

NEWS & INSIGHTS

Islamabad High Court rules international carriage by air conventions provide “yardstick” for damages in passenger claims under consumer protection law

By Maria Ahmad, Partner; Zayna Nazir Khan, Associate

In October 2022, the Islamabad High Court (the **IHC**) passed a ruling that damages for loss claimed against an airline under the provincial Islamabad Consumer Protection Act 1995 (the **Islamabad Consumer Protection Act**) can only be quantified in accordance with the mechanism given in the applicable international air carriage conventions under the Carriage by Air Act 2012 (the **Carriage by Air Act**).

The petitions before the IHC were filed by the Pakistani airline, Airblue, against orders passed by the Islamabad Consumer Court in two separate complaints. In ‘Airblue (Private) Limited v Judge Consumer Court Islamabad’ (Writ Petition No. 1422 of 2019) the airline challenged the Consumer Court’s jurisdiction to entertain a claim for damages for lost baggage on a flight from Islamabad to Dubai, on the ground that it could only have been brought under the Carriage by Air Act, which is the special law enacted for international carriage by air. Similarly, in ‘Airblue (Private) Limited v Judge Consumer Court Islamabad’ (Writ Petition No. 2579 of 2019) the airline contended that only an ordinary Civil Court under the Carriage by Air Act, and not the Consumer Court, could hear the passenger’s complaint against the airline’s cancellation of his tickets to Saudi Arabia. A common question of law was thus considered by the IHC i.e., whether the Consumer Court, exercising jurisdiction under the Islamabad Consumer Protection Act, could entertain a claim for loss suffered on account of an airline, in the presence of the Carriage by Air Act.

The Islamabad Consumer Protection Act is a special consumer protection law which has established a provincial consumer court for the capital territory of Islamabad. It aims to provide “speedy” redressal of consumer complaints in respect of defective manufacturing, faulty services, and unfair trade practices. The term “services” has been defined broadly to include the provision of facilities in connection with transport and therefore, airline passengers are considered “consumers” who may seek a redressal of their grievances before the Consumer Court under the Islamabad Consumer Protection Act. On the other hand, the Carriage by Air Act is the special law by which the international conventions that govern air carrier liability towards passengers i.e., the Warsaw Convention 1929, the Warsaw Convention as amended at The Hague 1955, the Guadalajara Convention 1961, and the Montreal Convention 1999 have been given the force of law in Pakistan. The Montreal Convention was brought into force for the first time in 2012 by the Carriage by Air Act. Prior to this, the Carriage by Air (International Convention) Act 1966 had given statutory effect to the Warsaw Convention as amended at The Hague 1955, and the Carriage by Air Act 1934 had brought into force the Warsaw Convention 1929. The provisions of these conventions provide the scope and limits of air carrier liability in the event of death and injury to passengers, loss or damage to baggage and cargo, and delay in carriage. A

claim in the first instance under the Carriage by Air Act would be brought before an ordinary court exercising original civil jurisdiction.

The IHC affirmed that to the extent of any overlap in jurisdiction, an aggrieved passenger may, at their option, choose whether to file a claim before the Islamabad Consumer Court or the ordinary Civil Court, as neither the Islamabad Consumer Protection Act nor the Carriage by Air Act have ousted the jurisdiction of any court. However, a Consumer Court dealing with the complaint of a passenger has to exercise jurisdiction by considering the “principle” of the international conventions set out in the Carriage by Air Act. While additional clarity on this point has not been provided, the IHC has recognised that the international conventions provide a mechanism to quantify the damages an airline can be liable for in terms of the conventions. It has held that although a passenger can choose whether to claim damages from the Consumer Court or ordinary Civil Court (if the grievance is covered by an applicable convention), the passenger’s “rights with reference to damages or loss suffered could only be calculated on the yardstick provided in [the] Carriage by Air Act”.

This decision of the IHC sets an important precedent for passenger claims: it has confirmed the passenger’s right to choose the forum for bringing a claim against an airline but to the extent of the damages that may be awarded against the airline, the Court has sought to harmonize the outcome that may result in either forum. Taking liability for the carriage of baggage as an example, the Montreal Convention as applicable in Pakistan provides a limit of 1,000 Special Drawing Rights (to be converted into PKR according to the value on the date of judgment) in the case of destruction, loss, damage or delay in the carriage of baggage. This is unless the passenger had made a special declaration of interest at the time of check-in and paid a supplementary sum (if required) in which case, the carrier will be liable up to the limit of the declared sum unless it proves that the sum is greater than the passenger’s actual interest in delivery at destination. The IHC’s latest decision means that in a complaint before the Islamabad Consumer Court concerning, for instance, baggage lost in carriage to which the Montreal Convention applies, the judge would have to be guided by the foregoing limits in awarding compensatory damages against the air carrier. The manner and extent to which this will be done in practice remains to be seen. Nonetheless, the ruling does aim to provide some predictability, to airlines and passengers alike, in valuation of the remedy that may be granted in liability claims under either of the applicable laws. Further, although the decision has been made in respect of the Islamabad Consumer Protection Act, it would also serve as a useful precedent for Consumer Courts in Punjab, Sindh, Baluchistan and Khyber Pakhtunkhwa as similar consumer protection legislation is in force in all four provinces and the Islamabad capital territory.

For further information, please contact Maria Ahmad at Kabraji & Talibuddin by email (maria.ahmad@kandtlaw.com) or telephone (+922135838871-6).