

Families of Iran crash victims will be eligible for financial compensation, legal experts say

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Families of those killed in the Iran crash will be eligible for financial compensation under aviation law, and legal experts say they may collect far more if they argue negligence on the part of the Ukrainian airline for taking off during dangerous conditions.

All 176 people on board Ukraine International Airlines Flight 752 died when the flight crashed near Tehran, hours after Iran launched a missile attack on U.S. bases in Iraq.

The legal jurisdiction for compensation claims depends in part on the destination on a passenger's ticket, as well as other factors, but lawyers say it is likely that the families of many of the victims with ties to Canada will be able to file in this country. Other options include filing in Iran – the site of the crash – or Ukraine, the home country of the airline. But Canadian courts have a record of awarding some of the largest payouts in aviation disasters and also offer the comfort of dealing with the legal process from close to home for Canadian citizens or those who live here.

“The first thing that families will encounter is obviously trying to come to grips with the tragedy and loss and begin looking for answers as to how this could possibly happen,” said Joe Fiorante, a Vancouver-based lawyer who has practised aviation law for more than three decades. “Once the families have had some time to process, they may seek legal advice.”

Dozens of passengers boarded the flight with Canadian passports and a total of 138 were heading to Canada. Claims for financial compensation are governed by international treaties, and both Canada and Ukraine have adopted the Montreal Convention. Mr. Fiorante said Iran still operates under the much older Warsaw Convention, which has lower limits on payouts.

Under the Montreal Convention, an airline is required to pay whatever damages a victim's family can prove – which can vary based on the age and financial situation of each person – without any discussion of fault, up to a maximum of about \$230,000. If the family can prove damages above that amount, the airline is required to pay the additional amount unless it can prove that it was not negligent.

On Thursday, Prime Minister Justin Trudeau said Canada had received intelligence indicating an Iranian missile shot down Flight 752. Iran has now acknowledged this.

“The question of negligence will involve: Should any commercial carrier [airline] have been operating out of Iran given the circumstances?” Mr. Fiorante said.

“There is good reason to believe the families would succeed with this,” said Roderick Winsor, a partner with Blaney McMurtry LLP in Toronto, who represented plaintiffs related to the Air India disaster of 1985.

Ukraine International Airlines (UIA) could also be found at fault for other reasons, and it would have the burden of proving that it was not negligent. If it was at fault, its insurance provider would be required to cover all damages, whether they exceed the \$230,000 threshold or not.

As with any incident that results in death, the calculation of damages is a highly individual process. It is tied to the amount dependents would be entitled to under family law legislation, Mr. Fiorante said. This means financial damages are typically higher for adult victims who are already working and earning a good income, as opposed to a child or a student. However, some compensation can also be awarded for bereavement or loss of companionship.

Class-action lawsuits are common in aviation-disaster cases, but families might want their own legal representation.

“The claims in this case are large and no one will have trouble retaining a lawyer on a contingent-fee basis,” said Mr. Winsor, referencing an arrangement that sees lawyers receive fees out of the proceeds and charge nothing up front.

He said families should seek any benefits to which they might be entitled – under life insurance, for example – and should then take steps to make a claim against UIA. They might also have claims against other parties, Mr. Winsor said.

“They should start the claim procedure as early as they can to avoid any unnecessary delay and ensure that they do not miss any time limits,” he added. The limitation period on claims against an airline under the Montreal Convention is two years from the date of the crash.

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