

RWANDAIR LTD v. KARANGWA

[Rwanda SUPREME COURT – RCOMAA0025/13/CS (Mutashya, P.J., Nyirinkwaya and Hitiyaremye, J.) July 31, 2015]

Laws Governing Air Transportation – Trauma resulting from a plane crash – International agreement of Varsovie provides what should be indemnified in case of a plane crash are death, injury or any other body injuries, Trauma is not among things that can be awarded damages for – International agreement of Varsovie of 12/10/1929 relating Air Transportation of people, article 17.

Facts: Karangwa Oreste entered into a contract with RWANDAIR Ltd of transporting him in an Aeroplane from Kigali to Uganda and back. On departure day, that plane had an accident soon after its take off from Kigali International Airport. Karangwa Oreste later filed a claim in the Intermediate Court of Gasabo requesting for damages based on the Air transportation Contract that was not respected and that Court ruled on the case and pronounced that it had no competence to examine that case. He filed another case in the Commercial Court of Nyarugenge, where RWANDAIR Ltd submitted an objection saying that there has been the prescription of the claim because Karangwa never respected days put in place by the law to file a case. The Court took a preliminary judgment and decided that this objection has no merit. The case was heard in merit, and the Court decided that Karangwa Oreste has won the case and ordered RWANDAIR Ltd to give him damages equivalent to three million Rwandan francs (3,000,000Frw) and three hundred thousand (300,000) Rwandan francs as the lawyer's fees.

RWANDAIR Ltd was not happy with the decision taken and appealed against it in the Commercial High Court, stating that the Commercial Court never gave value the prescription of the crime, that even when calculating damages, the court erred in law. Karangwa Oreste also submitted a cross appeal claiming that there was miscalculation of damages awarded to him. This Court ruled on the case and decided that Karangwa has won the case, and ordered RWANDAIR to pay him 183,523USD; five hundred thousand Rwandan francs (500,000Frw) for procedural and lawyer's fees on the appeal level, and on the rest, the court upheld the first court's decision.

RWANDAIR Ltd was not satisfied with the decision again and appealed against it to the Supreme Court, stating that in its pleadings, it explained that Karangwa Oreste had no longer rights to file a case because the time provided for by the law elapsed, because the accident occurred on 12/11/2009 and that based on article 29 of the Convention of Varsovie, the last date to file the case was 11/11/2011. RWANDAIR states also that the court should not have awarded damages based on the depression Karangwa Oreste was caused by the accident, because there were no body injuries caused by that accident, and that even the awarded damages were calculated contrary to the law.

The Lawyer on behalf of Karangwa states that he was injured and he should be awarded damages for that and that the injuries mentioned in the contract which was based on in the case, refer not only to body injuries but even to the trauma which are even indicated by medical documents because he was seriously traumatized.

On the hearing day, the Lawyer for Karangwa submitted an objection of inadmissibility of the appeal of RWANDAIR Ltd on the ground that he lost the case on the first and second level for similar reasons and the Supreme Court rejected that objection in an interlocutory

judgment. The Supreme Court also decided in a preliminary case that the prescription of the claim has no merit.

Held: The fact that the initiators of the International convention of Varsovie, provided in article 17, instances in respect of which damages should be awarded in case of a plane crash, which are death, wounds or other body injuries, all these words implying physical things, if psychological injuries or trauma considered as moral element were intended by the initiators of the Convention, they would not have failed to include them in it clearly. Therefore, the plaintiff should not be awarded damages for that because such injuries are not included among injures in respect of which damages are awarded in accordance to the Varsovie convention referred to by parties in this case.

**Appeal has merit.
Appealed judgment overruled.
Court fees to the respondent.**

Statutes and statutory instruments referred to:

International Convention of Varsovie of 12/10/1929, relating to Air transportation of people, article 17.

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Karangwa Oreste entered into a contract with RWANDAIR Ltd of taking him in an Aeroplane from Kigali to Uganda in a round trip. On 12/11/2009, the departure day, the plane in which Karangwa boarded which was departing to Entebbe in Uganda had an accident soon after its take off from Kanombe Airport. On 11/11/2011 Karangwa Oreste filed a claim in the Intermediate Court of Gasabo requesting for damages, based on the Air transportation Contract that was not respected and on 24/04/2012, the Court took decision and ruled that it had no competence to examine that case.

[2] Karangwa filed a case again in the Commercial Court of Nyarugenge and RWANDAIR Ltd also raised an objection stating that there was prescription of the claim because Karangwa never respected the time limit provided for by law for initiation of the case. On 4/3/2013, the Court took decision in a preliminary judgment RCOM0102/13/TC/NYGE and ruled that the objection has no merit. The merit of the case was heard on 22/4/2013, where the court declared Karangwa Oreste the winning party of the case and ordered RWANDAIR Ltd to give him damages equivalent to three million Rwandan francs (3,000,000Frw) and three hundred thousand Rwandan francs (300,000) of Lawyer's fees.

[3] RWANDAIR Ltd was not satisfied with the decision again and appealed against it to the Commercial High Court, stating that the Commercial Court did not consider the prescription of the action and concerning calculation of damages, it was erred in law. Karangwa Oreste filed a cross appeal stating that the damages awarded to him were

erroneously calculated. This Court decided upon the case RCOMA0180/13/HCC and ruled that Karangwa has won the case and ordered RWANDAIR Ltd to give him 183,523USD, five hundred thousand Rwandan francs (500,000) for procedural and Lawyer's fees on the appeal level and ordered also that for the rest, the decision of the court in the case RCOM0102/13/TC/Nyge should be upheld.

[4] RWANDAIR Ltd was not satisfied with the decision and appealed against it to the Supreme Court, stating that it explained in its hearing arguments, that Karangwa Oreste had no longer the right to file a case, because the time provided for by the law elapsed, explaining that the accident occurred on 12/11/2009 and that based on article 29 of the Convention of Varsovie, the last date to file a case was 11/11/2011. RWANDAIR Ltd also states that the court should not have awarded damages based on the depression occasioned by the accident to Karangwa Oreste, because there were no body injuries caused by that accident, and that even the awarded damages were calculated contrary to the law.

[5] On 6/05/2014 the parties appeared in Court, the hearing was conducted in public where RWANDAIR was represented by Counsel Nkurunziza François Xavier, while Karangwa Oreste was represented by Counsel Rwihandagaza Richard. On that day, the Lawyer on behalf of Karangwa submitted an objection requesting the court to dismiss the appeal lodged by RWANDAIR on the ground that it lost the case in the first and second level for the same reasons, and on 06/06/2014 the Supreme Court held in a preliminary case, that this objection lacks merit and ordered for the hearing to resume on 23/09/2014.

[6] On 23/09/2014, the parties appeared in Court assisted as before and the appeal of RWANDAIR was examined where it was stating that the claim of Karangwa Oreste was not supposed to have been admitted because it was filed after there was prescription and on 14/11/2014, the Supreme Court rejected that appeal ground and ordered that the hearing of the case in merit will proceed on 20/01/2015.

[7] On that day the hearing was held in public, the parties were present and represented as before. After hearing the submissions from both sides, the parties to the case were informed that the judgment on the case will be delivered on 27/2/2015, but on that day, the court decided to resume the hearing and scheduled it on 21/4/2015, in order to allow the parties to have their comments on the letters that were submitted in the file after the closure of hearing. On that day the hearing was adjourned to 13/5/2015 because the day time was over.

II. ANALYSIS OF THE LEGAL ISSUES

➤ **To determine whether it should be awarded damages in respect of the psychological injuries that resulted from the accident of the Aeroplane provided for in article 17 of the Convention of Varsovie relating to transportation of people in an aeroplane that was signed on 12/10/1929.**

[8] Counsel Nkurunziza François Xavier on behalf of RWANDAIR Ltd states that the reasons that led them to appeal, was that the Judge who decided upon the appealed case awarded Karangwa Oreste damages based on the sorrow caused by the accident of RWANDAIR's Aircraft in which he lost his closest friend, while they find the damages mentioned in article 17 of Varsovie international Convention should result from direct effects caused by the accident, of which effect should be both visible and tangible.

[9] He says that it is known that Karangwa Oreste has no body injuries caused in an accident of RWANDAIR's Aircraft, instead that, his statements relate to distress caused by that accident, and that all evidence he holds which are based on reports done by Medical doctors are baseless.

[10] He states also that article 17 of the Varsovie Convention provides that, in case of an accident of the aircraft, damages are determined only when death occurs or body injuries and Karangwa does not indicate that he had those injuries. He adds that even if the Court finds damages to be awarded in respect of psychological injuries too, , Karangwa should not be awarded any because the Medical doctor confirmed that those injuries were caused by the distress he had for losing his close friend in the accident. Therefore his injuries have no direct relations with the accident of the Aircraft belonging to RWANDAIR Ltd.

[11] Counsel Nkurunziza François Xavier states in a document submitted to Court, that even in other jurisdictions, decisions were taken that; injuries in respect of which damages are awarded are only those originating from the accident, and based on article 17 of the Varsovie convention, only body injuries. He provides a model case law which Morris vs KLM Royal Dutch Airlines that was taken in England where a girl aged fifteen years old (15) was offended by a passenger in an Aircraft, and went to court to seek for damages on the basis that she was traumatized but based on article 17 of the Convention previously mentioned, the House of Lords, considered as the Supreme Court, decided that she deserves no damages based on the same article because there were no body injuries indicated.

[12] Counsel Rwihandagaza Richard on behalf of Karangwa Oreste states that he had injuries and should be awarded damages for that, based on article 17 of the Varsovie convention. He states that the said injuries in this article is not only body injuries, but also psychological injuries and there are documents from the Hospital that indicate that he suffered of those injuries because he was seriously traumatized.

[13] Regarding the effect of those injuries he had in relation to his job, Counsel Rwihandagaza states that even if he is not an expert in relation to those problems, he finds that the trauma suffered by Karangwa due to this accident impacted his daily activities, and that it has been even evidenced in Medical doctors reports.

[14] Concerning the fact that this trauma Karangwa Oreste suffered was caused by the loss of his close friend, his Counsel Rwihandagaza Richard states that this also traumatized him because it was Karangwa who was taking a lady named Azera who lost her life in this accident to Uganda, and even her ticket was bought by him, therefore he always regrets her death by accusing himself of being the catalyst.

[15] Counsel Rwihandagaza Richard states in the documents submitted to the Court, that French courts have never had to rule on the question of what is meant by the concept of "body injury", whether it includes only the injury which causes only a physical injury or if it also includes a lesion which caused a mental injury, (les juridictions françaises n'ont toujours pas eu à se prononcer sur la question de savoir ce que recouvre la notion de "lésion corporelle", si elle comprend uniquement la lésion qui n'entraîne qu'un préjudice physique ou si elle comprend également une lésion qui occasionna un préjudice psychique). He gave an example of the case decided by the "Cour de cassation" in 1982, where it took a decision based on article 17 of the Varsovie Convention, that a passenger has the right to request for damages resulting from the trauma, though the transporter (le transporteur aérien) had play no

role in it, but indicated the effects caused to the passengers as a result of the Aircraft hijacking, whether they are effects based on body injuries or trauma.

[16] He states that in this case, it was found that there was no role played by the transporter in the occurrence of such effects, whether based on body injuries or trauma, not because no damages are awarded in respect of the effects based on trauma, but because the transporter managed to prove that he/she took all possible measures to prevent those effects in compliance with the provision of article 20 of the Varsovie Convention.

[17] In that document, Counsel Rwihandagaza states that in regards to Labour legislation, “Cour de cassation” in France regarded trauma (trouble psychique) as normal body injuries (lésion corporelle), whereby this Court confirmed this qualification when it was examining the claim of an employee who suffered trauma when he was being inspected.

[18] He concludes his remarks by requesting the court to assist for interpretation of the word injuries (blessures) stated in article 17 of the Varsovie Convention because the parties have controversial interpretation, where some say it is only body injuries (blessures physiques) which are concerned in this article while others regard it to include also psychological injuries (blessures psychiques).

THE VIEW OF THE COURT

[19] Article 17 of the Varsovie Convention of 12/10/1929 as amended by the La Haye Convention of 28/09/1955 which Rwanda ratified, states that the carrier is liable for damage occurred in case of death, injury or any other bodily injury suffered by a passenger if the accident that caused the injury occurred while on board of the aircraft or during any operations of embarkation and disembarkation. (Le transporteur est responsable du dommage survenu en cas de mort, de blessure ou de toute autre lésion corporelle subie par un voyageur lorsque l'accident qui a causé le dommage s'est produit à bord de l'aéronef ou au cours de toutes opérations d'embarquement et de débarquement).

[20] Regarding this case, Counsel Rwihandagaza Richard on behalf of Karangwa Oreste states that the injuries referred to in article 17 of the Convention previously mentioned, are not only body injuries, but instead they are psychological injuries which he confirms his client suffered in an accident of RWANDAIR's Aircraft and as a result, he requests for damages, while Counsel Nkurunziza François Xavier on behalf of RWANDAIR states that injuries which are considered in article 17 of the aforementioned convention are only body injuries, therefore psychological injuries are not included.

[21] The Supreme Court finds that an answer to the question to know whether the injuries suffered by a passenger due to the accident that occurred when he was on board of the plane are only body injuries (blessures physiques) or whether the psychological injuries (blessures psychiques) are also concerned by this article, must be found with the help of the analysis of this article made by experts who did research on it and other courts case laws that addressed similar issue.

[22] In his document entitled “La réparation du préjudice moral dans les accidents de transport aérien”¹, Counsel Kenneth WEISSBERG, an advocate in the Paris bar, states that the Varsovie Convention provides for three circumstances in respect of which a person may

¹ www.weissbergavocats.com/publications/prejudice-moral-accidents-aeeriens.pdf.

file a case to the court claiming for damages which are death, wound and body injuries (la mort, les blessures et les lésions corporelles). In that document, he says that even if words “death” and “wounds” has no unusual confusion about their sense , but it is the case in regards to the word “body injuries”. He says the problem is to know whether that word mentioned about in article 17 of the Varsovie Convention combines even the depression, sorrow, and other psychological injuries, and this would result in awarding the victim damages based on that aforementioned article.

[23] After reading different decisions taken by several courts when seized with claims of damages resulting from moral injuries (préjudice moral), this Law scholar finds that so many courts decided that, in order for damages to be awarded in respect of psychological injuries, they must be the result of body injuries resulting from the accident. He says that it is even the position of the Supreme Court in America in the case *Eastern Airlines, Inc. v. Floyd*, (1991) where it was concluded that based on 17 of the Varsovie convention, air carrier cannot be held liable when an accident has not caused a passenger to suffer death, physical injury or physical manifestation of injury².

[24] In the case, *Edith Rosman et al., Appellants, v. Trans World Airlines, Inc., Respondent. Miriam Herman, an Infant, by Alexander Herman, Her Father and Natural Guardian, et al., Appellants, v. Trans World Airlines, Inc., Respondent*, decided upon by the court of appeal of the State of New York Court of Appeals of State of New York) on 13/06/1974, the appellant were praying for damages for having been traumatized, when on 6/09/1970 the plane on which they boarded was rerouted by terrorists when they were on their way from Tel Aviv, Israel, to New York City. The judge said that, based on article of the 17 of the Varsovie international convention. At the trial, plaintiffs should be allowed to prove damages for palpable, objective bodily injuries suffered, whether caused by psychic trauma or by the physical conditions on the aircraft, irrespective of impact, but not for psychic trauma alone³.

[25] In the understanding of this court, based on what has been presented above, The fact that the initiators of the International convention of Varsovie, provided in article 17, instances in respect of which damages should be awarded in case of a plane crash, which are death, wounds or other body injuries, all these words implying physical things, if psychic injuries or trauma considered as moral element were intended by the initiators of the Convention, they would not have failed to include them in it openly. This is also how it was comprehended by different international courts that encountered cases of people claiming for damages resulting from the psychic injuries alleging to have resulted from the accident of the aircraft.

[26] Consideration made of aforementioned grounds, Karangwa Oreste having stated that he has been traumatized or had psychic injuries resulting from an accident of the aircraft of RWANDAIR Ltd in which he boarded, but without providing evidence of body injuries he was caused by that accident or that has resulted from that trauma he said was caused by that accident, the Supreme Court finds that, based on article 17 of the Varsovie international convention mentioned above, no damages should be awarded to him because such injuries are not included among injuries in respect of which damages are awarded.

² 2, Case law.find law.com/us-supreme-court/499/530/html.

³ 3, http://www.leagle.com/decision/197441934NY2d385_1368.xml/ROSMAN V. TRANS WORLD AIRLINES#

[27] After finding that no damages must be awarded to Karangwa Oreste as previously explained, the Supreme Court finds that it is not necessary to examine RWANDAIR's point of appeal regarding the calculation of such damages.

[28] Based on the explanations given above, the Supreme Court finds the appeal of RWANDAIR Ltd with merit, therefore, the judgment RCOMA0180/13/HCC rendered by the Commercial High Court on 04/10/13 is overruled.

III. THE DECISION OF THE COURT

[29] The Court decides that, the appeal lodged by RWANDAIR Ltd has merit.

[30] The Court Rules that, the case RCOMA 0180/13/HCC rendered by the Commercial High Court on 04/10/2013 is overruled.

[31] The Court orders Karangwa Oreste to pay court fees, equal to one hundred thousand francs (100,000).