

(2004) 11 NCDRC CK 0070

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

BHAGWANT SINGH ARORA

APPELLANT

Vs

KLM Royal Dutch Airlines

RESPONDENT

Date of Decision: Nov. 9, 2004

Citation: 2005 2 CPJ 197

Hon'ble Judges: J.D.Kapoor , Mahesh Chandra , Rumnita Mittal J.

Advocate: G.S.Chaturvedi , Rakesh Aggarwal

Judgement

1. -THE complainant lost his baggage while travelling in United States by the O.P. Airlines. His claim of lost baggage was assessed by the O.P. in terms of "Limited Baggage Liability Clause" at 640 US Dollars besides Rs. 5,000/- towards compensation. However, complainant declined to accept this amount as it was not in terms of the value of articles contained therein and the clause applicable for lost baggage liability. Through this complaint filed under Section 17(a)(i) of the Consumer Protection Act, 1986, the complainant has preferred claim of 40,000 US Dollars towards the loss of baggage as well as mental agony and harassment he suffered on account of deficiency in service on the part of O.P. as he could not visit other places, namely, United Kingdom and Europe for which he was having visa.

2. FACTS germane for our purpose are like this. The complainant undertook the journey on 9.8.1994 from Kansas to New York and the complainant was issued two Boarding Passes at Kansas Airport, one from Kansas to Pittsburgh and another from Pittsburgh to New York. At Kansas the complainant checked in his luggage weighing 32 kgs. by entrusting the same to the US airlines. On reaching New York, he found his luggage missing. After efforts, it could not be traced. Since the airlines informed

him that the matter was likely to take time in carrying out investigations, the complainant proceeded to Amsterdam and the luggage was directed to be delivered at Amsterdam by the O.P. in case it was traced out. However, the luggage could not be delivered at Amsterdam as it was notified as lost baggage.

However, vide communication dated 23.11.1994, the O.P. not only offered apology for the inconvenience caused to the complainant but also enclosed their final release form by extending the settlement based on the total weight of the reported lost baggage i.e., 32 kgs. at US D 20.00 per kilo, the then prevailing rate of exchange. This communication ensued the exchange of series of letters between the parties and ultimately, the opposite party made loss offer of Rs. 20,192/- vide letter dated 24.6.1996.

Feeling dissatisfied with this offer, the complainant has approached this Commission by filing the instant complaint.

3. IN order to appreciate the claim preferred by the complainant and the last offer made by the respondent, we deem it necessary to reproduce the relevant clause which is as under:

"Notice of baggage liability limitations Liability for loss, delay or damage to baggage is limited unless a higher value is declared in advance and additional charges are paid. For most international travel (including domestic portions of international journeys) the liability limit is approximately US D 9.07 per pound (US D 20.00 per kilo) for checked baggage and US D 400.00 per passenger for unchecked baggage. For travel wholly between US points, Federal Rules require any limit on an airline's baggage liability to be at least US D 1250.00 per passenger. Excess valuation may not be declared on certain types of articles. Some carriers assume no liability for fragile, valuable or perishable articles. Further information may be obtained from the carrier."

The offer made by the respondent is based upon the criteria applicable in respect of journey commencing from India and ending in United States and not the journey between United States points. On the contrary, the complainant has claimed the value of the items contained in the baggage which according to him works out Rs. 58,000/- besides the minimum liability of the lost baggage at the rate of US D 1250.00 per passenger as according to the complainant the baggage was lost during the journey undertaken by him in the US alone i.e., between US points and not while commencing the journey from India to US.

4. THERE is no dispute that the ticket was purchased at New Delhi from the O.P. for New York, Baltimore, Los Angles, Kansas, New York and as per ticket the complainant was required to undergo the journey by US airlines between the noticed destinations. At the same time, there is no dispute that complainant undertook the journey on 9.8.1994 from Kansas to New York and was issued two boarding passes at Kansas Airport, one from Kansas to Pittsburg and another from Pittsburgh to New York. It was during this sojourn i.e., between Kansas to New York that his luggage was lost.

The Counsel for the opposite party contended with vehemence that it is place from where ticket purchased and initial journey was commenced which shall determine whether the baggage was lost between US points or between India and US. We are afraid this contention holds water like a sieve as the determining criteria for the baggage liability would be the actual place from where the baggage was booked in the airlines and not the place from where the ticket was purchased or initial journey was undertaken. Had the baggage been lost while travelling from India to first destination is US only then the contention of the Counsel for the opposite party would have cut ice but the fact remains that the baggage was actually booked at Kansas for New York and the boarding passes were issued to the complainant at Kansas and it was during transit between Kansas and New York that the baggage was lost and, therefore, for the purpose of baggage liability, the baggage was lost between US points and, therefore, Federal rules will apply and not the international travel rules. As per Federal rules, liability of airlines is at least US D 1250 per passenger when the baggage is lost between US points.

However, so far as the claim of the complainant for the value of the articles contained in the baggage is concerned, the said claim is not maintainable against the airlines until and unless the passenger declares the value in advance and pays additional charges. Therefore, if passengers are given the value of the articles contained in the baggage, Airlines would go bankrupt and terms of agreement would have no meaning. This is why there is a specific provision that unless a passenger declares the value in advance and pays additional charges, he is debarred from claiming the value of the lost articles.

5. IN the result, we allow the complaint to the extent that liability of the opposite party-Airlines is US D 1250 per passenger as baggage was lost between US points

besides this we also award compensation of Rs. 25,000/- towards mental agony and harassment suffered on account of deficiency in service which is always independent of baggage liability limitation. The complainant is also awarded Rs. 2,000/- towards cost of litigation.

6. THE aforesaid amount shall be payable by the opposite party within two months from the date of receipt of this order.

A copy of this order, as per the statutory requirements, be forwarded to the parties, free of charge and thereafter the file be consigned to the record room. Complaint allowed.