

## **DHL WORLDWIDE EXPRESS COURIER DIVISION OF AIRFREIGHT LTD. Vs BHARATHI KNITTING COMPANY**

**Court:** NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

**Date of Decision:** Jan. 17, 1996

**Citation:** 1996 0 NCDRC 44 : 1996 2 CPJ 289 : 1996 2 CPR 206

**Hon'ble Judges:** V.BALAKRISHNA ERADI , S.S.CHADHA , S.P.BAGLA J.

**Advocate:** P.S.Pochkhanawalla , NARAIN , A.P.PAUL , K.K.MANI

### **Judgement**

1. THIS First Appeal by DHL Worldwide Express, Courier Division of Airfreight Ltd., is directed against the order dated 9.6.93 of the Tamil

Nadu State Commission at Madras allowing the complaint of M/s. Bharathi Knitting Company and directing the opposite party, Appellant herein

to pay to the complainant a sum of Rs. 4,29,392.60 with interest at the rate of 12% per annum from 25.5.90 till realisation.

2. THE facts lie in a narrow compass and may be noticed. The complainant who is a manufacturer of cotton garments for export sent a

consignment of Cotton Knitted T. Shirts for the summer season of 1990 to M/s. Interfin Textile Handel Duesseldorf, West Germany by Air. The

complainant handed over on 25.5.90 a sealed cover containing invoice, packing list, original export certificate and original GSP Form-A to the

Appellant for carriage and delivery to the said consignee, but these documents were lost and not delivered to the consignee who could not take

delivery of the said goods in time for summer season of 1990. The delivery was taken subsequently on duplicate copies of the documents sent by

the complainant. The complainant claimed that the consignee agreed to pay only DM 35,000 instead of the invoice value of DM 56469.63 as the

season was over and thus the complainant suffered a loss of DM 21469.63 equivalent to Rs. 4,29,392.60. In the written version before the State

Commission, the Appellant pleaded that the cover was received by DHL World Wide Express in Germany on 31.5.90, it attempted to deliver it to

the consignee on the very same day but as the addressee's door was locked, it could not be delivered to the addressee but was left with the

neighbour and ultimately lost. The Appellant averred it had made all efforts to deliver the cover to the addressee and there is no default or

negligence on its part. It is pleaded that in the Airway bill there is a Clause 5 providing for limitation of liability and it is limited US \$100 and under

Clause 7 the Appellant is not liable for any consequential or other indirect loss alleged to have been sustained by the complainant. The Appellant

had also taken technical objections that the complaint filed on 16.8.92 is barred by time and that as the delivery was in Germany outside India the

action initiated in this country is not maintainable and thus the Tamil Nadu State Commission has no territorial jurisdiction.

The State Commission repelled the preliminary objections and held that the right to sue had accrued on 25.5.90 when the cover was delivered to

the opposite party at Coimbatore and the complaint filed within three years from 25.5.90 is in time. The State Commission further held that the

consignment had been delivered to the opposite party at Coimbatore and part of cause of action arose at Coimbatore and hence the complaint

filed before the Tamil Nadu State Commission is perfectly maintainable. The State Commission held that there was gross deficiency of service and

negligence on the part of the opposite party in failing to deliver the cover and losing it altogether. On the quantum the State Commission found that

the complainant has incurred loss of DM 56468.63 - DM 35000 = 21469.63 equivalent to Rs. 4,29,392.60. The State Commission also noticed

that the question of validity of the conditions contained in the Airway Bill issued by the Carrier had come up for consideration before this

Commission in M/s. Airpak Couriers (India) Pvt. Ltd. v. S. Suresh decided on 11.3.93, II (1994) CPJ 521. This Commission upheld the

contention of the Appellant therein that as per the consignment note the Kwalitiy Tubes and Capillaries Pvt. Ltd. had agreed to the terms and

conditions that the liability of the Courier service is limited and restricted to the extent of Rs. 100/- only. The State Commission further, noticed

three other decisions of this Commission namely M/s. Airpak Couriers (India) Ltd. v. Anupama Bagla, I (1992) CPJ 84; Geeta Rani and Ors. v.

M/s. Airfreight Ltd., I (1992) CPJ 214 and M/s. Skypak Couriers Pvt. v. C.E.R.S. and Ors., I (1992) CPJ 316, and observed that no reference

to any of these three earlier decisions given was made in Airpak Courier (India) Pvt. Ltd. case and also there is a patent conflict between the three

earlier decisions and the latest decision of the National Commission. The State Commission came to the conclusion that the conditions

incorporated in the Airway bill is no bar to the complainant's seeking adequate compensation where there is negligence and deficiency in service

and granted to the complainant the sum of Rs. 4,29,392.60 with interest at the rate of 10% per annum from 25.5.90 till realisation besides costs.

3. WE have considered the submissions of the Counsel for the parties on the facts of the case and having regard to the earlier decisions of this

Commission. The consignment containing the documents sent in the cover had been accepted by the Appellant and was subject to the terms and

conditions mentioned on the consignment note. The complainant had signed the said note at the time of entrusting the consignment and had agreed

to and accepted the terms and conditions mentioned therein. Clauses 5 and 7 of the terms and conditions as also the important notice mentioned

on the consignment note are reproduced below:

Clause 5 : ""Limitation of liability. Without prejudice to Clause 7 the liability of DHL, for any loss or damage to the shipment, which term

shall include all documents or parcels consigned to DHL under this Air bill and shall not mean any one document or envelope included in the

shipment is limited to the lesser of, (a) US\$100 (b) The amount of loss or damage to a document or parcel actually sustained, or (c) The actual

value of the document or parcel as determined under Section 6 hereof, without regard to the commercial utility or special value to the shipper.

Clause 7: ""Consequential damages excluded. DHL shall not be liable in any event for any consequential or special damages or other

indirect loss however arising whether or not DHL had knowledge that such damage might be incurred including but not limited to loss of income,

profits interest, utility or loss of market. Important Notice : By the conditions set out below DHL and its servants and agents are firstly not to be

liable at all for certain losses and damages and secondly wherever they are to be liable the amount of liability strictly limited to the amount stated in

condition and customers are therefore advised to purchase insurance cover to ensure that their interests are fully protected in all events"".

Under Clause 5 of the terms and conditions of the contract, 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 special 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. In Airpak Couriers (India) Pvt. Ltd., this Commission had opined that if the documents

which were consigned were of great value the consignor ought to have insured them. No such step was taken nor was their value even disclosed in

the consignment note. This Commission had restricted in that case the quantum to the extent of Rs. 100/- only as damages.

4. AS already noticed the complainant's case is that the consignment was sent by Air in a cover containing invoice, packing list, original export

certificate and original GSP Form - A on 25th May, 1990. The envelope entrusted to the Appellant by the complainant had been couriered by

them to their counterpart at Duesseldorf, West Germany who had in turn attempted delivery on the consignee at 10.30 a.m. on 31st May, 1990.

The memo dated 2.7.90 reads as follows :

Shipment reached DUS on May 31st and courier attempt delivery same day at 10.30 hrs. Consignee, however was closed on the courier's

arrival. To avoid further delays, the courier delivered the shipment to "Fashion House", Room 201, Mr. Neicker at the Company v Geisler".

Courier did not give a message to the Consignee's door to inform him of the whereabouts of the shipment".

It is manifest that the appellant was negligent in not delivering the consignment to the consignee and due to the deficiency in service the consignment

was lost. We thus uphold the finding of the State Commission that there is deficiency in service and because of the negligence, loss has occurred to

the complainant. However, we are of the view that the loss has to be restricted as per the terms of the contract. The nature of the documents or its

importance or its value to the complainant had not been disclosed on the consignment note. The consignment note was also not insured by the

consignee despite advice to the effect given by the appellant in the important notice already noticed above. Under Clause 5 of the agreed terms,

the liability of the Appellant for any loss or damage to the shipment is limited to the lesser of US \$100 or the amount of loss actually sustained or

the actual value of the shipment without regard to the commercial utility or special value to the consignment. In this case, therefore, the loss has to

be restricted in the sum of US \$100. After the decision of Airpak (India) Pvt. Ltd., this Commission has consistently taken the view that the liability

has to be restricted according to the terms and conditions.

5. THAT takes us to the consideration of three earlier decisions of this Commission which according to the view of the State Commission are in

patent conflict. "M/s. Skypak Coureirs Pvt. Ltd. v. Ms. Anupanta Bagla" was an appeal against the order of the State Commission, Rajasthan

which had allowed the complaint put forward for recovery as compensation for nondelivery of a package containing a video cassette, which had

been entrusted to the appellant therein which is engaged in the business of Courier service for carriage from Jaipur to Bombay. The State

Commission found that the said Cassette which was to be delivered on the very next day had not been delivered because it was lost or miscarried

during transit with the result that the complainant who had applied for admission in the Sophia College in Bombay could not secure admission. She

had undergone a course at Cornell University in U.S.A. and the video cassette which contained a record of her work in the said University was

entrusted to the Courier for carriage from Jaipur to Bombay. It is on these facts that a compensation of Rs. 10,000/- was granted by the State

Commission. The Courier did not invoke any clause or terms or conditions of the carriage as apparently the contents of the consignment were

disclosed at the time of booking. ""Geeta Rani v. M/s. Airfreight Ltd."" was an Original Petition before this Commission. A sum -of Rs. 937/- was

paid to the Courier M/s. Airfreight Ltd., Madras to carry a parcel containing culture of Mycobacterium tuberculosis isolated from the sputum of the

patient Smt. Geeta Rani to Dr. P.R.J. Gangadharam, Director, Mycobacteriology for Immunology and respiratory medicine, Denver, U.S.A. on

23rd July, 1990. The parcel was marked as containing pathogenic material, not to be opened. The urgency of the parcel reaching Denver, its

destination, was mentioned whilst handing over the same to M/s. Airfreight Ltd. and the concerned staff of the latter assured that it would read in

four days time. The consignment actually reached at Denver on 27.8.90 but not delivered till 28.9.90. M/s. Airfreight Ltd. in that case did not raise

any contention that the contents were not disclosed and their liability is limited. This Commission in that case granted a compensation of Rs.

10,000/-only after expressing the opinion that the complainant in that case must have incurred considerable amount on that account. The third

case ""M/s. Skypak Couriers Pvt. Ltd. v. C.E.R.S. and Ors."" does deal with the objection a? to the limitation of the liability to a maximum of US of

\$100 per consignment for any cause or Rs.100/-when carried in India. This Commission considered the objections of the Courier that the liability

of the opposite party was limited to Rs. 100/-. It was found by the State Commission that the printed memo containing the above condition was

neither signed by any body nor there was any evidence to show that the terms printed therein were shown to the consignor or the consignee or that

the same were agreed upon by the consignor. This Commission upheld that finding and therefore, did not restrict the liability to Rs. 100/-. Shri Y.

Krishan, Member of this Commission, however, took a contrary view on the basis of the Courier Consignment Note executed in that case and

opined that the relief granted by the State Commission are excessive, being in excess of liability limited to US \$100 per consignment on the face of

the Courier Consignment note executed on behalf of the complainant by his travel agent. There is thus no conflict of the three earlier decisions as

given on the peculiar circumstances of each case.

6. IN the result, we allow this appeal and set aside the order of the State Commission and restrict the relief to US \$100.  
The appellant shall pay to

the complainant a sum of Rs. US \$100 equivalent to Rs. 3.515/- as on today with interest at 18% per annum from  
25.5.90 till realisation besides

costs of Rs. 2000/-.