
(2015) 03 NCDRC CK 0161

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

JET AIRWAYS (INDIA)
LTD

APPELLANT

Vs

M V V S Murthi

RESPONDENT

Date of Decision: March 11, 2015

Citation: 2015 3 CPJ 32

Hon'ble Judges: K.S.CHAUDHARI J.

Final Decision: Appeal allowed

Judgement

1. THIS appeal has been filed by the appellant against the order dated 24.08.2010 passed by the A.P. State Consumer Disputes Redressal Commission, Hyderabad (in short, "the State Commission") in Consumer Complaint No. 24/2008 Dr. M.V.V.S. Murthi Vs. Jet Airways (India) Ltd. and Anr. by which, while allowing compliant, OP was directed to pay Rs.1,03,600/- along with cost of Rs.2,000/-.

2. BRIEF facts of the case are that complainant/Respondent purchased ticket to travel from Hyderabad to Delhi in Flight No. 9W 828 of OP/petitioner on 28.6.2007. Complainant put his VIP suitcase and card board box in the aircraft as a check -in -baggage. Flight landed at Indira Gandhi Airport at Delhi at about 10.30 a.m. on 28.6.2007, but VIP suitcase with Tax No. 9W 937240 was found missing. Complainant immediately reported this fact to Duty Officer and obtained necessary certificate. Report was lodged at Police Station. It was further submitted that suitcase contained five demand drafts of Rs.2.00 lakhs each and Rs.2,10,000/- cash and several other documents. It was further submitted that due to non -submission of documents to the Dental Council of India in time, complainant could not get additional seats in the college and suffered loss of

Rs.22,00,000/- . Alleging deficiency on the part of OP, complainant filed complaint before State Commission. OP resisted complaint and submitted that staff of OP requested all the passengers including complainant to remove their important personal and precious belongings from checking baggage. It was further submitted that complainant never declared contents of his baggage. It was further submitted that as matter is under the purview of criminal law and requires lengthy and complicated evidence, State Commission has no jurisdiction to entertain the complaint and prayed for dismissal of complaint. Learned State Commission after hearing both the parties, allowed Rs.3,600/- compensation as statutory liability and Rs.1,00,000/- as compensation along with cost of Rs.2,000/- against which, this appeal has been filed.

3. HEARD learned Counsel for the parties and perused record.

Learned Counsel for the appellant submitted that learned State Commission has committed error in granting compensation of Rs.1,00,000/- above statutory liability of Rs.3,600/-; hence, appeal be allowed and impugned order be modified. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law; hence, appeal be dismissed.

4. IT is not disputed that complainant's checking baggage weighing 8 kg. was lost by OP and learned State Commission has not committed any error in allowing Rs.3,600/- as compensation as per statutory liability.

5. NOW , the core question to be decided is whether State Commission rightly granted compensation of Rs.1,00,000/- to the complainant.

6. LEARNED State Commission observed that complainant lost five demand drafts, Identity card issued by the Secretary -General of Lok Sabha, Driving Licence, Pan Card and Mobile phone with SIM card. It was further observed that complainant lost aforesaid items due to negligence of OP in handling baggage and complainant had not only undergone mental tension due to loss of aforesaid items, but also had to approach various authorities for obtaining duplicate documents due to deficiency in service rendered by OP and for this purpose Rs.1,00,000/- as compensation has been granted.

7. LEARNED Counsel for the appellant placed reliance on Bharathi Knitting Company Vs. DHL Worldwide Express Courier Division of Airfreight Ltd., 1996 4 SCC 704 in which it was observed as under:

"5. It is true that the Act is a protective legislation to make available inexpensive and expeditious summary remedy. There must be a finding that the respondent was responsible for the deficiency in service, the consequence of which would be that the appellant had incurred the liability for loss or damages suffered by the consumer due to deficiency in service thereof. When the parties have contracted and limited their liabilities, the question arises: whether the State Commission or the National Commission under the Act could give relief for damages in excess of the limits prescribed under the Contract? It was further observed as under: Under clause 5 of the terms and conditions of the contracts the liability of the Appellant for any loss or damage to the consignment: was limited to US \$ 100. Clause 7 of the contract specifically provided that the liability of the Appellant for any consequential or especial damages or any other indirect loss, that may occur including the loss of market or profits etc. was excluded. It is also pertinent to note that despite the advice in the important notice, the Complainant did not disclose at the time of Consignment the contents of the cover and also not purchased the insurance cover to ensure that their interests are fully protected in all events."

7. In view of the above consideration and findings we are of the opinion that the national Commission was right in limiting the liability undertaken in the contract entered into by the parties and in awarding the amount for deficiency service to the extent of the liability undertaken by the respondent". He has also placed reliance on judgment of this Commission in F.A. No.451 of 1994 The Manager, Air India Ltd. and The Manager, Cargo Flight Handling, Air India Ltd. Vs. M/s. India Everbright Shipping and Trading Co. as under:

7. As we have noticed above, the order has been passed by the State Commission under Section 14(1) (d) of CPA. Question arises if the State Commission could award damages more than what is prescribed under the CA Act. Section 3 of the CPA provides that the

provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Section 3 only provides for an alternative mode by enforcing the right or obtaining redress for the contravention of any provisions of law and no more. It does not change the substantive law which law limits the award of damages when there is violation of any obligation or right. If damages are to be awarded it has to be within the four corners of law on the subject. Section 14 (1) (d) of the CPA has to be read with CA Act. When there is a law defining the rights and its applications in any particular respect that has to be followed. Viewed from this angle when CA Act limits the liability of an air carrier to an extent that cannot be exceeded by the Forum under the CPA". It was further observed as under:

12. At that time when the complainant checked in, he had entrusted 5 Kgs of goods without declaring the value of the same. As per the regulation applicable in the case Airlines said it was liable to pay for the loss of luggage only US \$ 100 @ US \$ 20 per Kg. Complainant submitted that First Schedule to the CA Act did not apply inasmuch as airline had not issued any luggage ticket as required Chapter II Part II Rule 4(1) of the First Schedule to the CA Act. He succeeded before the District forum. On appeal filed by the Airline, State Commission referred to Rule 22(2) of the Second Schedule of the CA Act and held it was applicable and that the complainant was entitled to only under that Rule 250 Francs per Kg. unless the value was declared.

On the other hand, learned Counsel for the respondent placed reliance on judgment of this Commission in F.A. No. 438 of 2011 Jet Airways (India) Ltd. Vs. Vijay Kumar in which grant of compensation of Rs.1,00,000/- was upheld by this Commission. In the aforesaid case, there was error in not off-loading the coffin of complainant's father at Chennai airport.

Learned Counsel for the respondent submitted that compensation granted by learned State Commission is in accordance with law in the light of judgment of this Commission in Vijay Kumar's case. Dead body of complainant's father weighing 100 kgs. Was not unloaded at the airport which caused mental agony to all the relatives who had come to the airport to collect body for necessary rituals. Facts of aforesaid case are not applicable to the present case as in the case in hand, there was loss of ordinary baggage whereas in Vi jay Kumar case, dead body of complainant's father was not off-loaded which caused mental agony and pain and in such circumstances, grant of compensation of Rs.1,00,000/- was upheld. In such circumstances, respondent is not entitled to get any benefit from judgment of Vijay Kumar case.

Hon"ble Apex Court in Bharathi Knitting Company case clearly observed that compensation is to be awarded only to the extent of contract between the parties and in such circumstances, award of Rs.1,00,000/- as additional compensation for mental agony, etc., cannot be upheld. But, at the same time, it is not denied that the complainant lost Identity card, Driving licence and Pan Card which were kept in suitcase and complainant must have obtained duplicate copies of aforesaid documents which certainly

caused mental agony as well he must have incurred expenses in obtaining duplicate documents. In such circumstances, in addition to contracted liability, complainant is entitled to Rs.25,000/- as compensation, but there was no justification to grant compensation of Rs.1,00,000/- for alleged loss of aforesaid documents, as complainant could not prove any loss due to loss of five demand drafts.

8. IN the light of above discussion, appeal is to be allowed partly and granted compensation is to be reduced.

9. CONSEQUENTLY , appeal filed by the appellant is partly allowed and order dated 24.08.2010 passed by the learned State Commission in Consumer Complaint No. 24/2008 Dr. M.V.V.S. Murthi Vs. Jet Airways (India) Ltd. and Anr. is modified and compensation of Rs.25,000/- is substituted in place of Rs.1,00,000/- awarded by State Commission and rest of the order is upheld. There shall be no order as to costs.