ত কমিটির সম্মুখে হাজির হয়ে বক্তব্য প্রদানের জন্য অনুরোধ করা হয়। কিন্তু তারা কমিটির নোটিশের প্রেক্ষিতে কোনরকম সাড়া দেননি এবং কমিটির সম্মুখে উপস্থিতও হননি। এছাড়া কমিটি আবুধাবি মিশনকে ইতিহাদের সাথে যোগাযোগের মাধ্যমে তাদের বক্তব্য বিষয়ে রিপোর্ট প্রদানের জন্য অনুরোধ করে এবং একই সাথে পিটিশনার এর বক্তব্য গ্রহনের জন্য টরোন্টোস্থ বাংলাদেশ মিশনকে অনুরোধ করে বার্তা প্রেরণ করে। আবুধাবি মিশন থেকে তৎকালীন রাষ্ট্রদুত রিপোর্ট প্রদান করেন (পতাকা-ঙ) যেখানে মুলত মিশন কর্তৃক পিটিশনার ও তার মাকে সাহায্য করার জন্য তৎকালীন লেবার কাউন্সিলর নৌবাহিনীর কর্মকর্তা জনাব লতিফুল হক কাজমীকে প্রেরণের বিষয়টির উল্লেখ করেন। মান্যবর রাষ্ট্রদুত এই বিষয়ে ইতিহাদ এয়ারওয়েজ কর্তৃক প্রেরিত রিপোর্ট (পতাকা-চ) এর বক্তব্যই যে ইতিহাদ এয়ারওয়েজ এর চুড়ান্ত বক্তব্য তা তিনি উল্লেখ করেছেন। ইতিহাদ এয়ারওয়েজের রিপোর্ট বোডিং পাস এ সীল দেয়ার জন্য লাইন এ দাড়াননি । মিজ বৃষ্টি তার মায়ের পাসপোর্ট বহন করছিলেন বলে ইতিহাদের স্টাফরা তার মায়ের বোর্ডিং পাসে সীল দেননি বলে রিপোর্টে উল্লেখ রয়েছে। এর সুত্র ধরে বাকবিতান্ডা হাতাহাতি পর্যায়ে ; এমনকি ঘটনার একপর্যায়ে ইতিহাদ কর্তৃপক্ষ মিজ বৃষ্টি ও তার মাকে উক্ত ফ্লাইটের জন্য হুমকি মনে করেছিলেন বলে রিপোর্টে উল্লেখ রয়েছে । ফলশ্রুতিতে মিস বৃষ্টিকে রিপোর্ট এক পাক্ষিকভাবে শুধু পিটিশনার ও তার মাকে দোষারোপ করা হয়েছে এবং ইতিহাদের কর্মকর্তাদের সকল আচরণকে যৌক্তিক প্রমাণ করার চেষ্টা করা হয়েছে।

গত ১০.০১.২০১৯ খ্রিঃ তারিখে উক্ত রীট এর বিষয়ে মহামান্য হাইকোর্ট বেঞ্চ-এ শুনানী অনুষ্ঠিত হয়। মহামান্য আদালত এর আদেশ অনুযায়ী তদন্ত কমিটি-কে ইতিহাদ এয়ারওয়েজের থেকে ঘটনার ভিডিও ফুটেজ প্রাপ্তির ৪৫ দিনের মধ্যে তা পর্যালোচনা করে

*তদন্ত রিপোর্ট প্রদান করার নির্দেশনা দেয়া হয়েছিল। কিন্তু অদ্যাবধি ইতিহাদ এয়ারওয়েজের থেকে কোন ভিডিও ফুটেজ পাওয়া যায়নি। বাংলাদেশে ইত্তিহাদ এয়ারওয়েজের কোন অফিস না থাকায় তদন্ত কমিটি কর্তৃক ইত্তিহাদ এর আবুধাবিস্থ হেড অফিসের মাধ্যমে উক্ত ফুটেজ সংগ্রহ করার জন্য বাংলাদেশ মিশণ, আবুধাবী-কে ফ্যাক্স ও ইমেইল প্রেরণ করা হয়েছে **(পতাকা-ছ)**। এছাড়াও তদন্ত কমিটি কর্তৃক বিভিন্ন মাধ্যমে অনুসন্ধানে প্রাপ্ত ফ্যাক্স নম্বরে উক্ত এয়ারলাইন্সের চীফ এক্সিকিউটিভ অফিসার বরাবরে উক্ত ফুটেজ পাঠানোর ব্যবস্থা গ্রহণের জন্য বার্তা প্রেরণ করা হয়েছে **(পতাকা- জ)**। মহামান্য হাইকোর্টের সদয় নির্দেশনা অনুসারে ঐ ঘটনার সময়কার ভিডিও ফুটেজ পাওয়া গেলে রিপোর্টের সত্যতা ও যৌক্তিকতা বিষয়ে কমিটি অধিকতর স্পষ্ট সিদ্ধান্তে পৌছাতে সক্ষম হতো।*

*উক্ত রিট পিটিশন-এ বর্ণিত ঘটনার দিনে বাংলাদেশ মিশণ আবুধাবিতে নিযুক্ত বাংলাদেশের রাষ্ট্রদূত-এর নির্দেশক্রমে তৎকালীন লেবার কাউন্সেলর জনাব লতিফুল হক কাজমী মিশনের পক্ষ থেকে বিমান বন্দরে পিটিশনারকে সাহায্য করতে গিয়েছিলেন। তদন্ত কমিটির নোটিশের ভিত্তিতে জনাব কাজমী (বর্তমানে নৌবাহিনীতে কর্মরত কমান্ডার) কমিটির সামনে হাজির হয়ে ঘটনার প্রত্যক্ষদর্শী হিসেবে তদন্ত কমিটির সম্মুখে তাঁর বক্তব্য প্রদান করেছেন **(পতাকা-ঝ)**। তাঁর বক্তব্যে তিনি বলেন, তিনি ঘটনার দিন (২৮ জুন ২০১১) জনৈক ব্যক্তির ফোনের মাধ্যমে উক্ত ব্যক্তির স্ত্রী এবং কন্যাকে আবুধাবী এয়ারপোর্টে ইতিহাদ এয়ারওয়েজের একটি বিমান থেকে অফলোড করা হয়েছে মর্মে জানতে পারেন। বিষয়টি তিনি আবুধাবিতে নিযুক্ত বাংলাদেশের রাষ্ট্রদূতকে অবহিত করলে তার নির্দেশে জনাব কাজমী বিমানবন্ধরে যান। সেখানে কর্তব্যরত বিমানবন্দরের ডিউটি পুলিশ ম্যানেজার তাঁকে জানান যে, বোডিং পাস-এ সীল না থাকাকে কেন্দ্র করে বাদানুবাদের এক পর্যায়ে ইতিহাদের টরোন্টোগামী ফ্লাইট থেকে দুইজন যাত্রীকে অফলোড করা হয়। পরে ডিউটি পুলিশ ম্যানেজারকে সাথে নিয়ে দেড়-দুই ঘন্টা খুঁজাখুঁজির পর তিনি মিজ বৃষ্টি ও তার মাকে ট্রানজিট এলাকায় খুঁজে পান। মিস বৃষ্টি ও তার মা তাদের অফলোড করার বিষয়ে অত্যন্ত ক্ষুব্ধ প্রতিক্রিয়া ব্যক্ত করেন। এসময়ে কর্তব্যরত ডিউটি পুলিশ ম্যানেজার এর সাথে পিটিশনারদের উত্তপ্ত বাক্য বিনিময় হয় এবং এ পর্যায়ে জনাব কাজমী রাষ্ট্রদূত এর সাথে ফোনে যোগাযোগের মাধ্যমে পরিস্থিতি শান্ত করেন। জনাব কাজমী পিটিশনার ও তার মাকে বিমানবন্ধরের ফুড কোর্টে আপ্যায়ন করেন এবং তাদেরকে ট্রানজিট হোটেল-এ রাখার ব্যাপারে ইতিহাদের সাথে কথা বলে তা নিশ্চিত করেন। এরপর পরিস্থিতি স্বাভাবিক হলে পিটিশনার ও তাঁর মাকে ফুড কোর্টে রেখে তিনি বিমান বন্দর ত্যাগ করেন মর্মে তাঁর বক্তব্যে উল্লেখ করেন।*

তদন্ত কমিটির মতামতঃ

পিটিশন-এ উল্লিখিত ঘটনার বিষয়ে বাদীর সরাসরি মৌখিক কোন বক্তব্য এবং ইতিহাদ এয়ারওয়েজ থেকে মহামান্য আদালত কর্তৃক নির্দেশিত ঘটনার ভিডিও ফুটেজ পাওয়া যায়নি। রিট পিটিশন নং- ৬০৪৯/২০১১-এর মামলার সার্বিক পর্যালোচনা, বাদীর লিখিত বক্তব্য, সাক্ষীদের সাক্ষ্য এবং মামলা সংশ্লিষ্ট ব্যক্তিদের বক্তব্যের ভিত্তিতে তদন্ত কমিটি নিম্নোক্ত সিদ্ধান্তে উপনিত হয়েছেঃ

- *২ জুলাই ২০১১ খ্রিঃ তারিখের "The Daily Star" পত্রিকায় প্রকাশিত প্রতিবেদন-এ বর্ণিত বাংলাদেশী দুই নাগরিককে ইতিহাদ এয়ারওয়েজের কর্মকর্তা কর্তৃক রুঢ় আচরন ও অসহযোগিতা করা হয়েছিল বলে কমিটি মনে*

করে। দুই জন নারী যাত্রীকে শুধু বাকবিতন্ডার সুত্র ধরে বিমান থেকে অফলোড করা সমীচীন হয়নি এবং তাদের প্রতি হয়রানিমূলক আচরণ করা হয়েছে মর্মে তদন্ত কমিটি মনে করে।

- *ঘটনা পর্যালোচনায় দেখা যায় বোর্ডিং পাস-এ সীল প্রদানের জন্য নিজ নিজ পাসপোর্টসহ যাত্রীসারিতে দাড়ানোর কথা থাকলেও মিজ বৃষ্টির মা সেটি করেননি। এই বিষয়কে কেন্দ্র করেই পরবর্তী অপ্রীতিকর ঘটনাগুলো ঘটে। একটি আন্তর্জাতিক বিমানবন্দরে আন্তর্জাতিক নিয়ম অনুযায়ী আচরণ করাটাই সমীচীন ছিলো মর্মে কমিটি মনে করে।*
- *ইতিহাদ এয়াওয়েজ একটি পেশাদারী এয়ারলাইন্স হওয়া সত্ত্বেও দুইজন নারী যাত্রীর সাথে তাদের আচরণ অত্যন্ত দুঃখজনক। যাত্রীদের ভুলের কারনেও যদি বোডিং পাস-এ সীল না হওয়ার মত ঘটনা ঘটে থাকে, তবু এই বিষয়ে উক্ত এয়ারলাইন্স-এর আন্তরিকভাবে সহযোগিতা করা উচিত ছিল বলে তদন্ত কমিটি মনে করে। তবে এক্ষেত্রে সার্বিক পর্যালোচনায় হয়রানির বিষয়টি প্রমাণিত হলেও পিটিশনার ও তার মার জীবনের প্রতি হুমকি ও নির্যাতনের বিষয়টি প্রমানিত হয়নি।*
- *ইতিহাদ এয়ারওয়েজ কর্তৃক প্রদানকৃত রিপোর্ট পুরো ঘটনার দায় মিস বৃষ্টি ও তাঁর মাকে দেয়া হয়েছে। কিন্তু একজন যাত্রীর বোডিং পাস-এ সীল না দেখা এমনকি বিষয়টি উপস্থিত ইতিহাদ কর্মকর্তাদের অবগতির পরেও বাকবিতন্ডায় সময় ক্ষেপন হয়েছে কিন্তু বিষয়টি সমাধান করা হয়নি। উপরন্তু যাত্রী দুইজনের মালামাল অফলোড করা হয়েছে। এতে করে দুইজন নারী যাত্রী তাদের গন্তব্যে পৌছাতে না পেরে অনিশ্চিত পরিস্থিতির সম্মুখীন হয়েছেন। ইতিহাদ এয়ারওয়েজ এর এই আচরনে পেশাদারিত্বের অভাব ছিল মর্মে কমিটি মনে করে।*
- *ঘটনার বিভিন্ন পর্যায়ে পিটিশনার-এর আরো সংযত আচরণ করা উচিত ছিল বলে কমিটি মনে করে। এমনকি দূতাবাসের প্রতিনিধি বিমান বন্দরে যাওয়ার পরও বাকবিতন্ডার ঘটনা ঘটেছে। পিটিশনার-এর এ ধরণের আচরণ সমীচীন হয়নি বলে তদন্ত কমিটির কাছে প্রতীয়মান হয়েছে।*
- *মালামাল অফলোডের পর ইতিহাদ এয়াওয়েজের পক্ষ থেকে পিটিশনার ও তাঁর মাকে তিনটি বিকল্প দেয়া হয় এবং বিকল্পসমূহের মধ্যে তাঁরা টরোন্টো না গিয়ে বাংলাদেশে ফেরত আসার বিকল্পটি গ্রহন করেন। এতে আর্থিক সংশ্লেষের বিষয় ছিল কিন্তু এক্ষেত্রে ইতিহাদ এয়াওয়েজ আর্থিক দায়ভার গ্রহণ করেনি। এয়ারলাইন্সটির এধরনের আচরন সমীচীন হয়নি বলে তদন্ত কমিটি মনে করে।*
- *ঘটনার দিন আবুধাবিস্থ বাংলাদেশ দূতাবাস সময়মত দ্রুততার সাথে সঠিক ভূমিকা পালন করেছেন মর্মে এই কমিটি মনে করে। আবুধাবিতে কর্মরত তৎকালীন লেবার কাউন্সেলর জনাব লতিফুল হক কাজমী-এর বক্তব্য এবং পিটিশনার এর লিখিত বক্তব্যে এই বিষয়টি স্পষ্ট হয়েছে।*

বিষয়টি মহামান্য আদালতের সানুগ্রহ বিবেচনার জন্য প্রেরণ করা যেতে পারে।

স্বা/- অস্পষ্ট *স্বা/- অস্পষ্ট* *স্বা/- অস্পষ্ট*

২১.০৩.২০১৯ *Tahsina Nasrin* *Senior Assistant Secretary* *Ministry of Foreign Affairs* *Dhaka* *(সদস্য সচিব তদন্ত কমিটি)*	২১.০৩.২০১৯ *Muhammad Mizanur Rahman* *Director* *Ministry of Foreign Affairs* *Dhaka* *(সদস্য, তদন্ত কমিটি)*	২১.০৩.২০১৯ *মোঃ জাহাঙ্গীর আলম* *মহাপরিচালক* *পররাষ্ট্র মন্ত্রণালয়, ঢাকা।*

গণপ্রজাতন্ত্রী বাংলাদেশ সরকারের পররাষ্ট্র মন্ত্রণালয়ের বিগত ইংরেজী ১৪.১১.২০১৮ তারিখে গঠিত তদন্ত কমিটি কর্তৃক ২১শে মার্চ, ২০১৯ তারিখে স্বাক্ষরিত তদন্ত প্রতিবেদন মোতাবেক এটি কাঁচের মত স্পষ্ট যে, ইতিহাদ এয়ারওয়েজের কর্মকর্তা এবং কর্মচারীগণ কর্তৃক দরখাস্তকারীনি এবং তার মায়ের সাথে অন্যায় আচরণ, রুঢ় আচরণ, অবহেলা, অপেশাদারী আচরণ, অসৌজন্যমূলক আচরণ করেছিল এবং দরখাস্তকারীনির মায়ের বোর্ডিং পাসের সীল এর বিষয়টি সমাধান না করে অন্যায়ভাবে দরখাস্তকারীনি এবং তার মাকে বাংলাদেশে ফেরত পাঠানো হয়েছিল।

সার্বিক পর্যালোচনা এবং আলোচনায় আমাদের দ্বিধাহীন মতামত হল দরখাস্তকারীনি এবং তার মায়ের সহিত ইতিহাদ এয়ারওয়েজ কর্তৃপক্ষের অবেহলা, হয়রানীমূলক আচরণ, জোর করে তাদের মালামাল বিমান থেকে নামিয়ে দেওয়া, বাংলাদেশে ফেরত টিকেট কিনতে বাধ্য করা এবং সর্বোপরী বেআইনীভাবে, অন্যায়ভাবে দরখাস্তকারী এবং তার মাতাকে টরোন্টো যেতে না দিয়ে বাংলাদেশে ফেরত পাঠানো ইতিহাদ এয়ারওয়েজ এর একটি অযৌক্তিক **(unreasonable),** অসদভিপ্রায় **(bad faith),** অসদদুদ্দেশ্যে **(malafide)** এবং স্বেচ্ছাচারী **(arbitrary)** কর্ম। সর্বোপরি ইতিহাদ এয়ারওয়েজের উপরিল্লিখিত কর্ম ন্যায়বিচার বা প্রাকৃতিক বিচার **(natural justice)** এর নিয়মবিরোধী বা পরিপন্থী। দরখাস্তকারী এবং তার মাকে বাংলাদেশে ফেরত পাঠানো ইতিহাদ এয়ারওয়েজের বেআইনী এবং এখতিয়ার বহির্ভুত কর্ম ছিল।

সুতরাং এটি নির্দ্বিধায় বলা যায় যে, ৭নং প্রতিপক্ষ ইতিহাদ এয়ারওয়েজ **The carriage by Air (International Convention) Act, 1966** এর প্রথম তফসিল এর চ্যাপ্টার ৩ এর অন্তর্ভূক্ত অনুচ্ছেদ ১৭ প্যারা ১ এ মোতাবেক দরখাস্তকারিনী ও তার মাতার ক্ষয়ক্ষতির জন্য দায়ী।

The carriage by Air (International Convention) Act, 1966 এর প্রথম তফসিলের চ্যাপ্টার ৩ এর ২২(১) অনুচ্ছেদে বলা হয়েছে যে, ***22. (1) In the carriage of persons the liability of the carrier for each passenger is limited to the sum of two hundred and fifty thousand francs. Where, in accordance with the law of the Court seized of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed two hundred and fifty thousand francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.***

অর্থাৎ ইতিহাদ এয়ারওয়েজ The carriage by Air (International Convention) Act, 1966 এর প্রথম তফসিলের চ্যাপ্টার ৩ অনুচ্ছেদ ২২ প্যারা ১ মোতাবেক যাত্রী প্রতি সর্বোচ্চ ২,৫০,০০০/- ফ্রাঙ্ক প্রদানে দায়বদ্ধ।

সার্বিক পর্যালোচনায় অত্র রুলটি চুড়ান্ত যোগ্য।

অতএব, আদেশ হয় যে, অত্র রুলটি চুড়ান্ত করা হলো।

আমরা, অতঃপর নিম্নলিখিত আদেশ এবং নির্দেশসমূহ প্রদান করলামঃ

(১) বৈশ্বিক মহামারী কভিট-১৯ সংকটজনিত কারনে ইতিহাদ এয়ারওয়েজের অবস্থা বিবেচনায় অত্র দরখাস্তকারীনি এবং তার মাতা প্রত্যেককে মাত্র ১(এক) কোটি টাকা করে ক্ষতিপূরণ প্রদানের জন্য ইতিহাদ এয়ারওয়েজ এর বাংলাদেশ প্রতিনিধি অত্র ৭নং প্রতিপক্ষের মাধ্যমে ইতিহাদ এয়ারওয়েজকে নির্দেশ প্রদান করা হলো।

(২) অত্র রায় ও আদেশের অনুলিপি প্রাপ্ত হওয়ার পরবর্তী মাস হতে ২০ (বিশ) টি সমান মাসিক কিস্তিতে উপরোল্লিখিত ক্ষতিপূরণের টাকা ইতিহাদ এয়ারওয়েজকে প্রদান করার জন্য নির্দেশ প্রদান করা হলো।

(৩) নারী যাত্রীদের সহিত অধিকতর সতর্কতার সাথে সম্মানজনক আচরণ করার জন্য ইতিহাদ এয়ারওয়েজকে নির্দেশ প্রদান করা হলো।

(৪) বৈদেশিক মুদ্রা অর্জনকারী বাংলাদেশী নাগরিকদের প্রতিনিয়তই সমগ্র বিশ্বে পাড়ি জমাতে হয় দেশী এবং বিদেশী আকাশ পথের পরিবহনে। এছাড়াও বৈদেশিক মুদ্রা অর্জনকারী বাংলাদেশী রপ্তানীকারকদের পণ্য প্রতিনিয়তই পরিবহন করা হয় সমগ্র বিশ্বে দেশী বিদেশী আকাশ পথের পরিবহনে। সতুরাং বৈদেশিক মুদ্রা অর্জনকারী বাংলাদেশী প্রবাসী সকল কর্মজীবি এবং রপ্তানীকারকদের স্বার্থ রক্ষার্থে এবং তাদের অধিকার আদায়ের নিমিত্তে বাংলাদেশের সকল দূতাবাস অত্র মোকদ্দমাটির উপর ভিত্তি করে সভা, সেমিনার আয়োজন করে প্রবাসী কর্মজীবীদের এবং বৈদেশিক মুদ্রা অর্জনকারীদের আকাশপথে যাত্রী ও পণ্য পরিবহনের বিমান সংস্থার দায়বদ্ধতার বিষয়ে তাদের ওয়াকিবহাল করবেন। যাতে আকাশ পথে যাতায়াতের সময় ক্ষতিগ্রস্থ হলে যথাযথ ক্ষতিপূরণ তারা আদায় করতে সক্ষম হন।

(৫) আকাশ পথে যাত্রী এবং যাত্রীর লাগেজ, পণ্যের মালিকের অধিকতর নিরাপত্তা সুনিশ্চিত করার জন্য **International Civil Aviation Organization (ICAO)** কে আরও বেশি তৎপর হতে হবে। বর্তমান **ICAO** এর কার্যক্রম যতটা যাত্রী বান্ধব তার চেয়ে বেশী পরিবহন সংস্থা বান্ধব। যেহেতু বর্তমান বিশ্বে যাত্রী এবং পণ্য দ্রুত পরিবহনের অন্যতম তথা প্রধান মাধ্যম আকাশ পথ, সেহেতু আকাশ পরিবহন সংস্থা এবং যাত্রী সাধারণের মধ্যেকার দায়-দায়িত্বসমূহ আরও বেশী সহজ-সরল, সুনির্দিষ্ট এবং সুস্পষ্ট হওয়া

উচিত। বিশেষ করে সাধারণ যাত্রী এবং সাধারণ পণ্য মালিককে সুরক্ষা প্রদান সবচেয়ে গুরুত্বপূর্ণ। কারণ বিশাল বিমান সংস্থার সামনে সাধারণ যাত্রী নিতান্তই অসহায়। সেহেতু **ICAO** এর প্রধান উদ্দেশ্য এবং কাজ হবে সাধারণ যাত্রীরা যেন তার অধিকার আদায়ে কিংবা তার ক্ষতিপূরণ আদায়ে কোন প্রকার বাধা বিপত্তির সম্মুখীন না হয় সেটি দেখা। আকাশ পরিবহন কার্যক্রম পরিবহন সংস্থার লাভের জন্য নয়। বরং এটি আন্তর্জাতিক পর্যায়ের ভ্রমণকারীদের সেবা প্রদানের লক্ষ্যে পরিচালিত।

(৬) আন্তর্জাতিক আকাশ পরিবহন সংশ্লিষ্ট অত্র মোকদ্দমার বিষয়ে সময় উপযোগী এবং চোখ খুলে দেয়া প্রতিবেদনের জন্য **The Daily Star** পত্রিকা এবং এর রিপোর্টারকে বিশেষ ধন্যবাদ প্রদান করা হলো।

(৭) অত্র রায় ও আদেশের অনুলিপি **Judicial Administration Training Institute (JATI)** তে পাঠানোর জন্য রেজিষ্ট্রার জেনারেলকে নির্দেশ প্রদান করা হলো।

(৮) অত্র রায় ও আদেশের অনুলিপি আইন কমিশনের মাননীয় চেয়ারম্যান মহোদয়কে পাঠানোর জন্য রেজিষ্ট্রার জেনারেলকে নির্দেশ প্রদান করা হলো।

(৯) অত্র রায় ও আদেশের অনুলিপি বিদেশস্থ বাংলাদেশের সকল দূতাবাস এবং দূতাবাস সংশ্লিষ্ট সকল অফিসে ই-মেইলে পাঠানোর জন্য রেজিষ্ট্রার জেনারেলকে নির্দেশ প্রদান করা হলো।

(১০) অত্র রায় ও আদেশের অনুলিপি বেসামরিক বিমান চলাচল কর্তৃপক্ষ (বেবিচক) এর চেয়ারম্যান বরাবরে ই-মেইলে পাঠানোর জন্য নির্দেশ প্রদান করা হলো।

(১১) অত্র রায় ও আদেশের অনুলিপি বাংলাদেশ বেসামরিক বিমান পরিবহন ও পর্যটন মন্ত্রণালয়ের সচিব এবং মাননীয় প্রতিমন্ত্রী বরাবরে ই-মেইলে পাঠানোর জন্য রেজিষ্ট্রার জেনারেলকে নির্দেশ প্রদান করা হলো।

(১২) অত্র রায় ও আদেশের অনুলিপি **International Civil Aviation Organization (ICAO)**-কে ই-মেইলে পাঠানোর জন্য রেজিষ্ট্রার জেনারেলকে নির্দেশ প্রদান করা হলো।

বিচারপতি রাজিক আল জলিল

আমি একমত