THE INTERPRETATION OF "ACCIDENT" WHICH TRIGGERS AN AIR CARRIER'S LIABILITY FOR PASSENGERS' DEATH OR INJURY UNDER THE THAI INTERNATIONAL CARRIAGE BY AIR ACT B.E. 2558[*]

Jetsada Cheewahirun[**]

ABSTRACT

Hundreds of millions of people participate in air travel each year and, despite the proliferation of airlines, air routes, and tourist destinations, it is by far the safest way to travel. At the same time, the risk of accident remains with the air transportation industry.

This article examines the term "accident" which triggers an air carrier's liability for a passenger's death or injury in international carriage by air in relation to significant legal instruments, namely, the Warsaw Convention 1929 and the Montreal Convention 1999. Article 17 of each Convention is one of the most important and problematic provisions, resulting in an airline's liability when damage is sustained in the case of the passenger's death or other bodily injury. This implies that the accident causing the death or injury has taken place onboard the aircraft or in the operation of embarking or disembarking.

Yet, the definition of the word "accident" under Article 17 is not determined in any convention. Rather, it is the duty of the national courts to define what circumstances constitute an "accident" in their point of view. There is an abundance of evidence arising from cases involving the term "accident" that have been held by courts in various jurisdictions, for instance, in the case of *Air France v. Saks*, 470 U.S. 392 (1985). In this case, the United States Supreme Court held that in Article 17 "accident" is, "*an unexpected or unusual event or happening that is external to the passenger and does not encompass an injury caused by the passenger's own internal reaction to the usual, normal, and expected operation of the aircraft*." Consequently, this has become the established and universally accepted definition of "accident" of Article 17 and, subsequently, adopted and followed by the courts in other state parties. Nevertheless, it can be questioned whether the "accident" requires there be some connection with the irregular operation of the aircraft; whether it incorporates medical emergencies including a passenger's previous medical condition; or whether it incorporates activities or behavior of fellow passengers such as sexual and other assaults, hijacking or terrorist activity like a bomb threat, etc.

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[**] Graduate student of Master of Laws program in Business Laws (English Program), Faculty of Laws, Thammasat University.

Thailand enacted the law which is called “The Thai International Carriage by Air Act B.E. 2558.” However, Article 10 of this act mirrors the wording of Article 17 of the Montreal Convention 1999. This article will then analyze case law from other court jurisdictions and examine how those courts have interpreted the term “accident.” This will bring about significant consistency in applying laws imposing air carrier’s liability.

Keywords: Accident, Passenger’s Death or Bodily Injury, Carrier’s Liability, International Carriage by Air

บทคัดย่อ

ผู้คนจำนวนหลายร้อยล้านคนเดินทางทางอากาศในแต่ละปี และถึงแม้ว่าจะมีสายการบิน เส้นทางการบิน และ สถานที่ท่องเที่ยวเพิ่มขึ้นเป็นจำนวนมาก วิธีนี้ก็ยังคงเป็นวิธีการเดินทางที่ปลอดภัยที่สุด ในขณะเดียวกัน ความเสี่ยงของการ เกิดอุบัติเหตุก็ยังคงมีอยู่ในอุตสาหกรรมการขนส่งทางอากาศ

บทความฉบับนี้ศึกษาคำว่า "อุบัติเหตุ" อันก่อให้เกิดความรับผิดของผู้รับขนส่งทางอากาศต่อผู้โดยสารที่เสียชีวิต หรือบาดเจ็บในการรับขนทางอากาศระหว่างประเทศ ซึ่งมีความสัมพันธ์กับกฎหมายที่สำคัญ ได้แก่ อนุสัญญาวอร์ซอ ค.ศ. 1929 และอนุสัญญามอนทรีออล ค.ศ. 1999 โดยมาตรา 17 ของ อนุสัญญา ทั้งสองนั้นเป็นบทบัญญัติที่สำคัญและก่อให้เกิด ปัญหามากที่สุดบทหนึ่ง นั่นคือสายการบินต้องรับผิดในความเสียหายที่เกิดขึ้นในกรณีที่ผู้โดยสารเสียชีวิตหรือเกิดความ บาดเจ็บแก่กายของผู้โดยสาร ซึ่งโดยนัยยะ คืออุบัติเหตุที่ก่อให้เกิดการตาย หรือการบาดเจ็บเหล่านี้เกิดขึ้นบนอากาศยาน หรือในระหว่างปฏิบัติการ ลำเลียงผู้โดยสารขึ้นหรือลงจากอากาศยาน

กระนั้น คำจำกัดความของคำว่า "อุบัติเหตุ" ภายใต้บทบัญญัติมาตรา 17 ไม่ได้ถูกกำหนดไว้ในอนุสัญญาใดๆ จึง เป็นหน้าที่ของศาลประเทศต่างๆ ที่จะวินิจฉัยว่ากรณีใดบ้างที่ถือว่าเป็น "อุบัติเหตุ" ในมุมมองของศาลเหล่านั้น ทำให้มี พยานหลักฐานทางคดีเกิดขึ้นเป็นจำนวนมากจากเหตุการณ์ต่างๆ ที่เกี่ยวพันกับคำว่า "อุบัติเหตุ" ที่ศาลในเขตอำนาจต่างๆ ได้ วินิจฉัยไว้ เช่น ในคดี Air France v. Saks, 470 U.S. 392 (1985) ในคดีนี้ศาลฎีกาสหรัฐฯ ได้พิพากษาไว้ว่า "อุบัติเหตุ" ตาม บทบัญญัติ มาตรา 17 หมายความถึง "เหตุการณ์ที่ไม่คาดคิด ผิดปกติ หรืออุบัติการณ์ที่เกิดขึ้นภายนอกตัวผู้โดยสารที่ไม่ ครอบคลุมการบาดเจ็บที่เกิดขึ้นจาก ปฏิกิริยาภายในของผู้โดยสารต่อการทำงานอย่างเป็นปกติธรรมดา และคาดการณ์ได้ ของอากาศยาน" ผลที่เกิดขึ้นคือคำนิยามนี้ได้ถูกนำไปใช้อย่างแพร่หลายและเป็นที่ยอมรับโดยสากลว่าเป็นคำจำกัดความ ของคำว่า "อุบัติเหตุ" ตามบทบัญญัติมาตรา 17 และต่อมาถูกนำไปปรับใช้ในศาลของประเทศอื่นๆ ที่เป็นภาคีของอนุสัญญา ด้วย อย่างไรก็ตาม ก็ยังคงมีปัญหาว่า "อุบัติเหตุ" นั้นต้องมีความเชื่อมโยง กับการทำงานที่ผิด ปกติของอากาศยาน ประกอบ ด้วยเหตุฉุกเฉินทางการแพทย์ รวมไปถึงสภาพความเจ็บป่วยของผู้โดยสารที่มี อยู่ก่อนแล้วหรือไม่ หรือประกอบด้วย กิจกรรมหรือพฤติกรรมของผู้โดยสารอื่น อาทิ การลวนลามทางเพศ หรือการทำร้ายในลักษณะอื่น เช่น การจี้เครื่องบิน หรือ การก่อการร้ายโดยการขู่วางระเบิด ฯลฯ

ประเทศไทยได้มีการตรากฎหมาย คือ "พระราชบัญญัติการรับขนทางอากาศระหว่างประเทศ พ.ศ. 2558 อย่างไร ก็ตาม มาตรา 10 ของพระราชบัญญัตินี้สะท้อนถ้อยคำของมาตราที่ 17 ของอนุสัญญา มอนทรีออล ค.ศ. 1999 บทความฉบับนี้ จะวิเคราะห์กรณีทางกฎหมายที่เกิดขึ้นจากคำพิพากษาของศาลในเขตอำนาจอื่น และศึกษาว่าศาลเหล่านั้นตีความคำว่า "อุบัติเหตุ" เช่นไร โดยจะนำมาซึ่งความสอดคล้องต้องตรงกันในการบังคับใช้กฎหมายอันเกี่ยวเนื่องกับความรับผิดของผู้รับ ขนทางอากาศต่อไป

คำสำคัญ: อุบัติเหตุ, ผู้โดยสารเสียชีวิตหรือบาดเจ็บทางกาย, ความรับผิดของผู้รับขน, การรับขนทางอากาศ ระหว่างประเทศ

Introduction

Transportation today is greatly critical to economy both nationally and internationally. This is because transportation contributes to economic growth, the volume of trade, investment including the unloading of passengers, both local and international, especially in developed countries; they have developed the transportation system in every mode in order to develop the country's economy and to have the potential of trade competition in world trade activity.[1]

As the role and importance of air transport has rapidly increased in the transportation industry, thus whenever the aviation accident happens, there are serious damage to the passengers and third parties caused by the death, personal injuries, and loss of personal property. The seriousness from the accident differs from one case to another. This can be clearly seen in the case of the mysterious, baffling disappearance of Malaysia Airlines flight MH370, or the crash of Malaysia Airlines flight MH17 as part of big bulk missile found at Ukraine, for instance.

Therefore, this article will then deal with the airline's liabilities to passengers in case of death or injury during international commercial carriage by air pursuant to the Montreal Convention 1999 including the Warsaw System. In this regards, Article 17 of the Montreal Convention is one of the most important and problematical provisions. It makes the air carrier liable for any damage sustained in case of the death or bodily injury of passengers, provided that the accident causing the death or injury shall take place on board the aircraft. While the trigger for liability is the 'accident,' this term has not been defined in the convention. Rather, it is for national courts to determine whether any particular event constitutes the 'accident' in their view. Since the word is normally used to describe the accident which occurs unintentionally, the use of 'accident' within the convention gives rise to the questions whether certain intentional events fall within the scope of this provision. The courts in various jurisdictions have held, for example, that the injuries arising from passenger health issues, hijacking, sabotage, and sexual molestation are all 'accidents' which fall under the ambit of the convention.[2]

I. The Interpretation of "Accident" under International Conventions and Foreign Laws

The meaning of the term "accident" used in Article 17 of the Warsaw Convention 1929 and the Montreal Convention 1999 is the legitimate inquiry to be settled by the court as the matter of treaty interpretation;[3] subsequently, the part of

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[1] Thotsaporn Leephuengtham, "อุบัติเหตุที่ทำให้สายการบินต้องรับผิดต่อผู้โดยสารในกรณีตายหรือบาด เจ็บ," The Intell- ectual Property and International Trade Law Journal, Judge office, The office of the Judiciary, Thailand, 2, (2542).

[2] ibid.

[3] *El Al Israel Airlines, Ltd. V. Tseng*, 525 U.S. 155, 172 (1999); [3] *Air France v. Saks*, 470 U.S. 397-400 (1985) [hereinafter *Saks*]; *Langadinos v. American Airlines,*

judges is then urgent with a specific end goal to give the intended meaning. Therefore, this section examines jurisprudence concerning the interpretation of the word "accident" which triggers the air carrier liabilities in case of death or injury of passengers. It is analyzed by the Warsaw Convention 1929 and the Montreal Convention 1999, the most recent contribution to the unification of law in this field. Also, the interpretation of the term "accident" decided by the U.S. and the U.K. courts will be discussed.

- **The Warsaw Convention 1929**

The Warsaw Convention 1929,[4] nevertheless, it can be clearly seen that the word "accident," which leads to the liabilities of passenger for passenger death or bodily injury is not given any meanings. Hence, it is concluded by the drafters of the Warsaw Convention 1929 and subsequent amendments and supplements that in case that the international laws could not be applied to the cases, the domestic laws should be applied instead.[5] Another word is that in case the provisions of the Warsaw Convention cannot resolve the problem arising from the international transport by air, the local or domestic law will be the essential instruments. Therefore, none of the definition of the word "accident" is appeared in the Warsaw Convention; however, it has been defined by the courts over the seventy-year history of the Warsaw Liability System. Also, as the accident, which is the key liability term, remains the same in the Montreal Convention 1999, the accepted judicial definitions of this term as used in the Warsaw Convention will continue to be valid upon applying the comparable provisions of the Montreal Convention 1999 to the damage claim.[6]

- **The Montreal Convention 1999**

As mentioned previously that there is no change in the substantive wording of Article 17 in the Montreal Convention, it includes the term "accident." As a

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Inc., 199 F.3d 68, 70-71 (1st Cir. 2000); *Ramos v. Transmeridian Airlines, Inc*., 385 F. Supp. 2d 137 (D.P.R. 2005); *Gotz v. Delta Air Lines, Inc*., 12 F. Supp. 2d 199, 201 (D. Mass. 1998); *Schneider v. Swiss Air Transport Co*., 686 F. Supp. 15, 16-17 (D. Me. 1988).

[4] The Warsaw Convention 1929 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.*"

[5] *See, e.g.*, the Montreal Convention 1999, Art. 22, para. 6, Art. 28, 29, 33, para. 4, Art. 35, 37; the Warsaw Convention 1929, Art. 22, 24, 25, 28 and 29. *Zicherman v. Korean Air Lines Co. Ltd*., 516 U.S. 217 (1996); *Jack v. Trans World Airlines, Inc*., 820 F. Supp. 1218 (N.D. Calif. 1993).

[6] George N. Thompkins, Jr., '*Liability Rules Applicable to International Air Transportation as Developed by the Courts in the United States: From Warsaw 1929 to Montreal 1999,*' 1 (2010).

consequence, the former court judgments defining and applying the provision of Article 17 of the 1929 Warsaw Convention shall have equal effect in case where the passenger claims in the court applicable by Article 17 of the Montreal Convention 1999. More importantly, there is the most significant U.S. Supreme Court decision which has become the fundamental criteria for the following judgments up to the present. Such decision is the case of *Air France v. Saks*.[7]

- **The United States**

Regarding the interpretation of the word "accident" in the United States court, there are some intermediate appellate courts attempting to address the issue of what constitutes the "accident," as well as those interpreted by the U.S. Supreme Court, which are mentioned here.

In *Krys v. Lufthansa German Airlines*,[8] "the passenger who suffered the heart attack on a transatlantic flight from Miami to Frankfurt brought suit against Lufthansa for aggravating the damage to his heart by not landing the plane, so that he could go to the hospital, before its scheduled arrival in Frankfurt. The U.S. Court of Appeals for the Eleventh Circuit concluded that "looking solely to a factual description of the aggravating event in this case – i.e., the continuation of the flight to its scheduled point of arrival – compels a conclusion that the aggravation injury was not caused by an "unusual or unexpected event or happening that is external to the plaintiff . . ." and therefore did "not constitute an "accident" within the meaning of the Warsaw Convention."[9]

Significantly, in 1985 the term "accident" was defined by the Supreme Court of the United States that it was an "unexpected or unusual event or happening that is external to the passenger." An injury resulted by the passenger's own internal reaction to the usual, normal and expected operation of the aircraft is not the result of the accident, and therefore, it is not compensable under the Article 17 of the Warsaw Convention 1929.[10]

In case of *Air France v. Saks*,[11] "the fact in this case was that, Ms. Saks was the passenger on an overseas flight from Paris, France to Los Angeles, California. As the plane was landing, Ms. Saks experienced great pressure and pain in her left ear because of cabin pressurization change. As a result, she suffered permanent deafness. She claimed that the change in the cabin pressure during the descent caused her deafness, and thus, constituted the accident under Article 17. The Saks Court suggested that the intent and expectations of the parties were of paramount importance when interpreting the treaty.[12] Consequently, the High Court held that the passenger who suffered deafness in one ear as a result of the depressurization of the passenger cabin during flight could not recover under

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[7] *Saks* (n 3).
[8] 199 F.3rd 1515 (11th Cir. 1997).
[9] ibid 1522.
[10] *Saks* (n 3).
[11] ibid.
[12] ibid.

Warsaw as her case was not the accident. It was undisputed that the pressure change within the cabin was not the result of any abnormal operation or malfunction of the plane. Instead, the injury was found to be the consequence of the passenger's own internal reaction to the normal operation of the aircraft. In addition, the U.S. Supreme Court denied the recovery because the Court found that the injury occurred to her inner ear was internally caused by sinus problems to her rather than by anything unusual about the flight. According to Justice O'Connor, the "accident" under Article 17 "arises only if the passenger's injury is caused by the unexpected or unusual event or happening, that is external to the passenger."[13]

Nevertheless, there were additionally decisions of lower courts in other jurisdictions especially the appellate court decision in the United Kingdom which held that inaction could not be the "event," yet was the "non-event." Such inaction ought not equivalent to the occasion that fulfilled the primary appendage of the meaning of the accident which "occurred on board the aircraft or in the course of any of the operations of embarking or disembarking," and it was, along these lines, not the accident under Article 17. This interpretation of the term "accident" of the court in the United Kingdom will be tended to in the area underneath.

- **The United Kingdom**

There is one of the important issues, which needs to be noted in the interpretation of the term "accident" in the court of the United Kingdom; and such issue has different result with the U.S. Supreme Court decision particularly in the *Husain* case. The U.K. court decision was the decision of the Court of Appeal in the case: *In re Deep Vein Thrombosis and Air Travel Group Litigation.*[14]

For this situation the court held that, for the accident, there must be the external event with the adverse effect on the passenger. This is comparative interpretation with the U.S. Supreme Court decision in the *Saks* case. Also, the court held that the inaction was non-event which could not be the accident under Article 17 of the Warsaw Convention. Additionally, as indicated by the careful judgments of the Court of Appeal, the straightforward inquiry which must be asked was that, in regards to the perceived significance of the word, whether there was the accident in circumstances where the individual suffered DVT just in view of the impact of a flight on the plane with no activating occasion. The court offered an explanation to this inquiry in the negative angle that it was viewed as the mistake to concentrate on the segment parts of the great definition in *Saks* instead of on the straightforward idea of accident itself.[15]

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[13] ibid.

[14] [2004] QB 234.

[15] Lord Scott of Foscott House of Lords, Opinions of the Lords of Appeal for Judgment in the Cause Deep Vein Thrombosis and Air Travel Group Litigation (8 actions) (formerly 24 actions) UKHL 72 (2005).

II. The Problem of Defining the Word "Accident" under Thai law

According to the International Carriage by Air Act B.E. 2558 Section 10 states that "*The carrier shall be 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*," the air carrier shall be liable to passengers in the event of the passenger's death or injury caused by the accident. However, there is no provision in the Act defining the term "accident." If the case is filed to the court, there will be the problem on the criteria employed to determine whether it is the accident or not. If the case is filed to Thai court, it shall be considered whether it is the accident or not in the court of Thailand. It is remarkable to think that what should be the court's decision. There are three possible guidelines as follows.[16]

1. Thai Court may interpret the word "accident" in the tradition of international trade and customary international subject to Section 368 of the Civil and Commercial Code. The criteria used by the Parties in 1929 Warsaw Convention or Montreal Convention 1999 is convicted on the point that any event is the accident, which its details will be analyzed later in the chapter 4. However, it does not appear to any provision of the Act on the International Carriage by Air Act B.E. 2558, in providing about the problems with the interpretation of customary international trade.

2. Thai Court may define the term "accident" which appears in the regulations of the Civil Aviation Act B.E. 2498, No. 3, which are configurable notifications and reports pursuant to Section 61 of the Air Navigation Act B.E. 2497. The definition of the term "accident" is defined that matters arising in connection with the operation of aircraft. The event takes place during the time the persons are in the aircraft with the intention of travelling until they leave from such aircraft, and in case that (a) any person is died or seriously injured by the presence in the aircraft, or by hitting with the aircraft, or anything attached to the aircraft, or (b) the aircraft is damaged in essence. However, according to the mandate of the Committee on Civil Aviation No. 3 issued by the Air Navigation Act, the "aircraft accident," shall not be applied to the relationship between the carrier and passengers.[17]

3. Thai Court may interpret the word "accident" by consideration of the dictionary definitions of terminology B.E. 2542 edition of the Royal Academy, which provides the meaning of this word that "the event happened unexpectedly, coincidences."

Therefore, as previously stated, the International Carriage by Air Act B.E. 2558 does not define the meaning of "accident." In addition, Section 10 of

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[16] Jayaravee Nipawan, ความรับผิดเพื่อความเสียหายทางจิตใจตามกฎหมายรับขนระหว่างประเทศทางอากาศ (LL.M. thesis, Thammasat University 2012) 41.

[17] *See,* Prasert Pompongsuek, Details About the Accident of Aircraft, 'The Investigation of the Accident of Aircraft: A Legal Perspective', JL, Vol. 32, No. 3, (September) 661-693.

the Act and Article 17 of the Montreal Convention have the similar matter that the airline shall be liable for any damage caused to passengers as a result of the accident. It shall be interpreted that any event of the accident for which the airline shall be liable. Also, the Civil and Commercial Code itself does not define the term "accident" as well. However, the word "force majeure" in Section 8 of the Civil and Commercial Code is defined. Therefore, if the case filed to Thai court is in respect of the airline's liability for damages arising under such provisions of the Act, it should be construed on the fact that whether Thai Court will interpret the case of hijacking or passenger's illness as the accident or not. This is because those events are not occurred by coincident, but they are intentionally happened or caused by the current intentions. In this regard, the liability of the airlines for the damage caused to the death and bodily injury of passengers shall fall under the provision in the first paragraph of Section 437[18] or Section 634[19] of the CCC as they are similar matters of the law specifying that the possession or control of the vehicle, or the carrier shall be liable for the damage caused to passengers, unless the damage is due to force majeure or fault of the passenger himself. These provisions differ from the provisions of the Montreal Convention 1999, and the International Carriage by Air Act B.E.2558. It is needed to be decided whether the damage occurred is the "accident" or not, because if damage occurred is not accidental, the carrier shall not be liable for any damage occurred. However, under the first paragraph of Section 437 or Section 634, specifying that the control or possession of the vehicle, or the carrier shall be liable for any damage that occurs, except the liability exemption as determined by the law.

Conclusions and Recommendations

In terms of Thai law, the International Carriage by Air Act B.E. 2558 was enacted in the Gazette on February 13, 2558, and came into force on May 15, 2558. The Act has implemented the provisions of the Montreal Convention 1999, in particular of Section 10 of the Act stating that "*The carrier shall be 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*." There is also no definition of the word "accident" in Section 10, which contains material substance as same as Article 17 of the Montreal Convention triggering that the carrier is liable for damage caused to passengers as a result of the accident. It must be interpreted whether any event will be considered as the accident. The Civil and Commercial Code itself does not

[18] Civil and Commercial Code (CCC) s 437 "*A person is responsible for injury caused by any conveyance propelled by mechanism which is in his possession or control, unless he proves that the injury results from force majeure or fault of the injured person.*"

[19] Civil and Commercial Code (CCC) s 634 "*The carrier of passengers is liable to a passenger for personal injuries and for the damages immediately resulting from delay suffered by reason of the transportation, unless the injury or delay is caused by force majeure or by the fault of such passenger.*"

define the term “accident,” it just has the definition of the term “Force majeure” as provided by Section 8 of the Civil and Commercial Code. Thus, if there is a case to the Court of Thailand that the plaintiff has sued the airline liability under the international carriage by air, the court must interpret and lay down the norms to determine the meaning of the term “accident” which triggers the airlines liable for damages arising under such provision.

In order to achieve an effective interpretation of the word “accident” under section 10 of the Thai International Carriage by Air B.E. 2558 (2015), it is, thus, necessary to examine the point in the context of the development of comparative jurisprudence. The important case is the Supreme Court decision in *Air France v. Saks*, 470 US 342 (1985). In such case the court interpreted the term “accident” that the liability under Article 17 arose only if the passenger’s injury was caused by the unexpected or unusual event or happening that is external to the passenger, and not where the injury results from the passenger’s own internal reaction to the usual, normal, and expected operation of the aircraft, and in such case, the damage was caused by the accident under Article 17. This is the important decision, and it is also the strong decision which are further applied by many cases.

As set forth below, there are many efforts to interpret the term “accident” to guide Thai court on determining the international air carrier’s liability as follows.

Therefore, the definition of the word “accident” under Section 10 of the Thai International Carriage by Air Act B.E.2558 (2015) should be flexibly applied after assessment of all circumstances surrounding the passenger’s death or bodily injuries as follows.

The term “accident” shall refer to the case that the passenger’s death or bodily injuries is caused by “an unexpected or unusual event or happening that is external to the passenger only, and not where the death or bodily injuries resulted by the passenger’s own internal reaction to the usual, normal, and expected operation of the aircraft in such case is caused by the accident under Section 10.

In light of “an unusual or unexpected event” in the meaning of the term “accident,” it is a physical circumstance, which unexpectedly takes place beyond the usual course of things. Thus, if the event on board the aircraft is the ordinary, expected and usual occurrence, then it cannot be termed as the accident. To constitute the accident, the occurrence on board the aircraft must be unusual, or unexpected events. Also, the event or occurrence shall not be the accident if it is solely resulted by the state of health of the passenger and is unconnected with the flight.

The unusual or unexpected operations of the airline must be a “link in the chain of causes” leading to the death or bodily injury of the passenger. In other words, the accident must arise from a risk that is characteristic of air travel.

The happening must be “external to the passenger.” A pre-existing injury aggravated by, or a hypersensitive physical response to, a routine and normal flight shall not be the accident under the meaning of Section 10 of the Act. However, it can be noted that even there is the pre-existing injury condition to the passenger, but the inaction of the flight attendants, or their refusal to assist the passenger who requests the assistance is deemed the unexpected, or unusual event, or happening.

Also, such event or happening is external to the passenger, and constitutes a Section 10 “accident.”

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