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Digest of Recent Cases

DIGEST OF RECENT CASES

AIRCRAFT-AUTO CRASH — RES IPSA LOQUITUR — NEGLIGENCE

Rehm v. United States

6 Av. Cas. 17,999 (E.D. N.Y., April 12, 1960)

The plaintiffs moved for partial summary judgment, seeking to adjudge the defendant liable and to direct further proceedings to determine quantum of damages for personal injuries alleged to have been sustained when an Air Force plane struck the plaintiffs' automobile. Plaintiffs' contention that there was no genuine issue of liability and that the doctrine of *res ipsa loquitur* made the judgment appropriate was rejected by the court. It held that even though *res ipsa loquitur* is sufficient to establish *prima facie* negligence of the defendant, it is not conclusive proof thereof. The plaintiffs needed to sustain their claims by a preponderance of the evidence and the question of negligence was one to be determined by the trier of the facts.

Similar case: Galef v. American Airlines, Inc., 6 Av. Cas. 17,952 (N.Y. Sup. Ct., N.Y. County, March 17, 1960).

AIRCRAFT COLLISION — TOWER OPERATORS' RESPONSIBILITY — NEGLIGENCE

United States v. Schultetus

6 Av. Cas. 17,991 (5th Cir., April 18, 1960)

The Court of Appeals reversed a decision holding two airport control tower operators negligent for their failure to give a warning light signal to two planes which collided over the airport. The operators were found to have discharged their duties when they radioed one of the pilots informing him of the presence of the other plane. There was no duty to warn the planes by signal light since the planes were operating under visual flight rules and the tower operators were entitled to believe that the pilots in the exercise of their direct and primary responsibility would avoid a collision.

AIRPLANE CRASH — PASSENGER KILLED — BASIS OF RECOVERY

Kilberg v. Northeast Airlines, Inc.

6 Av. Cas. 17,988 (N.Y. App. Div., April 12, 1960)

The plaintiff alleged that the defendant breached its implied contract of safe carriage by the negligent operation of its plane which culminated in its destruction in Massachusetts and the death of the plaintiff's intestate, a passenger for hire. By predicating the cause of action upon the breach of a contract made in New York, the plaintiff sought to avoid the recovery limitations of the Massachusetts death statute. This theory was rejected by the court which held that the cause of action, although couched in language alleging a breach of contract, was in fact one for a breach of duty through negligence. Relief, if any, could only be obtained upon proof the defendant was negligent and therefore the laws of Massachusetts where the injury occurred governed the extent of the damages which might be recovered.

INJURY IN AIR TERMINAL — INSURANCE COVERAGE — PART OF AIR TRAVEL

Great American Indemnity Co. v. Pepper

6 Av. Cas. 17,939 (Tex. Civ. App., March 25, 1960)

The plaintiff who was injured by falling on a step in an air terminal while changing planes sought recovery under an accident insurance policy which covered bodily injuries while a passenger in an aircraft on a regularly scheduled passenger trip. Defendant-insurer contended that the policy was not applicable unless the plaintiff was physically in an airplane at the time of the injury. Although the court conceded that the policy was susceptible of such an interpretation, it affirmed the trial court's decision, holding that the insured was covered while she had the status of a passenger. It held that language in an insurance policy which is capable of two constructions must be construed most favorably to the insured. It found that the intent of the policy to exclude injuries sustained by insured in the terminal building was not so certain as to make it wholly unreasonable to say that the insured was insured.

JUDICIAL REVIEW — CAB ORDER — ROUTE AWARD

Braniff Airways, Inc. v. Civil Aeronautics Board

6 Av. Cas. 17,894 (D.C. Cir., March 11, 1960)

Plaintiff challenged an order of the Civil Aeronautics Board authorizing a competing service. The contention that the finding of public convenience and necessity must be supported by evidence of the carrier's detailed proposals of schedules, equipment, accommodations, and facilities was held invalid. The court held that carriers are authorized to change schedules, equipments, accommodations, and facilities as development of the business and demands of the public shall require and thus the information need not be given in support of public convenience and necessity.

LAND CONDEMNATION — STATUTORY COMPLIANCE — WRIT OF ASSISTANCE

Wisconsin v. Berg et al.

6 Av. Cas. 17,890 (Wis., March 9, 1960)

After the State Aeronautics Commission had filed an award for damages for the appellee's property which was required for the establishment of an airport, money was tendered to the appellee who refused it and continued in possession of the land still claiming title. The money was then deposited with the clerk of the circuit court to be held for benefit of the appellee and the appellant sought a writ of assistance. On appeal from the denial of the trial court for such writ, it was held that the appellant was entitled to an order granting the writ of assistance since land condemned for airport purposes in compliance with all statutory requirements becomes vested in the state as owner.

MANUFACTURER IN INTERSTATE COMMERCE — ARBITRATION OF LABOR DISPUTE — STATE vs. FEDERAL JURISDICTION

Ryan Aeronautical Co. v. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 506

6 Av. Cas. 17,857 (S.D. Cal., December 9, 1959)

Plaintiff, a manufacturer of airplane equipment, and defendant-union submitted a labor grievance to arbitration pursuant to their collective bar-

gaining agreement. The plaintiff, after the arbitration award had issued according to state law, sought to enjoin its enforcement contending that the California courts and the arbitrator had no jurisdiction as the firm was engaged in interstate commerce and thus the National Labor Relations Board had exclusive jurisdiction. It was further alleged that the arbitrator and the courts failed to apply Federal law thus exceeding their jurisdiction. The court rejected both contentions holding that exclusive jurisdiction does not rest with the federal government and, although federal substantive law should be applied in situations as this, the fact that such law was not applied does not deprive the state of jurisdiction where the dispute was voluntarily submitted to arbitration and the parties agreed to be bound by the award.

PROPERTY ADJACENT TO AIRPORT — AIRPLANE NOISE — TRESPASS

Cheskov et al. v. Port of Seattle et al.

6 Av. Cas. 17,882 (Wash., January 14, 1960)

Plaintiffs sought damages for diminution of value of their property due to the noise of planes warming up, landing, and taking-off from the adjacent airport. The Supreme court upheld the trial court's finding that the claim against the airport was barred by the statute of limitations. The trial court's decision, however, was reversed for its allowing recovery from the defendant airlines for technical trespass over the plaintiffs' property. The flights complained of were within the navigable airspace as defined in the Federal Aviation Act of 1958 and thus trespass was not maintainable. The flights were found to be within the public domain and did not subtract from the owners' full enjoyment of the property nor limit their exploitation of it so as to substantially reduce its value.

SUPPLEMENTAL AIR CARRIERS — CERTIFICATION —BREACH OF STATUTORY AUTHORIZATION BY CAB

United Air Lines, Inc. v. Civil Aeronautics Board

6 Av. Cas. 17,984 (D.C. Cir., April 7, 1960)

An order of the CAB granting certificates of public convenience and necessity to certain qualified supplemental air carriers was set aside by the count and the proceedings remanded as being beyond the statutory authorization of the Federal Aviation Act of 1958. Specific actions of the Board found to be unauthorized were: (1) the issuance of blanket authorization to engage in air transportation between any points in the U.S. which was in contradiction to section 401 (e) of the Act; (2) limiting operations to ten flights each calendar month in the same direction between the same two points which also failed to observe the dictates of section 401 (e) of the Act; and (3) the failure of the Board to consider the fitness, willingness and ability of the respective carriers individually as required by section 401 (d) (1) of the Act.