AIR MANUFACTURER’S LIABILITY IN INDIA

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**ABSTRACT**

When an aircraft is involved in an accident, the manufacturer of the aircraft may be involved in the litigation regarding the accident. This most often occurs when there is a claim that the aircraft accident was the result of a malfunction or a defect in the aircraft. The types of actions that may be brought against the manufacturer may include for negligence, breach of warranty, or products liability.

All the types of action that one can resort to, fall within the ambit of Torts. In India, this stream of law has not developed to its optimum standards. Further, there is no explicit legislation to monitor and regulate this aspect of aviation industry in specific. The other issue that is to be pondered upon is the question of jurisdiction that jeopardizes the objective of the judicial proceedings so initiated. For instance, in the case of Airbus Industries v/s Laura Howell Linton, these were the basic points of determination that were to be presided over before the ultimate objective, to provide relief to the victims. Due to the absence of a codified law, the judiciary is impaired in delivering appropriate remedy. The solution to it resides in the process of formulating a legal order and succinctly dealing with the conflict between municipal and foreign jurisdiction by studying incidents that have occurred in the past and meeting the requirements of the future.

**INTRODUCTION**

When an aircraft is involved in an accident, the manufacturer of the aircraft may be involved in the litigation regarding the accident. This most often occurs when there is a claim that the aircraft accident was the result of a malfunction or a defect in the aircraft. The types of actions that may be brought against the manufacturer may include for negligence, breach of warranty, or products liability.

An Aircraft Manufacturer is the organization that has been recognized by its certifying authority as having manufactured the aircraft, at the time of completion.[[1]](#footnote-1) This industry comprises establishments primarily engaged in manufacturing aircraft, missiles, space vehicles and their engines, propulsion units, auxiliary equipment, and parts thereof. The development and production of prototypes is classified in this industry, as is the factory overhaul and conversion of aircraft and propulsion systems.

When an aircraft manufacturer commits an error on his part, it does not give rise to the same kind of liability that a manufacturer of any other product would have. This is due to the immense amount of cost of aircrafts and more than that is the vulnerability to the lives of hundreds of people. If there is a negligent or unlawful omission on the side of the manufacturer, it clearly creates an impact equivalent to mass killing or culpable homicide.

Thus, it becomes indispensable to ponder upon the aspect of air manufacturer’s liability.

**AIR MANUFACTURER’S LIABILITY**

A negligence action is based on the existence of a duty, a breach of the duty, and an injury that was proximately caused by the breach of the duty. If an aircraft accident was foreseeable on the part of a manufacturer, that is, if a reasonable person would have anticipated the accident, the manufacturer may be sued for negligence. For example, negligence on the part of the manufacturer may be alleged if the manufacturer knew about a defective part in the aircraft and failed to replace the part.

In 1934 Lord Wright said,‘In strict legal analysis, negligence means more than heedless orcareless conduct, whether in omission or commission: it properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing.’[[2]](#footnote-2)

In the present times, this tort has emerged to be the most widely litigated and relevant tort. Negligence actions against aircraft manufacturers generally involve issues of contributory or comparative negligence rather than sole negligence or strict liability. Plaintiffs in those actions often attempt to show that the manufacturers contributed to the accident or were responsible for a portion of the accident rather than the entire accident.

An aircraft manufacturer may also be sued for breach of warranty in an aircraft accident. Such actions are usually brought by persons who entered into a contract with the manufacturer for the purchase of an aircraft. Passengers may have a problem bringing a breach of warranty action against the manufacturer because the passengers are not in privity with the manufacturer, that is, the passengers have not entered into a contract with the manufacturer. Also, if the manufacturer's contract with a buyer disclaimed all liability for any warranties regarding the aircraft, the disclaimers may be upheld.

A more common type of action against an aircraft manufacturer regarding an aircraft accident is a products liability action. In a products liability action, a plaintiff sues the manufacturer for harm that was caused by a defective and unreasonably dangerous product. The action is premised upon the manufacturer's strict liability for the defective or dangerous product. Whether or not the manufacturer was negligent is not an issue.

In order to prove a products liability cause of action, a plaintiff must establish that a product was defective, that the defect rendered the product unreasonably dangerous, that the defective product reached the plaintiff without being changed, and that the defective product was the cause of the plaintiff's injuries. A product is considered to be unreasonably dangerous when its usefulness does not outweigh the risk that was created by a defect.

A product may be defective as a result of its design or manufacture or because of a manufacturer's failure to warn of the dangers or the risks of using the product, which defect is also known as a marketing defect. In order for a design to be defective, there must be a safer alternative design. A safer alternative design is a design that would have prevented or reduced the risk of personal injury or property damage and that was economically and scientifically feasible at the time the product was manufactured. A manufacturing defect is a manufacturing condition that renders the product unreasonably dangerous. A marketing defect is the failure to give adequate warnings or instructions, which failure rendered the product unreasonably dangerous at the time it was marketed.

Warnings or instructions regarding products are considered to be adequate when they catch the attention of a reasonably prudent person who is using the product. The warnings or instructions must generally be understandable to the average person and must convey the nature and the extent of the danger of the product. However, a manufacturer does not have a duty to warn of a risk when the risk is understood by the persons who are using the product. This is often the case with aircraft manufacturers. The manufacturers generally do not have a duty to warn pilots of the normal risks of flying aircraft when it is considered to be common knowledge among the pilots that there are risks of flying an aircraft.[[3]](#footnote-3)

In some states, there is a presumption that an aircraft manufacturer is not liable for a defective design if the design complied with the mandatory safety standards or regulations that have been adopted by the federal government or a federal agency, such as the Federal Aviation Administration (FAA). However, in those states, the presumption may be rebutted by evidence that the federal safety standards or regulations were inadequate.

Aircraft manufacturers are protected by a statute of repose under the General Aviation Revitalization Act of 1994. In accordance with the Act, manufacturers of small aircraft or aircraft parts or systems cannot be sued for an accident that occurred more than 18 years after the aircraft or the parts were manufactured. However, the statute of repose only applies to an aircraft that has a maximum seating capacity of fewer than 20 seats, that was not engaged in scheduled passenger-carrying at the time of the accident, and for which the FAA has issued an airworthiness certificate. The statute of repose does not apply if the manufacturer knowingly misrepresented or concealed safety information. The statute of repose also does not apply if the plaintiff was a passenger who was receiving treatment for a medical or another emergency or if the plaintiff was not aboard the aircraft at the time of the accident. The statute of repose further does not apply to actions that are brought under written warranties. These are the possible claims that can be asserted in order to hold the manufacturer liable for his unlawful act or omission.

**LEGAL REGIME IN INDIA**

All the types of action that one can resort to, fall within the ambit of Torts. In India, this stream of law has not developed to its optimum standards. Further, there is no explicit legislation to monitor and regulate this aspect of aviation industry in specific. The other issue that is to be pondered upon is the question of jurisdiction that jeopardizes the objective of the judicial proceedings so initiated.[[4]](#footnote-4) To add to the misery, the absence of a codified law, has impaired the judiciary in delivering appropriate remedy.

The most important development that has been witnessed is the concept of Strict Product Liability. There is a codified law in the United States of America that enshrines this particular concept. However the evolution and prevalence of this doctrine is rudimentary in India.

Strict tort liability differs noticeably from the concept of negligence. Negligence evaluates the conduct of the product supplier while strict tort liability focuses solely on the condition of the product. The Court must decide whether the defects in the design, manufacture and marketing which were unreasonably dangerous for use by the consumers and they have further undertaken to prove those defects by involve the defendants in that suit.[[5]](#footnote-5)

When a tragic industrial disaster occurred in the City of Bhopal, State of Madhya Pradesh, law suits were filed by American Lawyers in the United States on behalf of thousands of Indians.

The Indian Judiciary system was considered from the Indian Common Law Legal System by Prof. Galanter. Numerous examples from Mr. Palkhivala, former Ambassador of India to the United States, also considered. "A legal system is not a structure of fossils but is a living organism which grows through the Judicial process and statutory enactments." The Court also taken into consideration the delays and back log exist in Indian Courts. The affidavits of Mr. Palkhivala and Mr. Dadachanji were considered. By summing up, the learned Judge held that : "the Indian legal system provides an adequate alternative forum for the Bhopal litigation. Far from exhibiting a tendency to be so 'inadequate or unsatisfactory' as to provide no remedy at all, the Courts of India appear to be well up to the task of handling this case. Any unfavourable change in the law for plaintiffs which might be suffered upon transfer to the Indian Courts, will, by the Rule of Piper, not be given "substantial weight".

Differences between the two legal systems, even if they inure to plaintiffs' detriment, do not suggest that India is not an adequate alternative forum. As Mr.Palkhivala asserts with some dignity, "while it is true to say that the Indian system to day is different in some respects from the American system, it is wholly untrue to say that it is deficient or inadequate. Difference is not to be equated with deficiency." Thereafter, the Court proceeded to dismiss the consolidated case on the ground of Forum non convenience with the conditions that the Union Carbide shall consent to submit to the jurisdiction of the Courts of India and shall continue to waive defenses based upon the statute of limitations; it shall agree to satisfy any Judgment rendered by an Indian Court, and if applicable, upheld by an appellate Court in that Country, where such judgment and affirmance comport with the minimal requirements of due process; and it shall subject to discovery under the model of the United States Federal Rules of Civil Procedure after appropriate demand by plaintiffs.

**ESSENTIALS TO CONSTITUTE STRICT PRODUCT LIABILITY**

In order to prove claims the product's design was defective because the product did not perform as safely as an ordinary consumer would have expected it to perform. To establish this claim, one must follow the subsequent steps and prove all of the following:

1. That manufacturer manufactured/distributed/sold the product;

2. That, at the time of the use, the product was substantially the same as when it left manufacturer's possession;

or

That any changes made to the product after it left manufacturer's possession were reasonably foreseeable to the manufacturer;

3. That the product did not perform as safely as an ordinary consumer would have expected at the time of use;

4. That the product was used or misused in a way that was reasonably foreseeable to manufacturer;

5. That the claimant was harmed; and

6. That the product's failure to perform safely was a substantial factor in causing harm.

Further, the consumer expectation test and the risk-benefit test for design defect must be asserted by the plaintiff.[[6]](#footnote-6)

Product misuse is a defense to strict products liability only when the defendant proves that an unforeseeable abuse or alteration of the product after it left the manufacturer's hands was the *sole* reason that the product caused injury.[[7]](#footnote-7)

'Misuse' is a defense only when that misuse is the actual cause of the plaintiff's injury, not when some other defect produces the harm. This causation is one of the elements of the 'misuse' affirmative defense and thus the burden falls on the defendant to prove it.[[8]](#footnote-8)

**CONCLUSION**

Upon a detailed analysis of international and national codes on Air manufacturer’s liability, it is indispensable for India to legislate on this concept. This would ensure a clear, unambiguous and certain stand of the state on this issue. The legislation must deal with issues pertaining to jurisdiction, the scope of strict product liability of air manufacturers, conflict in matter of international accident, compensation to be awarded to victims and other remedies to be granted in the light of justice, equity and good conscience.

The legislation must operate on twin objectives. Firstly, it must aim at providing adequate remedy to the victims. Secondly, it must establish a national legal regime in harmony with the principles celebrated over the world and upheld as an integral part of international law.

1. http’://www.avaitionglossary.com/ visited on 14 February 2012 [↑](#footnote-ref-1)
2. (*Lochgelly Iron* *and Coal Co* v *McMullan* [1934] AC 1 at 25) [↑](#footnote-ref-2)
3. Bracisco v. Beech Aircraft Corp. (1984) 159 Cal.App.3d 1101, 1106-1107 [206 Cal.Rptr. 431].) [↑](#footnote-ref-3)
4. Airbus Industries vs Laura Howell Linton ILR 1994 KAR 1370 [↑](#footnote-ref-4)
5. Piper Aircraft Company V. Gaynel Reyno, 70 L.Ed. 2d (Supreme Court Of The United States) [↑](#footnote-ref-5)
6. Barker v. Lull Engineering (1978) 20 Cal.3d 413 [143 Cal.Rptr. 225, 573 P.2d 443] [↑](#footnote-ref-6)
7. Campbell v. Southern Pacific Co. (1978) 22 Cal.3d 51, 56 [148 Cal.Rptr. 596, 583 P.2d 121], [↑](#footnote-ref-7)
8. Huynh v. Ingersoll-Rand (1993) 16 Cal.App.4th 825, 831 [20 Cal.Rptr.2d 296], [↑](#footnote-ref-8)