



[Home](#) / [Money](#) / Plane Crash Victim Compensation under the Montreal Convention

Plane Crash Victim Compensation under the Montreal Convention

By *Miriam Kelliher* on April 3, 2014



As their disbelief turns to anger and their anger turns to grief, the families of the passengers of missing Malaysia Airlines flight 370 will likely turn to the law to explore their right to economic compensation for their horrific loss. Any claims filed against the airline will be subject to the provisions of the Montreal Convention, an international treaty signed by 105 nations, intended to bring order to a potential multijurisdictional legal mess arising from international commercial aircraft disasters. But can this law, born of an earlier legal scheme to shield the industry, fairly compensate 21st-century victims and their families?

The Montreal Convention replaced a system of laws and agreements that had grown out of a 1929 international agreement called the Warsaw Convention, drafted to promote the fledgling business of international air travel by limiting airline liability. The Warsaw Convention originally capped damages for injury or death at just \$8,300 per passenger, although later private agreements among the major air carriers stipulated much higher awards.

Under the Montreal Convention, which took effect in 2003, airlines in the signatory countries are subject to a two-tiered system of liability. The first tier imposes strict liability for damages up to \$175,000. At the second tier, airlines are liable for proven damages beyond the \$175,000 unless they can show the crash was not caused by its own negligence or that it was caused by the negligence of a third party.

ADVERTISEMENT

LUXURY
WATCH
SALE

LOWEST
PRICE
ONLINE

Trusted
Worldwide



plus
Free Shipping

BUY NOW

THE Watchery.com

SUBSCRIBE VIA EMAIL

Enter your email address to subscribe to the ConsumerEagle and receive notifications of new posts by email.

If \$175,000 sounds low for a wrongful death award in the U.S., it is. Texas-based aviation attorney [Jon Kettles](#), who has litigated cases under the Convention, offers as a reference the \$7.2 million figure he says the U.S. government places on a life when determining what to spend on safety features of roadways and bridges. Add in the value of love, companionship, and the anguish that the victim went through before dying, he says, and “my view is the value of that person to families should be higher,” than \$7.2 million, although he admits juries do not always agree.

[Joseph Vacek](#), aviation law professor at the University of North Dakota’s John D. Odegard School of Aerospace Sciences, says the strict liability amount was probably arrived at through negotiation and an “arcane formula,” noting, “I don’t think it has worked out the way the drafters intended. People’s life value has increased. But that’s based on the jurisdiction I’m in. Other signatory countries may value life in different ways.”

In the end, the low strict liability number may not matter much. Kettles explains that the second tier of liability in the Convention, which has no damages cap, switches the burden of proof from the plaintiff, where it normally resides in tort actions, to the defendant, giving victims and their families a tremendous advantage in court. “The airlines went along with that in exchange for not having punitive damages,” he said, which he feels has been “a practical bargain.” Aviation lawyer [Jonathan Reiter](#) agrees that “there is a very low standard for proving negligence in the second tier,” adding, “the airlines don’t really contest it.”

Reiter, who represented families in cases stemming from the 1999 EgyptAir crash off Nantucket, the crash of SwissAir flight 111, and the American Airlines ([NASDAQ:AAL](#)) flight 587 crash into Belle Harbor, Queens, says that what is contested is the value of the injury or life lost. In the U.S., he explains, “the damages in a wrongful death case most often depend on the circumstances of the individual defendant who was killed and the condition of their dependents,” noting that cases with young children usually involve a higher award.

In China, the home country of many of the passengers on the Malaysia Airlines flight, Reiter says “the computation of damages...is quite different,” explaining that a recent reform of Chinese tort law was based on “an attempt to say every life is worth the same.”

While this difference in compensation can seem like an unfair result of the Convention’s jurisdictional provisions, lawyers say it’s unavoidable. Kettles explains, “If there were no treaty, there probably still would be a vast disparity in compensation based on where people might file suit.” And Vacek calls the apparent inequity “an accident of being on the aircraft. A citizen of the [People’s Republic of China] versus a citizen of Luxembourg will be valued differently. But it’s uncomfortable because it brings that to the forefront.”

RELATED ITEMS AIRLINES

YOU MAY ALSO LIKE...



Protections from the Not-so-Friendly Skies

LEAVE A REPLY

Your email address will not be published. Required fields are marked *

Name *