

## **AIR CRASH – VICTIM'S PERSPECTIVE**

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### **ABSTRACT**

An Air Crash is a dreadful event. It is alarming for the CAA, worrisome for the Insurers and a shocking event for the public in general because of the harrowing publicity it gets through the electronic and print media. But it has a devastating and lasting effect on the families of those who perish in such disasters. Others involved in such a tragic event get over their problems sooner or later and memory of the tragedy also recedes into the past in the minds of the general public. However, it is the families and the heirs of the deceased -- the sufferers of the disaster - who become the real victims of such cases. They generally do not get necessary and timely emotional and financial support which they deserve. This, according to my information, did not sufficiently happen in the two air crashes of Airblue of 28th July 2010 and Bhoja Air crash of 20th April 2012, for various reasons. These two air crashes about the worst in Pakistan Aviation history occurring in a spade of 18 months have actually prompted me to share my thoughts with you along with my recommendations for improving the present state of affairs from the perspective of the victims – the sufferers of such fatal accidents.

Air crashes by their very nature are dreadful events. When these happen, first concern of those whether affected by the tragedy or not, is to know about the fate of the persons on board. It is the number of casualties that makes the headlines and not the aircraft or the place of occurrence. These come later. There is always outpouring of sympathizes for those who perish and for their families who have to bear the loss of their loved ones. The immediate concern for the victims of the crash, which is natural, however does not take it long to recede into the past and is overshadowed by the interests of other stake holders and other events.

Besides the mental agony and difficulty to come to terms with stark reality that their loved ones and in most cases their bread winners are suddenly gone and the ordeal that goes with it constantly haunts the families of those perished. They have to fend for themselves alone to claim some compensation for the loss and to find some solace of to cope with the appalling tragedy. The recent two air crashes of Airblue and Bhoja and knowing to some extent plight of the families of those who perished has prompted me to pick this topic for sharing my views with you. Since all on board including the crew of the two ill-fated aircraft are no longer with us, the families, particularly the heirs of the deceased in these two cases are the suffers and are therefore the actual victims of such crashes which is the theme of this humble presentation. They are the worst suffers as they are left alone to fight for their rights, whereas the other stake-holders, the airline, the manufacturers, the air traffic service providers etc may escape the ordeal as there is somebody else to look after their interests. Let me briefly explain position of these stake-holders vis a vis the victims i.e. families of the deceased. The airline loses the aircraft and becomes liable to compensate the victims as per the law. The Insurance Company steps in to pay the agreed cost of the aircraft as well as compensation to the families/heirs for which they are legally entitled to. The Civil Aviation Authority, orders investigation and quite likely gets away from any blame as to the airworthiness of the aircraft or the competence of the air crew, generally the main causes of accidents. In short, there is some body or some agency to protect the interest of other stake-holders, but the victims have to fend for themselves and in many cases stand on weak wickets because of lack of awareness how to go about asserting their own rights.

Now let us revert to the ordeals of these suffers – the real victims. The first and the foremost trauma for them is to know the fate of the loved ones, identification and collection of their remains. In case of Bhoja, it was a harrowing task to go through their charred bodies. In case of a friend of mine he could identify his wife's body only from the shred of a piece of cloth sticking to her charred body. More or less the same excruciating experience was faced by the families of Airblue passengers who perished on the hills of Marghalla. Then comes the problem of the transportation of remains to different places for burial, which in most cases is done by the families of the departed souls themselves.

There are the emotional traumas which cannot be helped much. Now let us come to the crunch that is the monetary compensation that needs to be paid to the families of those killed in the

crash. This is a bit complicated exercise because of legal formalities involved. This unfortunately is the most distressing phase of the ordeal of the families. The concerned airline is obliged to pay compensation (the limit of which I shall come later), only to those who are entitled to receive it as per the law. Generally the widow or the widower or the children have to approach the High Court or the District Court concerned for issue of a Succession Certificate under the Succession Act, 1925. Such a certificate not only specifies who the heirs of the deceased are but also the proportion they are entitled to receive the compensation. They have to file an application, and then a notice is to be published in the newspapers to invite any objections before the court issues the Succession Certificate. It may take several months, if not years, specially when rival claimants involve grand parents, more than one widow, minors, brothers and sisters etc. The claimants get adjournments after adjournment because the courts remain busy in other civil cases and are in no hurry to oblige the claimants of such accidents.

The claimants have to run from pillar to post for want of guidance about the succession certificate, many of them may never have heard of it. They have to engage a competent lawyer at an hefty fee, have death certificates of those killed in the crash, from the doctor concerned. It will be really nightmare for the doctors and may not readily issue death certificate on the basis of the few remains of those perished.

After receiving the Succession Certificate then comes the problem of recovery of the actual compensation. Luckily, the Federal Government through a recent Act has made commendable improvement in providing relief to the victims under the Carriage by Air Act 2012. You may be shocked to know that prior to this Act, the value of human life perished in a domestic air crash was only Rs.39,500, I understand it was doubled later, but I am unable to trace the gazette notification However under this Act of 2012:

- a. Compensation Limit for death or injury caused in an accident on board the aircraft or during the course of embarkation or disembarkations during an International flight is now 100,000 SDR (equivalent to \$ 150,000) and for Domestic accidents it is Rs.5,000,000.
- b. If the accident involves negligence, wrongful act or misconduct of the carrier, its servants or agent, then limit of compensation can be higher.

This high lights the importance of aircraft investigation which I shall discuss later.

It may be clarified that the limit of compensation for injury or death is the same. But the amount is not a lump-sum, payable in each case and every of injury or death; legally the claimant has to prove the extent of actual damage i.e. the economic loss. The compensation is based on the principle of restitution and not for enrichment.

The problem comes when the insurance company delays payment of compensation or naturally tries to reduce it as far as possible through out of court settlement particularly with those who are in dire financial need. I believe some victims of Multan crash of 2006 have not received

compensation yet. Why go that far. I am told only 12 heirs out of 127 passengers killed in the Bhoja Airline crash on 20<sup>th</sup> April, 2012 have received full compensation so far. I have no details about the Airblue crash.

Now I take up the victims' perspective about the aircraft investigation. Investigation into Airblue was completed by CAA some time back and is available on Google. But the Peshawar High Court has termed the investigation as unsatisfactory and wants the investigation redone by ICAO. Result of Investigation into Bhoja Air crash is not known. But it seems this investigation into the Airblue accident again was also done by CAA and if and when made public may also fail to satisfy the court and the bereaved families. The affected families remain in suspense, in fact on tinker hooks, to know who was responsible for taking away their loved ones and what action has been taken against those responsible for the two crashes. I may quote here a news item published in the Express Tribune on 19<sup>th</sup> November, 2011.

“None has been sacked for the Airblue and Bhoja Air disasters. In fact most in command have been rewarded. There is no remorse in the powers of corridor. Hundreds of families have been destroyed but the government continues to function as if nothing happened. Bring guilty to justice? You must be joking”

## **RECOMMENDATIONS**

From the perspective of the victims to assuage their grief and provide prompt compensation to them for the loss of their bread winners following are my recommendations.

1. A disaster of the nature of Airblue or Bhoja should be investigated by a high powered Board composed of persons of high integrity, may be chaired by a retired judge of Supreme Court and other experts, as provided under Civil Aviation Rules, 1994. These Rules are meant to be used. In any case, DG CAA appears to be an interested party in the outcome of serious cases; he should therefore better leave such cases to be handled by the Federal Government. I mean no reflection on any person, but as they say, justice should not be done but also seem to be done.
2. The airline concerned should establish a dedicated disaster management office to oversee relief efforts, transportation of dead bodies, and travel of the heirs to hospital for identification of bodies and oversee payment of compensation to the victims. This office should actually serve as a help line. All airlines should make an SOP which should be approved by DGCAA so as to avoid last minute panic.
3. As an on going exercise the relevant office of CAA should scrutinize the adequacy of insurance policy of the airline for adequacy as required under the law. It may well happen that when the crunch comes; insurance arrangement turns out to be inadequate.
4. As an added assistance, CAA may have a panel of lawyers who may at a reasonable fee process the Succession Certificates, without which no compensation can be given by the

insurance company. The families rather than going hither and thither may avail the services of the lawyers from this panel.

5. It goes without saying that airworthiness of aircraft and competence of crew should be strictly monitored both by the airline and the CAA at all times as these two elements are generally involved in all accidents.

6. Last but not the least The Federal Government should amend the Carriage by Air Act of 2012 to make a provision that the courts should give priority in litigation of cases involving issue of death certificates.

7. These were few humble recommendations to ameliorate the plight of the families of those perished in the air crashes-being the real victims of such dreadful accidents.