

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

DOOLEY, PERSONAL REPRESENTATIVE OF THE ESTATE
OF CHUAPOCO ET AL. v. KOREAN AIR
LINES CO., LTD.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

No. 97–704. Argued April 27, 1998— Decided June 8, 1998

The Death on the High Seas Act (DOHSA) allows certain relatives of a decedent to sue for their own pecuniary losses, but does not authorize recovery for the decedent’s pre-death pain and suffering. Petitioners, personal representatives of three passengers killed when Korean Air Lines Flight KE007 was shot down over the Sea of Japan, sued respondent airline (KAL) for, *inter alia*, damages for their decedents’ pre-death pain and suffering. While their suit was pending, this Court decided in *Zicherman v. Korean Air Lines Co.*, 516 U. S. 217— which arose out of the same disaster— that the Warsaw Convention permits compensation only for legally cognizable harm, but leaves the specification of what constitutes such harm to applicable domestic law, *id.*, at 231; that DOHSA supplies the applicable United States law where an airplane crashes on the high seas, *ibid.*; and that where DOHSA applies, neither state nor general maritime law can permit recovery of loss-of-society damages, *id.*, at 230. Subsequently, the District Court in this case granted KAL’s motion to dismiss petitioners’ nonpecuniary damages claims on the ground that DOHSA does not permit recovery for such damages, including damages for a decedent’s pre-death pain and suffering. In affirming, the Court of Appeals rejected petitioners’ argument that general maritime law provides a survival action for pain and suffering damages, holding that Congress has decided who may sue and for what in cases of death on the high seas.

Held: Because Congress has chosen not to authorize a survival action for a decedent’s pre-death pain and suffering in a case of death on the

Syllabus

high seas, there can be no general maritime survival action for such damages. Before Congress enacted DOHSA, admiralty law did not permit an action to recover damages for a person's death. In DOHSA, Congress authorized such a cause of action for certain surviving relatives in cases of death on the high seas, 46 U. S. C. App. §761, but limited recovery to the survivors' own pecuniary losses, §762. DOHSA's limited survival provision also restricts recovery to the survivors' pecuniary losses. §765. In *Mobil Oil Corp. v. Higginbotham*, 436 U. S. 618, this Court held that, in a case of death on the high seas, a decedent's survivors could not recover damages under general maritime law for their loss of society, reasoning that, since DOHSA announced Congress' considered judgment on, *inter alia*, beneficiaries, survival, and damages, *id.*, at 625, the Court had no authority to substitute its views for those expressed by Congress, *id.*, at 626. Because *Higginbotham* involved only the scope of the remedies available in a wrongful death action, it did not address the availability of other causes of action. However, petitioners err in contending that DOHSA is a wrongful death statute with no bearing on the availability of a survival action. By authorizing only certain surviving relatives to recover damages, and by limiting damages to those relatives' pecuniary losses, Congress provided the exclusive recovery for deaths on the high seas. Petitioners concede that their action would expand the class of beneficiaries entitled to recovery and the recoverable damages; but Congress has already decided these issues and, thus, has precluded the judiciary from expanding either category. DOHSA's survival provision confirms the Act's comprehensive scope by expressing Congress' considered judgment on the availability and contours of a survival action in cases of death on the high seas. Congress has simply chosen to adopt a more limited survival provision than that urged by petitioners. Indeed, Congress did so in the same year that it incorporated a survival action similar to the one petitioners seek into the Jones Act, permitting seamen to recover damages for their own injuries. In the exercise of its admiralty jurisdiction, the Court will not upset the balance Congress struck by authorizing a cause of action with which Congress was certainly familiar but nonetheless declined to adopt. Pp. 4–8.

117 F. 3d 1477, affirmed.

THOMAS, J., delivered the opinion for a unanimous Court.