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Digest of Recent Cases

DIGEST OF RECENT CASES

AIR CARRIER EMPLOYEE — DEATH ON THE HIGH SEAS ACT — WORKMEN'S COMPENSATION — EXCLUSIVE REMEDY

King v. Pan American World Airways

5 CCH Aviation L. Rep. 18,201 (N.D. Calif. Sept. 30, 1958)

Decedent was killed in the crash of defendant's airliner while in the course of his employment. Payment was made to the decedent's estate under the state workmen's compensation statute, but prior thereto, the decedent's wife filed this libel under the federal Death on the High Seas Act. Comparing the two remedies the court said that the Death on the High Seas Act, like state wrongful death statutes, afforded a remedy for death upon a showing of fault, whereas the state workmen's compensation statute grants relief for a workman killed in the course of his employment on the basis of his status as an employee. The court held that in light of the fact that the decedent was employed by a non-maritime industry and held a non-maritime position, the application of the state workmen's compensation act rather than the federal admiralty remedy was not unconstitutional. Furthermore, the federal act does not supersede the state workmen's compensation statute as it would the state wrongful death statute which like the federal act is based upon fault rather than employment as is the compensation act. Thus the workmen's compensation act, having been construed to give an exclusive remedy in the case of a death during employment, abrogates the admiralty remedy and no recovery may be had under the Death on the High Seas Act.

AIR CARGO — FOREIGN SHIPMENTS — LOSS BY DOMESTIC CONNECTING CARRIER — INTERLINE AGREEMENTS — WARSAW CONVENTION

Orlove v. Philippine Airlines Inc.

5 CCH Aviation L. Rep. 18,103 (U.S.C.A. 2d Cir. July 25, 1958)

Plaintiff delivered a consignment of jewelry to a domestic air carrier for shipment to a foreign air carrier who was to deliver the goods to the consignee in Hong Kong. This procedure between the domestic and foreign carrier was pursuant to an interline agreement filed with the Civil Aeronautics Board. Plaintiff, following the instructions of the foreign carrier, did not declare the value of the cargo to the domestic carrier who lost the jewelry. Under the domestic carrier's tariff it is liable only for the nominal value of the goods unless the full value is declared. Plaintiff, therefore, was precluded from recovery against the domestic carrier; but having followed the instructions of the foreign carrier, may recover the full value of the goods from that party. Moreover, the domestic carrier was the primary wrongdoer, and the doctrine of primary and secondary liability is applicable, thereby allowing the foreign carrier to recover over against the domestic carrier. The limitations provided in the Warsaw Convention cannot be invoked by the foreign carrier because plaintiff had literally complied with

its terms when he followed the foreign carrier's instructions to not declare added value. Held that plaintiff can prevail over the foreign carrier who in turn may recover against the domestic carrier.

AIRCRAFT FUEL TAXES — COLLECTIONS — REFUNDS

Pascal v. Lyons

5 CCH Aviation L. Rep. 18,172 (Ill. Sept. 18, 1958)

Pursuant to the state Motor Fuel Tax Act, gasoline distributors collected five cents per gallon on all fuel sold to Illinois airports. This tax is in turn passed on to purchasers such as the plaintiff who can then obtain a refund by filing a claim on forms provided by the state setting out that the fuel was not used for the purposes of travel on the highways. The plaintiff contends that fuel used for aircraft is exempt from the payment-refund procedure and should not be collected in the first place. This is based on the avowed purpose of the act which is to collect a tax for the privilege of operating motor vehicles on the highways of the state. This argument was rejected by the Illinois Supreme Court. The consumer has the burden of proving that fuel is not used for the operation of motor vehicles on the highways and if it was the intention of the legislature to grant an exemption in the case where fuel is sold to airport operators, it would have been clearly provided for in the statute.

AIRCRAFT COLLISION — FEDERAL TORT CLAIMS ACT — CONTROL TOWER OPERATORS NEGLIGENCE

Aero Enterprises, Inc. v. Schultetus

5 CCH Aviation L. Rep. 18,239 (N.D. Texas Nov. 3, 1958)

The failure of the Civil Aeronautics Administration air traffic control operators to give adequate warning to two planes that were attempting to land at the same airport at the same time resulted in a mid-air collision. Such an omission on the part of the federal agency, where it constitutes the proximate cause of the accident, is negligence of the kind and type contemplated within the Federal Tort Claims Act to impose liability upon the United States.

INSURANCE — SONIC BOOM BY JET AIRCRAFT — DAMAGE TO BUILDING

Alexander v. Fireman's Ins. Co.

5 CCH Aviation L. Rep. 18,218 (Texas 1958)

Plaintiff sued for damages to his building under a policy covering injuries due to "explosions" and "aircraft." It was held that the injury suffered due to a sonic boom is included under "aircraft" and that the provision is not limited to falling aircraft. The court rejected plaintiff's contention that judicial notice could be taken of the sonic boom to bring this loss also within the "explosion" provision of the policy despite the fact he was unable to produce any evidence to show that a sonic boom is an explosion. Recovery allowed for damages resulting from an "aircraft" but the court would not

take judicial notice as a scientific fact that a sonic boom was an explosion and recovery denied under that provision of the policy.

WRONGFUL DEATH STATUTE — PUBLIC CONVEYANCES — LIABILITY OF THE PILOT

Schloss v. Matteucci

5 CCH Aviation L. Rep. 18,210 (U.S.C.A. 10th Cir. Oct. 9, 1958)

The estate of a passenger aboard a Transworld Airlines plane that crashed in New Mexico killing all aboard, sued both the airline and the estate of the pilot. State wrongful death statutes provided for liability of the owner of the public conveyance when the employee who was operating the conveyance was negligent. The New Mexico Supreme Court had construed this statute to mean that only the owner was liable and the employee, although negligent, was not liable. The plaintiff alleged that such a construction of the statute made it unconstitutional as repugnant to the equal protection clause of the federal and state constitutions. This contention was rejected by the court holding that there having been provided a fixed penalty against the carrier, it is not a denial of equal protection of the law to further provide that such sum would be exclusive of all other liability for wrongful death and thereby preclude recovery against a negligent employee.