

## Insurance civil liability of the carrier for any damage to life, health, property passengers

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**Abstract.** From 1 July 2013 in Russia, the Federal law "On mandatory insurance of civil liability of the carrier for the damage caused to life, health, property and passengers on the order of compensation for such damage caused during transport underground." The law establishes a mandatory liability insurance carrier for damage to life, health, property, transportation of passengers by any means of transport, except taxis. Compulsory insurance is introduced in order to provide compensation for damage caused during transportation of life, health and property of passengers regardless of the type of transport and type of transport, creating uniform conditions of compensation for damage due to compulsory insurance. The need for the adoption of this law, given the recent tragic events associated with disasters airliners and the continued almost weekly information on accidents involving passenger motor carriers no doubt.

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### Introduction

Until 2013 in Russia mandatory liability insurance carrier to the passenger and the cargo owner (consignor) provided only VC and UZHT. However, transportation of passengers by rail is used both mandatory and voluntary life and health insurance of passengers. Compulsory insurance for passengers on the follow-up period is set long-distance trains Part 1 of Art. 31 of the Federal Law (hereinafter FL) "On the Federal Railway Transport of the Russian Federation" [1].

In addition, the mandatory personal accident insurance of passengers by air, rail, sea, inland waterway and road transport, as well as tourists and sightseers, make long-distance trips through the tourist - excursion organizations at time of travel (flight) is set by presidential decree of 7 July 1992 N 750 "On compulsory personal insurance of passengers" [2].

It should be noted that entered into force on January 1, 2013 Federal Law "On mandatory insurance of civil liability of the carrier for the damage caused to life, health, property and passengers on the order of compensation for such damage caused by transportation underground" does not negate the above regulations.

The need for the FL "On mandatory insurance of civil liability of the carrier for damage to life, health or property of passengers" so urgent that questioning the relevance of the introduction of this law is simply illogical.

Suffice it to recall the recent tragic events associated with disasters airliners and constant, almost weekly information on accidents involving passenger motor carriers.

The roots of this situation are passing - in the loss of the state monopoly on passenger services and the emergence of private passenger carriers, weakening or complete lack of control over the quality of services and technical condition of the means of transport. This has resulted in an increase in accidents in passenger transport, primarily the fault of the non-state carriers. At the same time, the proportion of such carriers, including individuals, is growing every year [3].

However, by the rules of law on compulsory insurance of civil liability of vehicle owners (Article 6 of the FL "On mandatory insurance of civil liability of vehicle owners") responsibility of the owner of the car to third parties or before passengers for causing moral harm to the victim refers to insurance risk. Insurers are not required to compensate moral damage to third parties in connection with an insured event occurs. Obligation to compensate moral damage caused when an insured event occurs, rests solely with the car owners or carriers [4]. Thus, the definition of the Constitutional Court of 21.02.2008 120-O-O specifies that victims sue directly to the person who caused the damage (the insured under a contract of liability insurance), does not preclude the involvement in the insurer and the possibility of laying on its responsibilities for the implementation of insurance payments in accordance with the terms of civil liability insurance. In this case, however, be aware that the insurance risk on compulsory insurance of liability does not apply because of pecuniary damage [5].

According to a survey of Primorsky Krai Court Judicial Department in the Primorsky Territory from 2007 relations arising from the Federal Law of

April 25, 2002 N 40-FL “On mandatory insurance of civil liability of vehicle owners“ (as amended on July 21, 2005) (hereinafter CTP), unlike those in voluntary insurance, have features as this federal law is to protect the life, health and property of third parties. On this basis the RF Law “On Protection of Consumers' Rights, which regulates relations arising from sales contracts (works, services) to meet the personal, family, household and other purposes not related to the business activity, may not be distributed on the relations arising from the compulsory motor insurance. This means that responsibility as moral damages, fines, penalties, provided by the legislation on the protection of consumers' rights in legal CMTPL not applicable [6].

A specific feature of the transport legislation is to limit the carrier's liability for obligations associated with the transportation. The exception is the obligation to compensate for damage to life and health. Such reimbursement is effected as a general rule in full in accordance with the provisions of Sec. 59 Civil Code of tort liabilities, unless the law or the contract provides for increased responsibility (Art. 800 Civil Code). However, it should be noted that in international transport, there are limitations of liability not only for the obligations relating to the carriage of cargo and luggage, but also for the obligations relating to the carriage of passengers. For example, Art. 7 Athens Convention relating to the carriage by sea of passengers and luggage set limit the carrier's liability in case of death of a passenger, or cause bodily injury [7]. However, the Convention permits increase the limits of liability in the national legislation. Finally, in determining the amount of KTM liability for damage to life and health of passengers depends on whether performed transport in international traffic, as well as the nationality of the persons involved in the contract of carriage. Article 190 of the Merchant Shipping Code establishes the limits of liability of the carrier: the carrier's liability for damage to life or injury to a passenger shall not exceed 175 thousand units of account in respect of carriage. As the text of Art. KTM 197, called the rules on liability of the sea carrier for damage to life or injury to a passenger, and on the limitation of such liability shall apply only in those cases when it comes to the transport of passengers in foreign traffic, and with the proviso that the carrier and the passenger are not Russian organizations or citizens. In other cases, the carrier's liability for damage to life or injury to a passenger, determined in accordance with the rules of the civil legislation of the Russian Federation [8].

In the late 60-ies. last century, established by the Warsaw Convention, lower liability limits for passenger services were unacceptable [9]. Many states and courts, under public pressure, the affected person

dissatisfied established limits by any means and methods of trying to overcome them.

a) have proliferated, especially in the United States, the practice of presenting subordinate domestic law tort claims to aircraft manufacturers, whose liability is not limited. For the same reasons other actions are brought agents and partners carriers, airports, air traffic control and other persons whose liability is not covered by the provisions of the Warsaw Convention.

b) The courts of some states began to apply different penalties to carriers. For example, in the U.S. there were lawsuits to air carriers to recover from them recognized “common law” of punitive damages (punitive damages) in order to increase the amount of compensation in a civil lawsuit. And the additional penalty of “punitive” damages sometimes an order of magnitude larger than the size requirements of the victims [10].

Convention for the Unification of Certain Rules for International Carriage by Air 1999 (Montreal Convention) [11] does not provide for any limitation of liability of the carrier for death or bodily injury to passengers and provides that if the amount of damages does not exceed 100,000 SDRs, such liability occurs at the mere fact that the presence of the carrier causing damage during transport, ie according to the principle of causing (paragraph 1 of Art. 17 and paragraph 1 of Art. 21). Part claims exceeding 100,000 SDRs, the carrier, in accordance with paragraph 2 of Art. 21 of the Convention shall be exempt from liability if he proves his innocence in causing harm. Absence in the Montreal Convention limits liability for damage to life and health of passengers in international air transport, in principle, should not cause any great surprise, since, as already mentioned, in the Russian legislation and law of most states in these cases applied the principle of full compensation for the harm. Limits of liability for damage to life and health of passengers, available in some jurisdictions, if installed on domestic routes, it was mostly similar documents and influenced the Warsaw system, either directly through the dissemination of recent domestic traffic. Thus, in the Montreal Convention celebrates the principle of full compensation for the damage caused to life and health of citizens, and, paradoxically, this principle has become a global character at the risk, as it seemed at one time, mode of transport [12].

However, the Federal Law “On Amendments to Certain Legislative Acts of the Russian Federation in connection with the adoption of the Federal Law” On mandatory insurance of civil liability of the carrier for damage to life, health, property and passengers on the order of compensation for such damages caused during transportation of passengers underground “in

this case amends, determines the amount of compensation carrier for damage to life of two million, for bodily injury to two million rubles. And at the same time indicates that the data size of compensation payments are not an absolute limit of liability of the carrier, as in the case if determined in accordance with the civil law the amount of compensation for harm caused to passengers his life or health, exceeds the amount of compensation payment in respect of damages, payment of the compensation does not relieve the carrier from harm compensation in excess of the amount produced by compensation. All of the above is entirely consistent with the Federal Law "On mandatory insurance of civil liability of the carrier for the damage caused to life, health, property and passengers on the order of compensation for such damage caused by transportation underground" which indicated that the sums insured for the risk of civil liability for harm to the life of the victim must be at least two million twenty-five thousand rubles (at the death of the passenger size of the payment shall be not less than 2 million rubles. necessary plus funeral costs (no more than 25,000 rubles.)) on the risk of civil liability for bodily injury at least two million rubles. It should be noted that changes in legislation regarding the fixing of compensation will affect all traffic regulations and codes except for Air Code of Russian Federation, which to date such standards already exist. In view of the foregoing that the legislator has provided the minimum amount of insurance coverage for the risk of civil liability of the carrier for damage to life or health of the victim, which is the maximum amount of compensation established by the Federal Law "On Amendments to Certain Legislative Acts of the Russian Federation in connection with the adoption of the Federal Law "On mandatory insurance of civil liability of the carrier for damage to life, health, property and passengers on the order of compensation for such damages caused during transportation of passengers underground" in this case, the carrier may insure the risk of liability for harm to the life or health of the victim and the amount exceeding the maximum compensation limit established by the Federal Law "on Amendments to certain Legislative acts of the Russian Federation in connection with the adoption of the Federal Law" On mandatory insurance of civil liability of the carrier for damage to life, health, property and passengers on the order of compensation for such damages caused during transportation of passengers underground "because the maximum compensation payment does

not exempt from redress determined in accordance with the civil law (Section 2 of Chapter 59 of the Civil Code) in excess of the size of the maximum statutory compensation.

Thus, the legislator, in the changes made to the relevant regulations, trying to establish the liability of carriers is identical regardless of the mode of transport, shipment. The validity of that law in force before the adoption of the analyzed laws need to be changed and the establishment of more or less the same type of approach to the carrier's liability for damage caused to the life or health of the passenger is not in doubt.

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#### References

1. Federal law "Railway Transport of the Russian Federation" of 10.01.2003 # 17-FL.
2. Presidential Decree "On compulsory personal insurance of passengers" of 07.07.1992 # 750.
3. Krasnov, K.M., 2006. Commentary to the Concept of the federal law "On mandatory insurance of civil liability of the carrier for damage to life, health or property of passengers". The regulation of insurance activities. Documents and comments, 3.
4. Kuznetsova, O.V., 2009. Non-pecuniary damage: A practical guide. Yustitsinform.
5. Defining Constitutional Court of 21.02.2008 number 120-OO. Access mode: PCA Consultant.
6. Judicial review of Primorsky Krai Court for civil cases in cassation and supervisory procedures in the second half of 2006. Bulletin jurisprudence number 1(15), 2007.
7. On the carriage by sea of passengers and luggage: Convention, concluded in Athens in 1974. Date Views 01.07.2014  
[www.zakon.law7.ru/base77/part8/d77ru8073.htm](http://www.zakon.law7.ru/base77/part8/d77ru8073.htm).
8. Sweet, Y.P., 2007. Consumer protection in the provision of transport services. Laws of Russia: experience, analysis, and practice, 2.
9. On the Unification of Certain Rules Relating to International Carriage by Air: The Convention, concluded in Warsaw on October 12, 1929. Date Views 22.06.2014  
[www.able.by/warsaw\\_air\\_convention](http://www.able.by/warsaw_air_convention).
10. Senchilo, V.M., 1987. Liability of air carriers for international shipments. L.: Olago, pp: 35.
11. Unification of Certain Rules for International Carriage by Air: The Convention, concluded in Montreal on May 28, 1999 Date Views 29.06.2014  
[www.able.by/montreal\\_air\\_convention](http://www.able.by/montreal_air_convention).
12. Ostroumov, N.N., 2006. Air carrier liability for baggage and cargo. Statute.

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