

Anonymised version

Translation

C-687/19 — 1

Case C-687/19

Request for a preliminary ruling

Date lodged:

18 September 2019

Referring court:

Cour d'appel de Mons (Belgium)

Date of the decision to refer:

5 September 2019

Appellant and defendant at first instance:

Ryanair Ltd

Respondent and applicant at first instance:

PJ

...

... [Or. 2]

IN PROCEEDINGS BETWEEN:

RYANAIR Ltd ...,

appellant,

...

and

PJ, ...

respondent,

... [Or. 3] [course of the proceedings]

I. Admissibility of the appeal

The appeal ... is admissible. ...

II. Background and present subject matter of the dispute

PJ brought proceedings against the company ... RYANAIR ... seeking an order requiring it to pay her damages in the principal sum of EUR 60 000, subject to any increase or decrease in the course of the proceedings, and EUR 2 000 as interim damages, in addition to compensatory interest as from 25 February 2015.

By submissions filed at the hearing held on 24 January 2018, she made an interlocutory application for the appointment of a medical expert to assess the damage which she claims to have suffered.

The judgment under appeal, delivered in the absence of ... RYANAIR ..., ordered the latter to pay to PJ interim damages of EUR 1 500 and, as regards the remainder, appointed the expert RI.

...[Or. 4]

III. Basis of the appeal

III.1. The relevant facts

1. On 25 February 2015, the respondent took flight FR2829 from Barcelona to Charleroi. She was accompanied by her nine-month old child, SH.
2. As the aircraft was flying over the Pyrenees, it encountered significant turbulence which caused injuries to two crew members: one stewardess was hurled to the ceiling and another suffered an ankle injury after being hit by a food trolley. The aircraft was diverted to Bordeaux in order to enable those two injured persons to receive medical treatment.
3. The flight landed at Charleroi airport five hours late.
4. The respondent states that, as a result of that incident, she suffered severe shock and has since suffered from debilitating post-traumatic stress syndrome. She is seeking an order requiring the appellant to compensate her for that injury.
5. The respondent has submitted:

- a statement dated 17 August 2015, signed by TG, a psychiatrist, recounting the respondent's statements and indicating that, since the incident, she has been afraid of all types of transport and relives that traumatic experience, concluding 'I think that this patient presents the typical characteristics of debilitating post-traumatic stress that will require psychological treatment and medication';
- three statements ... describing how the respondent has been undergoing therapy since 28 April 2015 as a result of the incident in question;
- a statement of 20 March 2017 by VF, according to which the respondent has been suffering from postconcussion syndrome since 25 February 2015, with anxiety, sleeping difficulties and right S1 lumbosciatica;
- the results of an X-ray examination carried out on 21 February 2017 which found a 'right posterior disc bulge at L5-S1, entering into contact with the emerging right S1 nerve root'. [Or. 5]

III.2. Discussion

6. The appellant claims that:

- the action is time-barred;
- no compensation is possible in the present case since there was no accident or, in the alternative, no bodily injury, within the meaning of Article 17(1) of the Montreal Convention of 28 May 1999 for the Unification of Certain Rules for International Carriage by Air;
- no causal link has been proven.

III.2.1. Limitation in time

7.-16... [Or. 6] ...

17. The application is therefore not time-barred

III.2.2. The concept of 'accident'

18.-20. ... [Or. 7] ...

21. In the present case, it has been established by the documentation and evidence submitted that, in the course of the flight at issue, the aircraft suddenly experienced severe turbulence which caused bodily injuries to two crew members and made it necessary to divert the aircraft.

III.2.3. The concept of ‘bodily injury’

22. If compensation is to be payable, the respondent must also prove that this sudden unexpected incident caused her bodily injury.
23. The respondent has never claimed that she was injured as a result of the turbulence which occurred during the flight at issue, and does not do so in the originating application, in which she claims that she suffered severe shock and was left traumatised by the incident but does not mention any physical injury. ...
24. ... **[Or. 8]**
25. The appellant, however, argues that purely psychological injuries are excluded from compensation, both under Article 17(1) of the Montreal Convention, which refers to bodily injury, and under Regulation (EC) No 889/2002, as well as under the appellant’s own general terms and conditions which govern the parties.
26. Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents states in its recital 4 that the Montreal Convention provides for a regime of unlimited liability in the case of death or injury of air passengers.
27. According to Article 2(2) of that regulation,¹ concepts contained in it which are not defined in paragraph 1 are to be equivalent to those used in the Montreal Convention. In its [recital 10], the regulation states that a system of unlimited liability in case of death or injury to passengers is appropriate in the context of a safe and modern air transport system.
28. Article 3(1) of that regulation provides that the liability of a Community air carrier in respect of passengers and their baggage is to be governed by all provisions of the Montreal Convention relevant to such liability. The annex to that regulation provides that there are no financial limits to the liability for passenger injury or death.
29. The appellant’s general terms and conditions state that international travel, as defined in the Convention, is governed by the liability rules of the Convention and of Council Regulation No 2027/97 (as amended by Regulation No 889/2002) and by those terms and conditions, which state in Article 14(2) that ‘there are no financial limits to our liability for the death of or physical injury to any passenger.’

¹ Translator’s note: the references in paragraphs 27 and 28 and in the question to Articles 2(2) and 3(1) and the annex should be understood as referring to those provisions of the amended Regulation No 2027/97 and not, as incorrectly stated, to those of the amending Regulation No 889/2002, which contains only two articles.

30. The appellant does not dispute the fact that Regulation No 2027/97 does not amend the content of the Montreal Convention.
31. Neither the Montreal Convention nor Regulation (EC) No 889/2002 defines the concept of ‘bodily injury’. In its usual meaning, the term ‘injury’ means ‘a serious change caused in an organ by a disease, accident (wound, bruise, burn)’, and the term ‘bodily’ means ‘relating to the [(physical)] body’ (see *Le Robert illustré*, 2012). [Or. 9]
32. The appellant defends the following position:

Post-traumatic stress, such as that alleged by the respondent, is not a ‘bodily injury’ within the meaning of the Montreal Convention. There is nothing new in psychological damage not being included as damage in respect of which compensation is payable. Even before the Montreal Convention came into force, Article 17 of the Warsaw Convention contained an essentially similar arrangement. The US Supreme Court delivered a landmark ruling in *Floyd* (US Supreme Court, *Eastern Airlines, Inc. v. Floyd*, 17 April 1991, 499 US 530 (1991)), holding that ‘*even if we were to agree that allowing recovery for purely psychic injury is desirable as a policy goal, we cannot give effect to such policy without convincing evidence that the signatories’ intent with respect to Article 17 would allow such recovery. As discussed, neither the language, negotiating history, nor postenactment interpretations of Article 17 clearly evidences such intent.*’

The *travaux préparatoires* relating to the Montreal Convention show that a number of Scandinavian countries attempted to have mental injury added alongside bodily injury (International Civil Aviation Organization, International Conference on Air Law, Montreal 10-28 May 1999, vol. 1, *Minutes*, p. 67).

However, that route was, quite deliberately, not taken on conclusion of the negotiations for the Convention and it was decided that the Convention should retain only bodily injury.

That refusal to include mental injury in the Montreal Convention is further confirmed by the option chosen by the committee revising the Rome Convention of 1952 on Damage caused [by Foreign Aircraft] to Third Parties on the Surface, in so far as the Convention on Compensation for Damage Caused by Aircraft to Third Parties of 2 May 2009 (not ratified by Belgium) provides in Article 3(3) that ‘*damages due to death, bodily injury and mental injury shall be compensable. Damages due to mental injury shall be compensable only if caused by a recognizable psychiatric illness resulting either from bodily injury or from direct exposure to the likelihood of imminent death or bodily injury.*’

This is the one and only legal instrument with a bearing on air transport that allows a particular category of victims to claim compensation for their mental injury in very limited circumstances. [Or. 10]

The international legislature did not make that choice haphazardly, but because it wished to ensure a uniform, reasonable and balanced compromise between, on the one hand, the protection of the interests of passengers and, on the other, the promotion of air transport as an activity aimed at allowing the free movement of persons and goods, for both social and commercial purposes.

Any other outcome would leave the way open to unreasonable claims for compensation from any passenger at all who might allege that he or she had suffered psychological discomfort, of any kind, as a result of using a means of transport.

33. The respondent defends the following position:

In *Floyd*, the US Supreme Court confined its examination to the matter of purely mental injury and left to one side the issue of mental injury accompanied by physical injury or the issue of mental injury subsequently manifesting itself through a physical injury.

Furthermore, subsequent to *Floyd*, the claimant in *Weaver v. Delta Airlines* stated that she had experienced terror during an emergency landing and was diagnosed with post-traumatic stress syndrome. She argued that recent medical developments showed that extreme stress causes physical brain damage, that is to say, physical destruction or atrophy of portions of the hippocampus of the brain, and the District Court agreed with her and found those factors to be sufficient (US District Court for the District of Montana, *Weaver v. Delta Airlines Inc.*, 56 F. Supp. 2d 1190 (D. Mont.1999), 3 June 1999).

There is reason to question where the line is to be drawn between a physical injury and a mental injury.

Subsequently to *Floyd*, during the negotiation of the Montreal Convention, both the American representatives and those of Sweden and Norway wished to add, in clear terms, the concept of mental injury. However, they encountered opposition from a large number of representatives of other countries who considered it unnecessary to do so because the concept of psychological injury was already included in the term ‘bodily injury’. This was confirmed by the French representative involved in the Montreal Convention, who stated that the expression ‘lésion corporelle’ did indeed cover both physical and mental injury (International Civil Aviation Organization, International Conference on Air Law, (Convention for the Unification of Certain Rules for International Carriage by Air), Montreal (10-28 May, 1999), *Minutes*, Doc. 9775- DC/2, p. 68 pt 36 (2001).

In the event of doubt with regard to the general terms and conditions, Article 1162 of the Belgian Civil Code must be applied. **[Or. 11]**

34. Under Article 267 of the Treaty on the Functioning of the European Union, the Court of Justice of the European Union has jurisdiction to give preliminary rulings

concerning the interpretation of the Treaties and the validity and interpretation of acts of the institutions, bodies, offices or agencies of the European Union.

Since it is for the Court of Justice of the European Union to interpret EU law, the question set out in the operative part of the present judgment should be referred to it for a preliminary ruling before this court rules more fully.

ON THOSE GROUNDS

...

Prior to ruling more fully, the Cour d'appel de Mons (Court of Appeal, Mons) refers the following question to the Court of Justice of the European Union for a preliminary ruling:

Must Article 2(2) of Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents, and therefore Article 17(1) of the Montreal Convention of 28 May 1999 for the Unification of Certain Rules for International Carriage by Air, be interpreted as precluding the payment of compensation for a psychological injury, such as post-traumatic stress, on the basis of those provisions?

[signatures]

... [Or. 12] ...

WORKING DOCUMENT