The Court of Appeal confirms that correct defendant is the carrier, not the airport operator/owner, in a situation where there is an accident causing injury while disembarking from an aircraft

A recent decision of the Court of Appeal confirmed that the provisions of the Montreal Convention governing international air travel applied to a claim for personal injuries mounted in relation to a fall while disembarking.

Background

The plaintiff, Teresa Bell, fell while disembarking from a Rome to Dublin flight on 16 January 2009. She fell on the air bridge between the aircraft and the terminal. It appears that she tripped on one of the steps.

In the High Court the judge found that the defendants should have placed signs at eye level to warn passengers in relation to the difference of the floor height in the air bridge which would have eliminated the trip hazard. The court found that the defendant was negligent in this regard. Furthermore, the court found that Article 4 of EU Council Regulation (EC) 2027/1997 permitted the Plaintiff to bring an action against the airport operator because it provided that nothing in the Regulation shall imply that the Community air carrier is the sole party liable to pay damages.

Article 4 reads as follows

"In the event of death, wounding or any other bodily injury suffered by a passenger in the event of an accident, nothing in this Regulation shall

(a) Imply that a community air carrier is the sole party liable to pay damages; or

(b) Restrict any rights of a community our carrier to seek contribution or indemnity from any other party in accordance with applicable law".
This decision was appealed by Dublin Airport Authority plc to the Court of Appeal. The Court of Appeal found in favour of the appellant on two grounds - the first being the issue of negligence. The court indicated that there was no adequate evidential basis for a finding of negligence.

In relation to the Montreal Convention (governing international air travel), the Court of Appeal confirmed that there was authority (from the House of Lords) to the effect that the system of international air carriage regulation is “complete, closed and exhausted”. The Court of Appeal indicated that those decisions had been acknowledged by the Supreme Court in Ireland. This means that a Plaintiff claiming injury in circumstances covered by the Convention can only claim compensation in accordance with its provisions. The Court held that just because the Plaintiff invoked the particular regulation on the basis of the wording did not mean that they had the effect of circumventing a key provision of international agreements.

In the High Court the Court had ruled that the Plaintiff was not restricted to suing the air carrier, Aer Lingus, as the carrier with which she had travelled. The High Court determined that that Council Regulation (EC) 2027/97 authorises proceeding against a party other than the carrier. After reciting the relevant provisions of the Montreal Convention and the Air Navigation and Transport (International Conventions) Act 2004 the Court of Appeal found that the convention applied to all international air travel. It also referred particularly to Article 17.1 which provides that

“The carrier is liable for damage sustained in the case of death or bodily injury of a passenger upon condition that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking”.

There was no question in this case but that Ms Bell was disembarking from the airplane when she sustained her injuries but in those circumstances she could only bring her claim subject to the conditions of Article 29 of the Convention, which makes any actions for damages relating to the carriage of passengers subject to the conditions outlined in the Convention.

The Court referred to a decision of the House of Lords in Sidhu –v- British Airways1 which concerned similar provisions of the Warsaw Convention. The essential finding of that decision was the restriction to proceeding under and in accordance with the Convention. The Court also referred to the decision of

1 1997AC 430
the Irish Supreme Court in *S. Smyth & Company –v- Aer Turas Teo* which provided that the only remedy opened to a passenger claiming to have suffered personal injuries arising from an international flight is under the Convention and that the Convention contained “an exclusive and exhaustive code governing such actions and excluded actions brought under common law”.

The Court of Appeal found that Article 4 does not permit a form of action otherwise prohibited by the Conventions. It further indicated that there was nothing explicitly stated in Article 4 of the Regulation in relation to the possible qualification of the Warsaw Convention. It found that there was nothing in the recitals to the Regulation which suggest that it is making significant changes to this feature of the regime. In the Court's view, it also did not make sense to think that there would be an alteration of this scheme in circumstances where an injured passenger was getting favourable treatment in respect of liability on the part of the carrier.

Finally, the Court held that the carrier should be able to look to another party for contribution or indemnity. Its reading of the Regulation suggests that this was the real purpose of the article. The Court found that the plaintiff was restricted to proceeding against Aer Lingus irrespective of any claim the carrier might have against a third party including DAA plc if that was considered appropriate. It did not mean that Ms Bell was entitled to sue the DAA. The appeal was allowed.

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2 Unreported 3 February 1997