LIABILITY IN THE INSURANCE OF AIR TRANSPORT RISKS: A COMPARATIVE STUDY

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Abstract *– With the advent of air transport, its importance has increased due to its brisk activity and high efficiency. This study addresses a very important issue, namely aviation liability insurance, especially in light of the increasing number of aircraft accidents and the deterioration of compensation claims associated with a decline in confidence and safety. The study relies on an analytical-descriptive approach to highlight the most important aspects of this topic. In addition, a comparative methodology is applied and the position of the international conventions regulating air transport in relation to air transport insurance coverage is examined. It is found that liability insurance is one of the most important guarantees for airline liability and the protection of passengers and victims in general, as it serves as an important mechanism for the compensatory protection of victims. The sums insured are within the limits of liability established by law.*

Keywords: *insurance; Airline liability; aviation insurance contract; risks; air carrier.*

INTRODUCTION

The history of mankind testifies to the central importance of transport in social life and in the history of civilization of mankind as a whole. With the development and rise of aviation in the national and international transport of people and goods, mankind has succeeded in conquering nature and using the machine - as well as airspace - for its economic interests, not only in the air but also in space. If transportation characterizes our modern age, it is only natural that air transportation has become one of its necessities, since airplanes can cover great distances in a short time due to their exceptionally high speed: a feat that cannot be matched by other means of transportation. Moreover, it does not need paved roads, so it can play its role as a means of transportation in the air and ensure its continuity in different circumstances. Therefore, air transport has become a mainstay of the modern economy, to such an extent that it has become an indispensable necessity for it. This is especially true for passenger and freight transportation.

The international nature of air transport has led to an increase in the potential risks to which the air transport industry is exposed, despite the enormous scientific progress that this sector has made in modern times. It is undeniable that air carrier liability is one of the most important and significant issues that aviation raises, and it is the most vulnerable and controversial in the jurisdiction. Whenever an air carrier fails to meet its obligations and cannot prove that it is not at fault, its liability is established and it is held responsible to compensate passengers and cargo shippers for the damages suffered. This is where the importance of insuring the carrier's liability against air cargo risks comes into play. However, the issue of air cargo insurance encounters many difficulties and complex legal problems, the most important of which is the adequacy of the insurance itself to compensate those affected by the carrier's liability, especially given the expansion and scope of the need for catalytic parallel jurisdictions to cover all damages arising from air cargo risks.

The international community has placed great emphasis on developing regulatory regimes for air passengers and cargo carrier liability that provide both economic and legal protection for air passengers and cargo carriers to grow and prosper, and that serve the interests of air passengers and cargo customers, ultimately leading to the growth and promotion of the air passengers and cargo industry. Insurance is at the forefront of legal guarantees that provide indemnity for air transportation risks.

Aviation insurance plays an important role, especially in the case of air accidents, as it holds the air carrier liable for damages to passengers, baggage or cargo. Therefore, it is important to study the liability of air passengers and cargo insurance.

The purpose of this study is to shed light on the scope and limitations of air passengers and cargo insurance. The main purpose is to explain the current situation in national legislation and to review what international conventions have established in this regard.

The problem of the study arises from the inadequacies of Jordanian law in terms of procedural or substantive guarantees that would ensure the right of the injured party who bears the risks of aviation insurance, since they are not regulated and are only mentioned. Moreover, there are few jurisprudential studies that do not deepen or adequately address these issues, not to mention the discrepancies in the results. The problem of the study is to define the scope of the carrier's liability, to clarify whether the insurance covers the risks of air transport, and to determine the limits of compensation for air transport.

METHODOLOGY

The article focuses specifically on comparing the liability aspects of air passenger and auto transport insurance between Jordan and Egypt. The objective of this study is to conduct a comparative analysis of the liability aspects of air passenger and transportation insurance between Jordan and Egypt. Data were collected from primary and secondary sources: i. Legal framework: Applicable laws, regulations, and statutes related to air transportation, insurance, and liability in Jordan and Egypt, as well as specific provisions relevant to passenger and carrier liability, were identified. ii. International Conventions: International conventions and treaties governing air transport liability and insurance coverage were analyzed. iii. Relevant case studies from Jordan and Egypt dealing with passenger and air carrier liability and insurance were analyzed. These cases can provide practical insight into how liability issues are handled and how insurance coverage is determined.

Comparative Methodology Identify the key areas of comparison between Jordanian and Egyptian passenger and air carrier liability laws with respect to insurance coverage. Compare the relevant provisions of Jordanian and Egyptian legislation side by side. Analyze the similarities, differences, and divergent approaches to passenger and air carrier liability in the area of insurance. This study also undertakes a legal interpretation of the identified provisions, taking into account legal principles, court decisions and legal commentaries. Finally, the results of the comparative analysis and recommendations have been summarized to provide recommendations for possible improvements or harmonization of the legal frameworks in Jordan and Egypt, and to propose measures to improve the efficiency and fairness of insurance coverage for passengers and air carriers.

CONCEPTUALIZATION OF LIABILITY IN THE INSURANCE OF AIR TRANSPORT RISKS

Aviation insurance was the subject of heated debate in the early days of the aviation industry, because air travel was considered a dangerous adventure at the time. As a result, insurers specifically excluded aviation risks from their life insurance policies. Later, however, and with advances in aviation technology, this concept of aviation insurance began to change as technical and technological advances helped to defuse the specter of many risks associated with air travel and alleviate insurers' concerns. The remarkable relative decline in aircraft catastrophes compared to the number of flights and passengers went a long way toward allaying fears once associated with aviation insurance[1].

The Montreal Convention provides some guarantees to ensure that victims are compensated for the damage they have suffered from aviation. There are two types of guarantees: liability insurance and advance payment[2]. The fiftieth article of the Convention states, "States Parties shall require their air carriers to maintain adequate insurance to cover their liability under this Convention." In addition, "an air carrier may be required by the Contracting State to which it flies to furnish evidence that it maintains adequate insurance to cover its liability under this Convention," making liability insurance mandatory. We will discuss the definition of aviation insurance and its origins in the following two subsections.

[1] Dr. Abu Zaid Radwan: *AL-QANOUN AL-JAWWI, QANOUN AT-TAYRAAN AT-TIJARI "[AIR LAW, COMMERCIAL AVIATION LAW],"* Dar al-Fikr al-Arabi, 1995, p. 369.

[2] Dr. Muhammad Farid al-Arini, Op. cit. pp. 343-44.

1. Definition and Characteristics of Aviation Insurance

Perhaps the most important obligation of the air carrier provided for in the contract of transportation is to ensure the safety of the passengers, to preserve and maintain the goods, and finally to change the destination within a reasonable time if no specific time of transportation has been agreed upon. The air carrier is obliged to ensure the safety of the passengers, i.e. it is obliged to bring the passengers safely and unharmed to the agreed destination, otherwise it is liable for the damage caused to them. Such an obligation is expressly provided for in the Warsaw Convention[1] in its seventeenth article: "The carrier shall be liable for the damage caused by the death or wounding of a passenger or by any other bodily injury to a passenger, if the accident which caused the damage occurred on board the aircraft or during boarding or disembarkation." The carrier is also obligated to provide for the preservation of the goods. This obligation is expressly provided for in both the Warsaw Convention and the Fourth Montreal Protocol; otherwise, he is liable for the loss of or damage to the goods, as stated in the Eighteenth Article of the Warsaw Convention and the Fourth Article of the Protocol: "The carrier shall be liable for the damage caused by the destruction of, loss to, or damage to baggage or goods, if the event which caused the damage occurred during transportation by air."

The insurance contract in the legal provisions

The Jordanian legislature defines an insurance contract in Article (983) of the Jordanian Civil Code as "a contract by which the insurer undertakes to pay to the insured or the beneficiary for whose benefit the insurance was taken out, in return for a premium or other specified financial consideration , to pay a sum of money or an annuity, to pay a sum of money or an annuity or any other pecuniary benefit upon the occurrence of the accident against which he is insured or upon the realization of the risk specified in the contract"," this article corresponds to Article (747) of the Egyptian Civil Code.

Article (4) of the Jordanian Civil Aviation Law[2] states that "the provisions of the collective and bilateral international treaties and agreements on civil aviation to which the Kingdom is a party shall be applied in the Kingdom"

The Jordanian legislature regulated the aviation insurance contract under no special provisions; that is, it is governed by the general rules of insurance contained in the Jordanian Civil Code, in addition to the Law of Insurance for Aircraft, Pilots, Passengers of Royal Jordanian Air Force[3], which sets forth, in its Third Article, that “a fund shall be established in the Air Force for the purposes of insurance for aircraft, pilots and passengers of the Air Force.” With the enactment of this Law, it was forbidden to insure the Air Force’s pilots, crews and passengers at the insurers inside the Kingdom[4]. Added thereto is the Jordanian Commercial Law, promulgated by Law No. 12 of 1966[5], with all amendments until 2032. This Law contains special provisions for Transportation by Air as well as general provisions for transportation, and provisions related to the transportation of things.

The Egyptian legislature enacted Civil Aviation Law, promulgated by Law No. 28 of 1981 on April 09, 1981, amended by Law No. 12 of 2018[6], in order to regulate all matters related to air navigation. In enforcement of its provisions, Minister of Aviation Decree No. 1 / A of 1989 was promulgated on Enactment of the Executive Regulations for the Civil Aviation Law. Added thereto is the Jordanian Commercial Law, promulgated by Law No. 17 of 1999 on May 17, 1999[7]. This Law contains special provisions for Transportation by Air as well as general provisions for transportation, provisions related to the transportation of things, others related to the transport of persons and other provisions. The

1 Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999 (Doc 9740). History: International Conference on Air Law, Montreal, 10 to 28 May 1999.
2 The Hashemite Kingdom of Jordan, Civil Aviation Law, promulgated by Law No. 41 of 2007, dated 31/05/2007.
3 Insurance Regulations for Aircraft, Pilots, Passengers of Royal Jordanian Air Force, enacted by Law of 1975, promulgated in Official Gazette Issue No. 2541 on 01/03/1975.
4 Article (14) of Insurance Regulations for Aircraft, Pilots, Passengers of Royal Jordanian Air Force, enacted by Law of 1975: “Insurance for the Air Force’s pilots, crews and passengers shall not be made at the insurers inland and abroad subsequent to the enforcement of the provisions hereof.”
5 Official Gazette, Issue No. 1910 on 30/03/1966, p. 472.
6 Official Gazette, Issue No. 7/ F (bis.) on 21/02/2018.
7 Official Gazette, Issue No. 19 (bis.) on 17/05/1999.

Egyptian legislature indicated in the First Paragraph of Article (285) of the Law that International Transportation by Air is governed by the provisions of international conventions in force in Egypt.

1. Aviation Insurance Contract defined

Aviation Insurance Contract is defined as "a contract, whereby the insurer shall, in consideration of an agreed-upon premium, undertake to compensate the insured for the damage sustained as a result of aviation accidents, provided that the quantum does not exceed the amount of damage sustained due to the materialization of the risk, against which it has been insured.[1]" Aviation Insurance Contract is also defined as "a contract, into which is entered by the aircraft owner or aircraft operator to protect against the risk of loss of or damage to the aircraft. Under this contract, the insurer shall, at its discretion, undertake to compensate, replace, or remedy any material damage that might occur to the aircraft due to aviation hazards. Additionally, it shall provide compensation to all those affected by the aircraft accident.[2]"

Despite the definitions cited for the Aviation Insurance Contract, they do not clearly signify what this contract is meant by. This is due to the fact that the Jordanian Civil Aviation Law did not address a definition of the aircraft insurance contract, as it focused its attention on the land and sea domains, overlooking airspace. Although it is no less important than them in terms of the international character of Transportation by Air and the gravity of risks, to which the aircraft is exposed, it is therefore found that Aviation Insurance can be defined as: "such type of contract that covers the risks, to which the aircraft or its cargo is exposed, and which are arising from accidents related to the operation, maintenance, repair or manufacture of the aircraft, as well as transportation accidents and liability for them."

As for the conceptualization of Aviation Insurance in international conventions, it is found that the international conventions that regulate the rules of Transportation by Air did not attach importance to the definition of Aviation Insurance, and did not regulate its provisions because the Warsaw Convention of 1929 did not address insurance against the liability of the air carrier for the damage to the traveler or the consignor of the goods. The Hague Protocol of 1955 sufficed recommending to the contracting states the need to develop a scheme for ensuring payment of the damages prescribed in accordance with the Warsaw Convention, and in contrast to the Rome Convention of 1952, which contained in Chapter III Security for the Air Carrier's Liability vis-à-vis the Damage caused by the Foreign Aircraft to Third Parties on the Surface. Article (15) of the Rome Convention stipulated insurance as security for the air carrier's liability vis-à-vis such damage. Then, the Montreal Convention of 1999 introduced a procedure for the compulsory nature of the Air Carrier Liability Insurance under the provision of Article (50) thereof, which matter prompts us to say that the Montreal Convention was the step towards unifying the provisions of the Air Carrier Liability at the international arena.

2. Transportation by Air Risks conceptualized

Risks are tantamount to a nexus between the probable occurrence of an event and the resultant consequences thereof. It is no secret to anyone that an aircraft, which is the instrument of aviation navigation, might be exposed to substantial risks during its flight. These risks often lead to catastrophic upshots, both internationally and domestically[3]. Not to mention the terrorist acts of aircraft hijacking and seizure[4]. Furthermore, the recent advancements in unmanned aerial vehicles (UAVs), whether for

1 Dr. Hani Duwidar: "at-Ta'min al-Jawwi, [Aviation Insurance]," Proceedings of the Annual Scientific Conference of the Faculty of Law: al-Jadid fi Majaal at-Ta'min wad-Daman "[The Newly-Introduced Novelties in the Insurance and Compensation Industry]—Beirut Arab University, Faculty of Law, Volume/ Part II, Lebanon, 2006, p. 110.

2 Dr. Alaa Aziz Al-Jabouri and Dr. Hassanein Mikki Judy, "'Aqd at-Ta'min 'ala at-Ta'irah (Dirasat Muqaaranah) [Aircraft Insurance Contract (A Comparative Study)]," Ahl al-Bayt University Journal, Issue 20, 2016, p. 350.

3 Roland Müller: Droit Aérien, Droit Aérien Théorie et Pratique, Bak, Swiss edition, 6e édition , Aéro - Club der Schweiz, 2017,P.7, in /www.alexandria.unisg.ch, visité le 25/5/2023.

4 Dr. Ibrahim al-Mansouri al-Qahlani, "Mas'ouliyat an-Naaqil al-Jawwi fi Itaar at-Tashri'aat al-Wataniyah wal-Itifaqaat ad-Dawliyah [Air Carrier's Liability in the Framework of National Legislation and International Conventions]," Maktabat al-Wafaa al-Qanouniyah, Alexandria, 1st Edition, 2017; p. 139 et seqq.

recreational or professional purposes, have raised questions about the emerging risks associated with their usage and how to address them. An exemplification of such risks is the incident that occurred in Mozambique on January 05, 2017, where a Boeing 737-700 aircraft suffered grave damage during the landing phase due to colliding with an unmanned aerial vehicle, which was completely destroyed[1].

Based on the international character of Transportation by Air and the inseparable link between aviation risks and commercial aircraft operations, there has become an urgent need for the international community to develop unified legal frameworks that would govern the provisions of International Transportation by Air.

Characteristics of Aviation Insurance Contract

The Chicago Convention of 1944[2] defined, in Paragraph (22) of its First Article, the Air Carrier as "every natural or juristic person operating, or offering for operating, airline(s) for the transportation by air of passengers, mail and/ or goods." The Jordanian and Egyptian legislatures quoted the same definition of the Air Carrier.

1. Aerial hazard

This is the risk to which the aircraft is exposed during flight. It can be a risk caused by an error, such as a collision, or by natural phenomena, such as thunderbolts and pests. A risk in aviation insurance contract is equivalent to the possible occurrence of an accident, without its occurrence depending on the will of one of the contracting parties. The risk in aviation is characterized by a rapid possibility due to the technical development of the aviation insurance contract, which leads to the fact that it is difficult to provide statistics on the percentage of possible risks[3].

2. International Character of the Aviation Insurance Contract

The Aviation Insurance Contract is of predominantly international character: this is evident through the numerous conventions that were successively followed to regulate its rules, the most important of which is the Rome Convention of 1952 on the Damage caused by Foreign Aircraft to Third Parties on the Surface, which contained a detailed regulation of the Aircraft Operators' Liability Insurance in accordance with the provisions of Article 15 to Article 18 thereof, and the Warsaw Convention and Protocols ended with the Montreal Convention of 1999, with the aim of Unification of the Rules and Provisions of International Transportation by Air, which superseded the Warsaw Convention, and was entered into force in November 2002. The Montreal Convention resulted in developing a set of doctrines, the most important of which are[4]:

1- Determining the Objective Liability for Transportation by Air vis-à-vis Aviation Accidents;

2- Determining the period of the Transportation by Air by expanding the Purview of the Air Carrier Liability; and

3- Obligating Airlines to insure their Contractual Liability for Aviation Accidents.

The substantial damages entitled against the risks of Transportation by Air have compelled the Montreal Convention to obligate the carrier to provide comprehensive liability insurance for all the items of damage that may arise from an aviation accident. This is done with the intention of ensuring the availability of financial resources for the Air Carrier to pay the rightfully-entitled damages.

1 Drones : L'Encadrement de l'Activité Indispensable à la Gestion des Risques, Journal Spécial des Sociétés, Droit Aérien, Paris, No 91, 2017, p.7.

2 Chicago Convention is a specialized agency of the United Nations charged with coordinating and regulating international air travel. The Convention establishes rules of airspace, aircraft registration and safety, and details the rights of the signatories in relation to air travel; it also exempts air fuels from tax, as deducted from the aforementioned Convention.

3 Dr. Ben Nasser Wahiba: "Mas'ouliyah al-Madaniyah 'an Hawaadith an-Naql al-Jawwi. [Civil Liability for Carriage by Air Accidents]," Dar al-Jami'ah al-Jadidah, 2014, p. 216.

4 Dr. Ben Issa Hayat, "at-Ta'min al-Jawwi ka-Du'aamah Li-Harakiyat an-Naql al-Jawwi [Air Insurance as a Support for Carriage by Air Traffic]," Revue Algérienne de Droit Maritime et des Transports, Fifth Issue, 2017, p. 12.

Importance and Typology of Aviation Insurance

Transportation by Air has become one of the fundamental pillars, upon which modern economic activity relies, to the extent that it has become an essential necessity of its. This is particularly true in the fields of passenger and cargo transportation[1]. Initially, insurance in Aviation Law, or Transportation by Air, emerged in a modest form, mainly following the principles of land and maritime transportation laws, where it was compulsory to resort to land and maritime insurance in this regard, without applying it to Transportation by Air. Subsequently, Transportation by Air Insurance Schemes appeared, including individual insurance and automatic insurance, to cover persons. Aviation insurance does not differ significantly from insurance in other systems, except in some minute matters. Moreover, it has taken on a compulsory nature in the Montreal Convention of 1999, to guarantee the rights of the affected party and protect the carrier from the items of damage to liability. This is due to the severity and enormity of aviation risks and their serious repercussions, prompting countries to emphasize its compulsory nature. Some even make the same a condition for the delivery of Transportation by Air documents[2].

The reason why countries emphasize the compulsory nature of aviation insurance, some of which make it a condition for the delivery of Transportation by Air documents, is that Aviation Insurance Contracts are considered among the most important insurance contracts. This is due to the severity, enormity, and serious repercussions of aerial risks, which have led the majority of countries to affirm its compulsory nature. Some even make it a condition for the delivery of Transportation by Air documents. It was only established in the wake of World War II. It is a distinct form of insurance with its own characteristics and features, rendering it different from other types of insurance. Consequently, we find various types of aviation insurance contracts, including insurance on carried goods, insurance on the fuselage of the aircraft itself, liability insurance, and other emerging forms of insurance. Through our extrapolation of the provisions of law related to aviation insurance, we find that air insurance is of three types, namely:

1. Fuselage Aviation Insurance

This type of insurance encompasses coverage of the fuselage of the aircraft, and the equipment necessary for its use and related thereto. It is the insurance contracted by the owner or operator of the aircraft against the risks of loss of and damage to the aircraft. Under this contract, the insurer undertakes to compensate everyone who is affected by the accident, in which the aircraft is hit[3].

2. Goods Aviation Insurance

It encompasses coverage against the items of damage, arising from the total or partial loss of the goods, or the decrease in their quantity and weight.

In this regard, the Jordanian Court of Cassation ruled—as precedential practice of its—as follows: "Whereas it has been established to the Court of Appeal that the company being sued, the carrier of the goods, shipped the medicines by air using its own aircraft to the Kingdom of Saudi Arabia, without considering the storage conditions of the medicines at a temperature below (8-2) degrees Celsius, contrary to the provisions of the Bill of Lading. This led to the damage to the goods while they were under the custody of the carrier. Furthermore, whereas these goods were insured by the Jordan International Insurance Company under to the Insurance Policy, having been produced amongst the statements of the Case. The Insurer compensated the Insured Company (to wit, Hikma Pharmaceuticals) for the actual damage that occurred, and the latter signed the settlement and discharge deed, through which it was proven the receipt of the quantum. Based on these facts, it is clear that they are sufficient for the subrogation of the Insurer Plaintiff in place of the Insured Company, considering the amount paid as compensation under the provisions of Article (926) of the Civil Code. Therefore, the finding, having

1 Dr. Muhammad Farid al-Arini; Op. cit., p. 55.
2 Khaled Adli Al-Amir: "'Āhkaam Mas'ouliyat an-Naaqil al-Jawwi [Provisions of the Air Carrier Liability]," Dar Munash'at al-Ma'aarif, 1998, p. 66.
3 Dr. Khamis Khidr: "Tatawur at-Tashri' al-Masri fi Maydaan an-Naql al-Jawwi, [The Evolution of Egyptian Legislation in the Field of Carriage by Air]," Research published in the Judiciary Journal, Issue No. 26, p. 201.

been reached, shall be in line with the rule of the law[1]." As for the provisions of the Air Carrier Liability Insurance, we will address them in the following section.

3. Provisions of the Air Carrier Liability Insurance

The obligation of the air carrier to pay compensation for Transportation by Air Risks oftentimes leads to adverse consequences for the Transportation by Aviation Enterprise[2]. On one hand, the Air Carrier may fail to pay the compensation amount, and on the other hand, its financial position may be affected, exposing its business enterprise to considerable loss[3]. In such a case, the Air Carrier resorts to insurance against these risks through liability insurance. In this scenario, insurers bear the compensation quanta, arising from the items of damage sustained by passengers and shippers.

Aviation insurance is the contract that covers the Transportation by Air Risks, which Transportation is carried out by means of an aircraft. It encompasses coverage against the items of damage that may befall the aircraft itself and its cargo, as well as the items of damage affecting passengers. Undoubtedly, the emergence and widespread adoption of the insurance schemes have had such an impact that made Air Carrier Liability Insurance a compulsory type of insurance. This indicates the superiority of the insurance scheme over the liability scheme.

4. Substitution of the Insurance Scheme for the Air Carrier Liability Scheme:

There is no doubt that insurance plays a significant role in covering the items of damage, arising from the dishonoring of the Air Carrier's obligations. This includes paying the damages entailed by the Air Carrier Liability, whether such liability arises from the Transportation of passengers, baggage, and goods or from delays. Aviation Insurance plays a vital role in Transportation by Air industry, as the Air Carrier becomes liable for the items of damage sustained by passengers, baggage, or cargo being carried in the event of an aviation accident[4]. Consequently, the Air Carrier bears the liability of compensation, in addition to the pecuniary burden incurred by the Air Carrier as a result of the loss of the aircraft, especially considering that engaging in aviation activities generally requires substantial financial investments in aircraft, equipment, employee salaries, and training[5]. All of this necessitates the indispensability of insurance for all those involved in the aviation industry.

Thus, the Air Carrier would turn to Liability Insurance[6] in order to mitigate the risks of air navigation. In this case, insurers shall bear the financial burdens of compensation for the items of damage sustained by passengers and shippers[7]. Every air carrier is obliged to subscribe to insurance that covers its liabilities for the items of damage incurred by passengers and carried cargo[8]. The evolution that has occurred in the nature and purview of Air Carrier Liability, particularly at the international arena, has stripped such liability of the notion of presumed error. In the Montreal Convention of 1999, it has transformed into an objective liability based on the concept of risks and assumption of consequential liability. The Air Carrier cannot escape such liability unless it proves the affected party's error, provided that the value of the damage does not exceed 100,000 Special Drawing Rights (SDRs). However, if the value of the damage exceeds this threshold, the Air Carrier can only escape liability by proving that the damage is not due to

1 Jordanian Court of Cassation's Precedential Practice in Cassation Appeal No. 1225 of 2021 – Droitural, Qistas Website: https://qistas.com/

2 Dr. Muhammad Farid al-Arini; Op. cit., p. 256.

3 Dr. Hani Duwidar; Op. cit., p. 317.

4 Isabella H. Ph .Diederiks –Verschoor: An introduction to Air Law, Wolters Kluwer, The Netherlands, Ninth Revised Edition. 2012. p.328.

5 Dr. Hani Duwidar; Op. cit., p. 461.

6 The Montreal Convention of 1999 has made Liability Insurance of compulsory nature as provided for in Article (50) thereof. With its entry into force, international air carriers will be compulsorily obligated to insure their civil liability.

7 Dr. Abu Zaid Radwan: al-Qanoun al-Jawwi, Qanoun at-Tayraan at-Tijari "[Air Law, Commercial Aviation Law]," Dar al-Fikr al-Arabi, 1995, p. 317.

8 E. Du PONTAVICE, Assurances Aériennes, Recueil Assurances Aériennes, Rép.com, Dalloz, Paris, 1972, p. 87.

the negligence or other wrongful act or omission of the carrier or its servants or agents, and that the damage is solely due to the negligence or other wrongful act or omission of a third party[1].

To that end, Article 57 of the Jordanian Civil Aviation Law, promulgated by Law No. 41 of 2007[2], sets forth that: "A. Every aircraft operator operating within the territory of the Kingdom or its airspace shall secure adequate insurance as determined by the Council's instructions to cover their liability, as well as the liability of their employees, agents, and servants, for the items of damage incurred by passengers, baggage, cargo, and property on board the aircraft and on the surface, including the aircraft crew and the employees affiliated with the aircraft operator." This provision aims to provide adequate assurance against the risks associated with Transportation by Air.

5. Interconnectivity of Air Carrier Liability to Aviation Insurance:

The Insurance Scheme is the driving force behind the development of the nature and purview of Air Carrier Liability. This is because the requirements of Air Carrier Liability. Insurance necessitate setting a maximum limit for such Liability in order for it to be covered by the Insured Amounts. Unlimited Liability Insurance seems to be an unattainable tall order, especially when it comes to the Air Carrier Liability for the items of damage incurred by individuals[3]. The risks of Transportation by Air require compulsory insurance against the hazards surrounding passengers and cargo to compensate for the risks they may face during the Transportation by Air Process. Insurance against Transportation by Air Risks has been the real impetus behind many court judgments that expand the determination of Air Carrier Liability, where the Insurer subrogates the Air Carrier, and bears the liability for compensating the items of damage, arising from Transportation by Air[4].

Air Carrier Liability Insurance Limits

The assessment of the Air Carrier Insurance Liability is interconnected to the determination of the carrier's liability in accordance with the provisions of the Transportation by Air Contract. International Transportation by Air Contracts are governed by the Warsaw Convention for Unification of Certain Rules for Transportation by Air, dating back to 1929 and its subsequent amendments. In addition, they shall also adhere to the general conditions of the International Air Transport Association (IATA). According to this Convention, the Air Carrier Liability for compensating passengers' death, injury, or material damage to baggage and cargo during international flights shall be limited to a maximum quantum, unless the carrier's omission in limiting its liability in the travel documents is proven. As for domestic transportation by air, many national legislations have resorted to incorporating the provisions of the Warsaw Convention into the specific terms of domestic transportation by air contracts.

Regarding Compensation for Liability towards Third Parties on the Surface, it is determined by assessing the Aircraft Operator's Liability in accordance with national laws in the case of domestic aircraft accidents, or in accordance with the provisions of the Convention on the Damage caused by Foreign Aircraft to Third Parties on the Surface, known as the Rome Convention signed on October 07, 1952, in relation to Foreign Aircraft.

Jordan acceded the Warsaw Convention by virtue of the Civil Aviation Law No. 50 of 1985, where Article 122 thereof provided: "1- The provisions of the Convention for the Unification of Certain Rules for International Transportation by Air, signed in Warsaw on October 12, 1929, and its amending conventions, to which the Kingdom has acceded, and which are published under this law, shall apply to the transportation by air of passengers, baggage, and cargo. 2- The provisions of Paragraph (A) shall apply to domestic transportation unless otherwise provided.[5]"

1 Article (21/ 2) of the Montreal Convention of 1999.
2 Jordanian Civil Aviation Law, promulgated by Law No. 41 of 2007, as Amended by Jordanian Civil Aviation Law No. 15 of 2021.
3 E.Du Pontavice, Transports Aériens, Rép.com, Dalloz, Paris, 1974.
4 E. Du PONTAVICE, Assurances Aériennes, Recueil Assurances Aériennes, Rép.com, Dalloz, Paris, 1972. p. 87.
5 Jordanian Civil Aviation Law No. 50 of 1985.

Therefore, the provisions of compensation provided for in the Warsaw Convention and its amending conventions apply to the Air Carrier Liability for the items of damage that would occur during Jordanian flights. There are two types of liability that are incurred by the Air Carrier:

1. Air Carrier Limited Liability:

The Warsaw Convention and the Egyptian Commercial Law have established the Air Carrier Liability based on the presumed contractual fault, just as the Egyptian Commercial Law sets forth the presumed liability when the desired upshot of transportation is not materialized. This serves the intended purpose of protecting the interests of transportation service recipients, whether they are passengers or shippers, by exempting them from proving the carrier's fault[1]. Thus, the Warsaw Convention and the Egyptian Commercial Law set maximum limits for compensation that the air carrier is requiredly obligated to pay in the event of aviation liability being materialized[2].

Consequently, the Air Carrier Limited Liability implies its obligation to pay a specified amount to those who have suffered damage[3] as a result of its failure to honor its obligations arising from the Transportation by Air Contract[4]. The principle of estimating compensation can be justified in two aspects. Firstly, it avoids the adverse effects on the parties involved in transportation by air, as the air carrier is held liable for compensating all the items of damage arising from an aviation accident. It is not limited to the air carrier alone but extends to insolvency of the transportation by air institutions. This would impact air navigation. Secondly, the specified damages ensure the continued operation and prosperity of air exploitation by enabling the possibility of insuring against aviation risks through the advance calculation of such risks.

Article (22/1) of the Warsaw Convention, amended by the Hague Protocol of 1955, provided that "[i]n the transportation 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." The amendment by the Hague Protocol to the original provision of the Warsaw Convention incorporated two updates. The first update was a monetary amendment by doubling the maximum compensation limit to 250,000 francs instead of 125,000 francs. This amount was further increased according to the Guatemala Protocol Amendment of 1971 to One-Million and Five-Hundred Thousand francs in case of bodily injuries, and Two-Hundred and Sixty-five Thousand francs in case of delay per passenger. The second update was a revision in the wording by replacing the phrase "for each passenger" with the phrase "of each passenger" in order to eliminate any ambiguity in the original provision of the Warsaw Convention. The amount of 250,000 francs[5] represents the maximum compensation limit for the transportation of passengers[6]. On such basis, the carrier is obligated to pay this amount, whether the damage, sustained by the passenger, encompasses compensation for the damage arising from the delay in the passenger's arrival or not[7]. In accordance with Article (22/4) of the Warsaw Convention, amended by the Hague Protocol of 1955, provided that compensation for the damage to carry-on baggage that passengers would bring with them on board the aircraft is limited to a

1 The liability of the air carrier shall not be extinguished unless the air carrier has taken all necessary measures to avoid the fault, or if it had another cause for exemption from liability in accordance with the general rules. (Egyptian Court of Cassation's Precedential Practice, at the March 7, 2000 Hearing, in Cassation Appeal No. 1050 of 69th JY).

2 Dr. Mahmoud Ahmed Al-Kandari, "an-Nizaam al-Qanouni lin-Naql al-Jawwi ad-Dawli wifqaan li-Itafaaqiyat Montreal Lisanat 1999, [The Legal System of International Carriage by Air in Accordance with the Montreal Convention of 1999]," Updating the Warsaw Convention, Scientific Publishing Council, Kuwait University, 2000, pp. 159-60.

3 Dr. Samiha al-Qalyubi; Op. cit., p. 204.

4 Cour de Cassation (1ere ch. Civ., 3 juin 1970, Mache c/ Air France, note. Gerard Cas, R.G.A.E, P. 300.

5 Jean-Pierre Tosi: Responsabilité Aérienne, Litec, Paris, 1978, No 223, P. 102 et s, Michel Alter, Op. cit., p.114
q.v. Dr. Hafizah al-Sayyid al-Haddad, "al-Qanoun al-Jawwi [Air Law]," p. 164.

6 Michel de Juglart: Traité de Droit Aérien, Tome 2, L.G.D.J, 2e Édition, 1992, No 3270, p. 395 et s.

7 Dr. Hani Duwidar: al-Wajeez fi Qanoun at-Tayaraan at-Tijari, [The Compendium in Commercial Aviation Law]," Dar al-Jami'ah al-Jadidah – Alexandria, 2014, p. 224.

sum of five thousand francs for each passenger under the Warsaw Convention. As for the Air Carrier Liability for registered luggage and goods, Article 22, Second Paragraph (A) of the Warsaw Convention, provided that "[i]n the transportation 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." Out of the foregoing, it becomes evident that when determining the maximum compensation for damaged goods, the weight criterion is adopted rather than the number of packages or units of the carried objects. The amount is limited to two hundred and fifty francs per kilogram[1], taking into account the provisions related to the aircraft's cargo. When the damage befalls a part of the registered baggage or cargo without affecting the value of the other packages, the compensation quantum shall be estimated in light of the packages that have solely sustained the damage, regardless of any air waybill or baggage receipt issued for all the registered baggage or cargo. However, if the partial damage affects the value of other packages, the total weight of such package or packages shall be taken into consideration in determining the compensation value, in order to cover the partial damage suffered by the baggage or cargo and the resulting decrease in value, provided that all the packages are covered by a single baggage receipt or a single air waybill. If this is not the case, only the weight of the packages that have sustained damage shall be taken into consideration[2].

Article 79/ 2 of the Jordanian Commercial Law, promulgated by Law No. 12 of 1966, as amended, sets forth that "Transportation by Air shall be governed by the rules and provisions contained in this Chapter and in the Civil Code, taking into account any conflicting provisions specified in the applicable Civil Aviation Law and any international treaties on air navigation that are legally in force in the Kingdom." Consequently, the liability of the carrier is determined by the compensation amounts provided for in the International Conventions, signed by the Hashemite Kingdom of Jordan.

Under Article 292 of Commercial Law, the Egyptian legislature provided that the damages to be awarded to each traveler by the air carrier shall, unless an express agreement is reached on exceeding that amount, not exceed One-Hundred and Fifty Thousand Egyptian pounds alongside the sum of Five-Hundred Egyptian pounds as compensation for the items of damage that may occur to the baggage carried by the traveler[3].

The maximum compensation for baggage and cargo is determined in the Egyptian Commercial Law at a rate of fifty pounds per kilogram. This provision does not have a corresponding provision in the Jordanian Commercial Law, as the Jordanian legislature adopted the application of the Montreal Convention of 1999 for Transportation by Air.

2. Air Carrier Absolute Liability

The Warsaw Convention provided for cases, in which the Air Carrier Liability is unlimited, imposing absolute liability thereon, and prohibiting it from evading or limiting their liability. These cases are set forth in Article 25 of the Warsaw Convention, which reads as: "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 willful 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 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.

Through the wording of this article, it is found that cases where the liability of the air carrier is unlimited, within the limits of compensation specified in that Convention and its amending conventions, are typically cases of fraud and misconduct, whether committed by the air carrier or any of its agents. Article 25 has established a rule that refers to the law of the judge seised of the case to define the misconduct equivalent to fraud, which entails the Air Carrier Absolute Liability.

1 Michel de Juglart, Op. cit., No 3273, P. 400 et s.
2 Dr. Hani Duwidar; Op. cit., p. 228 & 334.
3 Article No. 292/ 3 of Egyptian Commercial Law.

In a precedential practice of its, the Egyptian Court of Cassation cited that: "It is required for applying the provision the relevant Article of this Convention that the Plaintiff must prove that the damage, for which he seeks compensation, has arisen from the carrier's fraud, the error of its agents, or a misconduct deemed by the law of the court seized of the dispute to be equivalent to fraud. Since the Egyptian legislature, to whom the Convention referred for defining the misconduct equivalent to fraud in disputes brought before the courts regarding civil aviation accidents, stated in Article 217 of the Egyptian Civil Code that the misconduct equivalent to fraud is not deemed a type of error, and its constructive nature is something other than the gross negligence (*culpa lata*), where it is required to deem the airline as the judgment debtor who shall pay the compensation in full that the airline is proven to have committed gross negligence (*culpa lata*) on its part.[1]"

It is noteworthy that this provision represents an exception to the rule of Air Carrier Limited Liability in accordance with the Warsaw Convention, and therefore this provision was controversially-debated, and for the same reason the Hague Protocol has come to amend the provision of Article 25 of the Warsaw Convention, and has come to put an end to such discrepancies in interpretation, as Article 13 of the Protocol provided that "[t]he limits of liability specified in Article 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."

This provision settled discrepant and divergent viewpoints, as it distanced reliance on national laws and alleviated their burden. It established a unified approach to be followed by all courts of the contracting states in accordance with the concept of the well-known intentional error[2].

Findings

In the course of this investigation, we have reached a number of findings, which we summarize as follows: i. Aviation insurance contracts are merely instruments to mitigate aviation risks; ii. International conventions play an important role in regulating compensation for victims of aviation accidents and in developing specific guidelines for compensation that take precedence over national laws in case of conflict with the conventions; iii. Liability insurance plays a crucial and essential role in ensuring minimum coverage for damages arising from the transportation of risks in air transport; iv. Under the 1999 Montreal Convention, the liability of the carrier is an objective liability based on the concept of risk and the resulting presumption of liability. v. The Jordanian legislature has adopted the 1999 Montreal Convention and applied it to air transport.

Conclusion and Recommendations

Transportation by air has two key advantages: speed and safety. These characteristics are not found in any other means of transportation. However, this does not mean that this type of transportation is completely safe, because it takes place in a completely different environment than transportation by land, sea or river. When flying overhead, aircraft are exposed to hazards such as strong air currents, violent snowstorms, sudden atmospheric depressions, and dense fog near the surface of the earth, which can impair visibility and lead to catastrophic accidents. There was therefore an urgent need for protective measures against the risks of aviation.Legislators therefore considered it necessary to create new bases that would, on the one hand, counteract the risks of aviation and, on the other hand, create compensation possibilities that would guarantee jurisdiction between the parties to the dispute (the air carrier and the injured party). Hence the importance of air cargo insurance. Undoubtedly, insurance plays a crucial role in covering damages caused by the failure of the air carrier to fulfill its obligations, by covering the air carrier's liability, whether it results from the transportation of passengers, the carriage of baggage and goods, or delays.

1 Egyptian Court of Cassation's Precedential Practice, at the 27/09/1997 Hearing, in Cassation Appeal No. 39 of 33th JY, Technical Ofice 18, p. 907. Vide http://www.ibrahimomran.com/vb/forumdisplay.php

2 Dr. Jalal Wafaa Muhammadain, "Durus fi al-Qanoun al-Jawwi [Lessons in Air Law]," Dar al-Matbou'aat al-Jami'iyyah, 1992, p. 153.

Therefore, liability insurance is one of the most important guarantees for the air carrier's liability and the protection of passengers and affected parties in general, as it provides significant compensation protection to those affected. Recently, aviation insurance has taken on special importance due to the constant needs of the aviation industry and in light of the new risks in flight operations resulting from the over-reliance on technology. Insurance plays a large and important role in covering the risks arising from air transportation by covering the liability of the air carrier, whether that liability results from the transportation of passengers, baggage and cargo, or from delays. The sums insured are within the limits of liability prescribed by law.

In the course of this research, we have arrived at a number of recommendations that broaden the interpretation of insurance contracts between carriers and insurers, as this serves the interests of both the carrier and the affected party. Moreover, a narrow interpretation is not legally beneficial because of its negative effects. In the case of cargo insurance, we recommend that the provisions for aviation insurance be unified and specify that it should cover the maximum indemnity for the loss of aircraft cargo up to the furthest point reached by the carrier in its operations. Unify aviation provisions by enacting a law that governs all matters related to aviation, rather than splitting these provisions between the Civil Aviation Code and the Commercial Code. The arduous task of drafting a comprehensive international convention that unifies all air carrier liability provisions and regulates aviation without the complexity and branching provisions found in many different conventions. In addition, the foundation should be laid for an airline liability insurance system that ensures the rights of passengers and other affected parties to fair and comprehensive compensation.

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