

(1999) 06 NCDRC CK 0005**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION****Case No:** None

MANAGING DIRECTOR, AIR
INDIA

APPELLANT

REKHA MOHANDAS

Vs

RESPONDENT

Date of Decision: June 14, 1999

Citation: 1999 3 CPJ 361 : 2000 1 CLT 516 : 2000 1 CPR 143

Hon'ble Judges: L.Manoharan , K.M.Latha , R.Vijayakrishnan J.

Final Decision: Appeal dismissed

Judgement

1. OPPOSITE parties in O.P. 1123/97 on the file of CDRF, Thrissur are the appellants. Complainant alleged that she boarded the flight from Muscat on 26.2.1997 for her journey to Thiruvananthapuram as per Ext. AI ticket dated 16.11.1996 issued to her from the Thrissur branch of the opposite parties. She was in her advanced stage of pregnancy and she was alone. The plane had to take off at 6.50 a.m. on 26.2.1997, but it was delayed by 3 hours. When it reached Dubai, it was detained there, and later the Captain announced that as the duty time of the crew was over, they could not proceed to Thiruvananthapuram as per schedule. She alleged, she was stranded at Dubai Airport for about 15 hours, her husband was at Muscat and her relatives were only at Thiruvananthapuram. She alleged that no accommodation was provided during the 15 hours, and only after persuasion, she was permitted to use their telephone. She could reach Thiruvananthapuram only late at 6.30 a.m. and at her destination at 4 p.m. on 27.2.1997. On reaching there she complained before the Voluntary Consumer Association which issued notice on her behalf to the opposite parties on 28.2.1997 for compensation. But that was not complied. The opposite parties in their version maintained that the complaint is barred by res judicata. The flight originally had to operate Bombay, Dubai, Muscat, Thiruvananthapuram. But the flight had to be diverted to Muscat without landing at Dubai due to bad weather; later it was decided the flight should fly to Dubai by extending the duty time of the crew. But by that time the flight reached Dubai, duty time of the crew was over and since extension of duty time is opposed to the norms

fixed by the Director General of Aviation, alternate arrangement had to-be made. Though facility for journey was offered in AI720 Bombay Flight, with connection from Bombay to Thiruvananthapuram in AI 694 and hotel accommodation at Bombay, the economy class passengers insisted that they should be taken in the same flight. Allegation that facilities were not provided is denied, and maintained, they were given food and other facilities. Therefore the opposite parties wanted dismissal of the complaint.

2. BEFORE the District Forum complainant produced Exts. A1 to A9. On consideration of the said material the District Forum found deficiency of service and made a direction to pay Rs. 10,000/- as compensation with Rs. 500/- towards costs. The said direction is under challenge in this appeal.

The learned Counsel for the appellant urged, the District Forum at Thrissur had no jurisdiction to entertain the complaint, and alternatively maintained, that as the opposite parties made alternate arrangement and the complainant failed to avail it, she is not entitled to compensation.

The first question to be considered is jurisdiction of the Thrissur Forum to entertain the complaint. Since the opposite party has a branch office at Thrissur, the Forum found, it has jurisdiction as per Section 11, Sub-section (2), Sub-clause (a) of the Consumer Protection Act, 1986 (for short the Act). As per Section 11(2) of the Act the complaint can be instituted not only where the opposite parties or any one of them voluntarily resides or carries on business but also where it has branch office; and branch office as per Section 2(a,a) is an establishment described as branch office by the opposite party or any establishment carrying on the same or substantially the same activity as that carried on by the head office. The District Forum adverts to certain aspects in the context of the admitted fact that Ext. A1 ticket was issued from the office at Thrissur, alongwith factors such as Ext. A7 advertisement in the newspaper to the effect that there is facility in the Thrissur office to issue and reissue tickets, and the notice issued to the second opposite party with the description as Branch Manager of Air India, Sakthan Thampuran Nagar, Thrissur (1) was received by the Manager and signed the acknowledgement card to conclude the establishment at Thrissur satisfies the requirement of Section 2(a,a) of the Act. The description of the second opposite party as Branch Manager having been thus accepted by the opposite parties, the same would also go to show that the office of the first opposite party at Thrissur is a branch office within the meaning of Section 11(2)(a) of the Act.

3. BUT the argument now advanced by the learned Counsel is, that Section 11(2)(a) of the Act as to jurisdiction cannot have application because the said aspect is covered by Rule 28 in Chapter III of the First Schedule to the Carriage by Air Act, 1972. According to the learned Counsel, the Thrissur office since does not possess the character mentioned in the said Rule, the Forum at Thrissur could not get jurisdiction to entertain the complaint. In the context of the aforesaid argument it is necessary to read Rule 28 of the aforesaid Rules. It reads :

"An action for damages must be brought at the option of the plaintiff either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination."

(Emphasis supplied)

The learned Counsel sought to maintain that since the Carriage by Air Act, 1972 is a special Law and the Consumer Protection Act, 1986 being General Law, the said Rule-28 alone would have application and Section 11(2)(a) of the Act as to the place of institution of complaints cannot have any application. In support of the said proposition learned Counsel made reliance on the decision of this Commission in OP 72/97 wherein a similar question was considered.

4. AS has already noticed, if Section 11 of the Act applies, the contention that Thrissur Forum has no jurisdiction cannot be supported. Now coming to Rule 28 of the aforesaid rules under the Carriage by Air Act, 1972, what is significant to be noted is, as per the said Rule action for damages can also be at a place where the Air India has an establishment at which the contract was made. The contract here is, contract for journey on the strength of ticket issued by the opposite party. The fact that Ext. AI ticket was issued from the office of the opposite party at Thrissur is not in dispute. What is disputed is only its character as a branch office. Here even as per the said Rule 28 all that is required is, it need not even be a branch office it need be an establishment, and the additional requirement is, the same should be the establishment by which the contract was made. AS has noticed, since the contract of the journey by issue of the ticket was made at the establishment of the opposite party at Thrissur, even as per Rule 28 of the said Rules the Thrissur Forum had jurisdiction to entertain the complaint. The attack by the learned Counsel as to the

jurisdiction thus is not acceptable.

Now coming to the question of deficiency, certain admitted facts have to be noticed. The complainant boarded flight on the strength of Ext. Al ticket on 26.2.1997 at Muscat for her journey to Thiruvananthapuram is an admitted fact. The plane was detained at Dubai for 15 hours is not disputed. The justification offered is, as the duty time of the crew expired and since could not be extended, alternate arrangement had to be made. Even assuming the justification offered for the flight touching Dubai is justifiable, it cannot be said, that the opposite parties were not aware till the flight touched Dubai that the duty of the crew could not be extended. Even according to their defence, the duty time could not be extended because of the directives of the DGCA. If the norms were fixed by the Director General of Aviation which prevented the extension of duty time, the same should have been specially within the knowledge of the opposite parties, even at the time when the plane took off from Muscat. Then they should have made effective alternate arrangements to avoid delay. In such a circumstance one would expect a carrier to inform. The passengers as to the said delay or diversion of the journey on account of the said Rules at the beginning of the flight itself. That in itself has to be viewed in the context of the duty that a carrier owes to the passengers. Apart from the same the fact that the economy class passengers had to stay in the launch during the period is not disputed. That means they were not given suitable accommodation at Dubai. Thus the gravity of the lapse becomes intensive when it is noted, an Indian citizen who was in the advanced stage of pregnancy had to spend about 15 hours in the launch of an airport in a foreign country. This is negligence and deficiency of service. That she was in advanced stage of pregnancy is proved by Exts. A8 and A9. Though she claimed Rs. 25,000/- towards compensation, the District Forum fixed it at Rs. 10,000/-. Not only that she is eligible for compensation on the ground of deficiency of service and negligence, there is absolutely nothing to show, the quantification of compensation is on the higher side. There is nothing to interfere in the impugned order. The appeal is without merit. The same is liable to be dismissed. In the result, the appeal fails and the same is dismissed. In the circumstance of the case the parties are directed to suffer their costs. Appeal dismissed. _____