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CARRIERS — AIRPLANES — RIGHT TO LIMIT LIABILITY BY CONTRACT — Defendant corporation conducted a regular airplane passenger service between Miami and Tampa, Florida. Deceased purchased an ordinary passenger ticket at the regular price and, in the course of the trip, was killed due to the negligence of defendant's pilot. There was a stipulation in the ticket which all passengers were required to sign that "the company's liability is limited to $10,000." Wife of deceased sued for the negligent death and recovered a judgment in excess of $10,000. *Held*, that defendant was a common carrier, and, therefore, could not compel a passenger to release it of its legal liability. *Curtis-Wright Flying Service v. Glose*, (C. C. A. 3d, 1933) 66 F. (2d) 710.

It is generally agreed that an airline offering to the public a regular transport service is to be deemed a common carrier[1] and, as this court points out,

[1] Law v. Transcontinental Air Transport, Inc., [1931] U. S. Av. REP. 205; see

there seems to be no reason for not applying the same rules to it as to common carriers by land and sea. At common law the rule was settled that a common carrier could not contract against its common law liability for negligence.[2] In the leading federal case of *New York Central R. R. v. Lockwood*,[3] it was determined that a common carrier might, by express contract, relieve itself of liability both as to goods and passengers for hire, providing such a contract be just and reasonable in the eyes of the law. As a general rule, the courts have held that contracts by which a common carrier attempts to exempt itself from liability for its own negligence or the negligence of its servants are void on grounds of public policy.[4] The reports abound with cases stating that a common carrier cannot by contract limit its liability to passengers for hire, but only two cases[5] have been found in which the court has been faced with an attempt to limit the amount of the recovery and in each the right was denied on grounds of policy. However, the courts have upheld express contracts limiting the amount of recovery for negligent damage to goods, but the authorities are not agreed on whether the limitation must be based on what the carrier may reasonably accept as the actual value[6] or may be an arbitrary limitation by virtue of contract.[7] Since the same rules as to contracting against liability for negligence are said to apply to passenger service as to carriage of goods by a common carrier,[8] it is difficult to see how courts following the former theory could uphold a contract limiting the amount of recovery of a passenger.[9] Under the latter theory it would seem

law review articles collected in Quindry, "Airline Passenger Discrimination," 3 J. AIR LAW 481, n. 6 (1932).

[2] New York Central R. R. v. Lockwood, 17 Wall (84 U. S.) 357, 21 L. ed. 627 (1873); E. C. Goddard, "The Liability of the Common Carrier as Determined by Recent Decisions of the United States Supreme Court," 15 COL. L. REV. 399 (1915); for an able discussion of the early decisions respecting the general liability of a common carrier, see Fish v. Chapman, 2 Ga. 349, 46 Am. Dec. 393 (1847).

[3] 17 Wall (84 U. S.) 357, 21 L. ed. 627 (1873); also Bank of Kentucky v. Adams Express Co., 93 U. S. 174 (1876).

[4] Alexander v. St. Louis-San Francisco Ry., 221 Mo. App. 271, 2 S. W. (2d) 165 (1928); Sheridan v. New Jersey & N. Y. R. R., 104 N. J. L. 622, 141 Atl. 811 (1928); Santa Fe, P. & P. Ry. v. Grant Bros., 228 U. S. 177, 33 Sup. Ct. 474 (1913). New York is the single exception. See Anderson v. Erie R. R., 223 N. Y. 277, 119 N. E. 557 (1918).

[5] Feldschneider v. Chicago, M. & St. P. Ry., 122 Wis. 423, 99 N. W. 1034 (1904); Gerin v. Chicago, M. & St. P. Ry., 133 Minn. 395, 158 N. W. 630 (1916). In Chicago, R. I. & P. Ry. v. Posten, 59 Kan. 449, 53 Pac. 465 (1898), it was held that a statute providing, "No railroad company shall be permitted, except as otherwise provided by regulation or order of the board, to change or limit its common law liability as a common carrier" was sufficient grounds to void a contract limiting a passenger's recovery to $1,000.

[6] Alair v. Northern Pac. R. R., 53 Minn. 160, 54 N. W. 1072, 19 L. R. A. 764 (1893); Hart v. Pennsylvania R. R., 112 U. S. 331, 5 Sup. Ct. 151 (1884).

[7] George N. Pierce Co. v. Wells, Fargo & Co., 236 U. S. 278, 35 Sup. Ct. 351 (1915); Boston & Maine R. R. v. Hooker, 233 U. S. 97, 34 Sup. Ct. 526 (1914).

[8] New York Central R. R. v. Lockwood, 17 Wall (84 U. S.) 357, 21 L. ed. 627 (1873).

[9] While it is true that insurance contracts and Workmen's Compensation laws place a value on human life, such are not comparable to the above situation.

that such a contract might be valid if the court considered it just and reasonable. If all the elements of a binding contract had been present in the principal case,[10] it would have raised the issue of whether or not the law would void on grounds of public policy any kind of an attempt by a common carrier to limit the amount of a passenger's recovery for negligence.

J. C. W.

[10] There was no showing of any choice of rates offered to passengers from which might be deduced consideration for such a contract. As to the necessity for consideration, see Murray v. Cunard Steamship Co., 193 N. Y. S. 220, 200 App. Div. 466 (1922); E. C. GODDARD, BAILMENTS AND CARRIERS, 2d ed., sec. 272 (1928).