

Indian Victims: International Compensation!

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Ordinarily we do not cover non-corporate law events but this development might mark the first class action attempt by Indians and hence it makes for a very interesting story. Some victims of the Mangalore Air India Express crash have come together to pursue further compensation not from the airline but from the aircraft manufacturer or its suppliers. I will admit it is a developing story but it is an interesting one like I pointed out and Isha Dalal is here to fill you in with all the details.

On May 22, 2010 168 people lost their lives when Air India Express flight 812 crashed while landing on the Mangalore runway. The Montreal convention lays out international guidelines for compensation in airline accidents. Article 21 says that each passenger is eligible for atleast

100,000 Special Drawing Rights which is approximately Rs 70 lakh. But ultimately compensation is the discretion of the airline and Air India has offered interim compensation of Rs 10 lakh to each adult victim's family and Rs 2 lakh to each injured passenger. Some of the victims' families are asking for more and taking their case all the way to the United States. Earlier this week over 10 families in Mangalore signed on three US based aviation law firms i.e. Masry & Vititoe, Girardi & Keese and Engstrom, Lipscomb and Lack to explore a suit against the aircraft manufacturer, its suppliers and maybe even insurance companies. Nishit Dhruva of Mumbai based law firm M Dhruva and Partners is doing the India ground work.

Dhruva: We are trying to begin by negotiating with the insurance companies to ensure that each of the family members receive the maximum compensation.

Q: Have these kinds of claims – the case of Indian industrial disasters or perhaps an aircrash in India ever been filed sort of against the manufacturer or even an operator or a component manufacturer in another country successfully?

Dhruva: To my knowledge, I am not aware of any such cases but the cases which is proposed to be now filed through the American law firms, the advantage is that there is no cost to be paid by the family members.

Narration: That is because in this case like in American class action suits, the litigation cost will be borne by the law firms. They receive a portion of the settlement amount as fees. George Hatcher of New York based Air Crash Consultants is working with the victims and the foreign law firms to get this case started.

George Hatcher, President, Air Crash Consultants: What do I mean by starting the case the insurance companies have been served a notice that the law firms in the United States represent them and all negotiations are supposed to go through them. The law firms in US will start their own investigation into the



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process, they see if there is any other culpable parties besides the operator in this case here in India and that is the beginning of the case. It is just now beginning.

Q: When you say other culpable parties besides the operator, what would you mean by that because in this case, I understand from the statements that have been coming out from the government and from the operator that they believe it to be a pilot error or a human error. So what do you mean when you say other culpable parties?

Hatcher: Let us say that the pilot had made a mistake, we don't know that but let us say that he had when he made that mistake whatever it was, there is something failed, there something that was not there for that pilot to utilize, was there not enough power on the engines, that the engines lose power, the two altimeters on the plane, were they working, were they telling him what distance he was from the ground, he might have had a false reading. It is just like this in Turkish Airlines, some years back had the same situation where one altimeter wasn't working and the plane crashed onto the runway and luckily not everybody was died but there was deaths and so forth. So in that case they went after the lawyers whoever handled that particular case – they certainly had a case on behalf of the clients for the manufacturer of that altimeter. So it could be here, we have a plane here that is manufactured in United States, we have components here in plane that are probably manufactured in the United States and wherever they are manufactured, a good lawyer is going to look into and speak to experts who is going to point out other possible things that might have gone wrong that are not being talked about at that moment.

Narration: Infact back in 2007 when a flight operated by Brazilian Airline TAM Air crashed in São Paulo, a similar approach helped 70 victim families secure over USD 120 million in additional compensation.

Q: Can you give me a sense of the timelines we are looking at, ofcourse right now you are still in investigation stage so to speak in terms of finding out how this case can next be proceeded with but what are the sort of timelines we are looking at before we can even get to a lawsuit stage or the settlement stage although that might be in the far future from now?

Hatcher: It is difficult for me to answer that because investigations can take a year or two years. In Thailand the 1-2-3 Go crash, the federal investigation just several months ago or a month ago was released after three years since the accident. So it can take a long time. To a lawsuit point, in other cases, my clients have filed a case within 20 days of a crash because they felt they already had a culpable party other than the operator.

Q: So maybe a year atleast till we get to a lawsuit kind of stage?

Hatcher: It could take a year and it is all probably within a couple of years based on my experience that is about what it takes to move a case.

Narration: Over the next few months, the law firms and the team of experts will examine the Mangalore crash wreckage to secure evidence on the course of the crash. There are also hoping to sign on more victim families. Successful or not, this case may mark the first attempt by Indians at class action.
