

MANAGER, OMAN AIR Vs K.K.ABDUL AZEEZ

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Feb. 5, 2001

Citation: 2001 3 CPJ 287 : 2002 1 CPR 233

Hon'ble Judges: L.Manoharan , R.Vijaykrishnan J.

Final Decision: Appeal disposed of

Judgement

1. FIRST opposite party in O.P. No. 504/99 on the file of the Consumer Disputes Redressal Forum, Kozhikkode is the appellant. Complainant

alleged before the District Forum, he boarded the flight of the opposite party/appellant from Muscat to Bombay on 29.4.1998 and had four bags

as luggage. But when he reached Bombay the opposite parties delivered only three bags out of the four bags. He alleged deficiency of service and

wanted direction for compensation. In the version by the opposite party they sought to maintain the baggage that was lost could weigh only 20 kgs.

and mention of 24 kgs. in the receipt is due to inadvertant mistake. They also offered to pay compensation for the said 20 kgs. as per law. By the

impugned order the District Forum accepted the case of the complainant with respect to the loss as 24 kgs. and held that he is entitled to

compensation Rs. 1,750/- per kg. and made direction to pay a total sum of Rs. 42,000/- as compensation with interest at 15% per annum from

1.5.1998 and also costs. The said direction is challenged in this appeal.

2. THE learned Counsel for the appellant raised two points, one is that the District Forum did not have territorial jurisdiction to entertain the

complaint as according to the learned Counsel no part of the cause of action arose within the jurisdiction of the CDRF, Kozhikkode. THE other

point raised by the learned Counsel is, District Forum has gone wrong in computing the compensation for the goods lost. According to him per kg.

the opposite parties are to pay only at the rate of 250 Francs equivalent to 20 U.S. dollars. He also urged that the finding of the District Forum that

the opposite parties are bound to pay compensation for 24 kgs. is against the material before the District Forum as according to him the same

would reveal only 20 kgs. and hence the compensation at the above rate had to be fixed only for 20 kgs. THE learned Counsel for the respondent

on the other hand maintained that District Forum had jurisdiction to entertain appeal and also maintained that since the entry in the relevant receipt

is 24 kgs. the opposite parties are bound to account for the said 24 kgs. and the quantum of compensation has to be fixed at the exchange value of

250 French Francs. In short he supported the direction.

As regards the first point, as to the jurisdiction learned Counsel for the appellant made reliance on the decision of the National Commission in 1992

(1) CPR 4, Indian Airlines Corporation & Ors. v. Consumer Education and Research Society & Anr., wherein the National Commission held that

since no part of the cause of action arose within the jurisdiction of the State of Gujarat and the cancelled sector of the flight since was one

originated from Bombay, only Commission at Bombay had jurisdiction. This decision is seen rendered on 6.6.1991. On 18.6.1993 Section 11 of

the Consumer Protection Act was amended and in Section 11(2)(b) amendment was made to the effect that the complaint can be instituted in the

District Forum within whose jurisdiction the opposite party has a branch office. This as noticed had effect from 18.6.1993 and the decision which

the learned Counsel for the appellant relied on since was rendered on 6.6.1991, the National Commission had no occasion to deal with the

aforesaid amendment; this decision is distinguishable. Admittedly the opposite party has a branch office within the jurisdiction of District Forum,

Kozhikkode and second opposite party is the Manager whose office is at Kozhikkode. Then by virtue of Section 11(2)(b) the District Forum has

territorial jurisdiction to entertain the complaint. The point urged by the learned Counsel for the appellant in that regard hence cannot be accepted.

As to the loss suffered by the complainant, he claimed the luggage weighed 24 kgs. whereas the opposite parties contended that it was only 20

kgs. According to them the mention of 24 kgs. in the relevant receipt was due to an advertant mistake and hence cannot be given effect. In para 4

of the impugned order the District Forum discusses the said aspect and holds that the weight of the baggage which was lost was 24 kgs. It will be

noted that there is absolutely no evidence to support the argument that as a matter of fact the said entry is vitiated by mistake; not only none on

behalf of the opposite party gave evidence, not even an affidavit was filed. When the entry made by them is admitted the burden is on them to

show the said entry is vitiated by mistake. The argument that the mention of 24 kgs. in the ticket is a mistake, therefore, cannot be accepted.

3. THE next argument is that the District Forum has gone wrong in holding that the value of the luggage has to be assessed at 250 French Francs

per kg. is not correct. He maintained that what the complainant in such circumstance would be eligible is only 250 francs per kg., not French frank;

as is stated by the District Forum. He also maintained that the said view is supported by the decision of this Commission reported in Air Lanka

Ltd. & Anr. v. S. Prasannan, I (1998) CPJ 117. In that decision my learned predecessor held that in such airline concern was Airlanka Ltd.,

adverting to the said aspect in para 7 of the order it is observed that when the loss is incorporated in the ticket the provision contained in Rule

22(2) of II Schedule of Carriage by Air Act is applicable and the complainant would be entitled to under that Rule at the rate of 250 Francs per

kg., unless the value is declared. THERE is no case that the complainant has declared the value of the luggage. It is further held in the said paragraph

the liability of the Airline, therefore, would be 250 Francs per kg. which is equivalent to 20 US dollors and the complainant shall be entitled to the

said rate fixed with reference to the date of delivery. THE learned Counsel for the respondent sought to distinguish the said decision maintaining

that it is not clarified or stated whether the francs mentioned therein is that of France or Switzerland and since the value of the currency of these

two countries is different, one cannot go by assuming that the same is French. One thing has to be observed in this connection, there is also nothing

to show that the value of franc is different, and apart from the same when there is a precedent of this Commission with respect to a disputed

question of law, judicial propriety demands that the said precedent has to be followed. We are in agreement with the view taken by my

predecessor and we hold that the complainant would be eligible to get compensation for the loss of baggage weighing 24 kgs. at the rate of 250

Francs per kg. equivalent to 20 US dollors per kg. THE complainant shall be entitled to have the exchange rate of said US dollors fixed with

reference to date of delivery on 29.4.1998. THE complainant also shall be entitled interest at 12% on the said amount from the aforesaid date of

delivery till payment or recovery whichever happens early. THE appeal is allowed only to that extend, we do so. In this appeal there will be no

order as to costs. Appeal disposed of.