

(2008) 03 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

AIR INDIA LIMITED

APPELLANT

Vs

VINAYAK NAGESH SHRIKHANDE

RESPONDENT

Date of Decision : 14-03-2008

Acts Referred:

Citation : 2008 2 CPJ 136

Hon'ble Judges : M.B.Shah , Rajyalakshmi Rao J.

Final Decision : Appeals dismissed

Judgement

1. -THESE two cross appeals were heard together as they arise out of the judgment and order dated 1. 4. 2006 passed by the State Commission, Maharashtra in Complaint No. 44 of 2004 whereby the complaint was allowed, and the opposite party, Air India was directed to pay Rs. 2,75,000 as compensation along with Rs. 5,000 as costs in favour of the complainant, Dr. Vinayak Nagesh Shrikhande. The State Commission further initiated proceedings against Mr. T. Narendra Kumar, General Manager (Legal) of Air India by issuing a show cause notice returnable on 6. 6. 2006 as to why he should not be prosecuted for the offence of perjury for filing false written statement and affidavit in support of Air India's defence. Air India has challenged this order and prayed to set aside the same and Dr. Shrikhande has filed the appeal for enhancement of compensation. Brief facts of the case are:

2. DR. Vinayak Nagesh Shrikhande, the complainant, bought a "j" (business) class "to and fro" ticket from Mumbai to New York via London on payment of Rs. 1,46,000 to attend the Annual Conference of American College of Surgeons at Chicago which was scheduled to be held from 19th to 23rd October, 2003. On 11. 10. 2003 he boarded Air India Boeing Aircraft No. AI-101 at Chhatrapati Shivaji International Airport at Sahar, Mumbai. He was allotted Seat No. 18k issued at the check-in counter. Dr. Shrikhande himself had undergone an Open Heart Surgery in Bombay Hospital in June 2002 and it was his first international travel after his operation and that too he was travelling alone. Complainant's version: It is contended by the Learned Counsel for the complainant that during the travel

he found that the seat belt sign was switched off and he could not convert his seat into reclining position. The defect was that the back portion of the seat which tilts 158 degree as against 180 degree in First Class and 10 degree in economy class was not tilting at all and this seat was worse than an economy class seat. The footrest also did not work and the seat belts got stuck which the crew could not retrieve them. Then he alerted the attention of the stewards and he was told that the seat had been defective for several weeks. Then he met the pilot who tried to put the seat in a reclining position but could not do so and further the safety seat belt also got stuck while the pilot tried to get it right. Dr. Shrikhande had to undertake the journey in upright sitting position right upto London Airport. Not only the seat had defective arrangement of not having reclining facility but the seat belt too got stuck which also could not be set right by the cabin crew. The complainant was the only passenger who travelled in the Jumbo Jet without safety belt in no reclining seat. He averred that it was a frightening experience for him not to have seat belt for fastening at the time of take off and landing. He could not get sleep during the entire period since it was a traumatic experience on board on Air India flight from Mumbai to London. He arrived as a tired passenger feeling hurt and being cheated with the indifferent attitude of the staff and after paying heavy price receiving bad service he felt cheated. In the condition that he was in after the operation and being 72 years old, he could not cope up with the mental agony of feeling unsafe during the flight journey.

After his return to India he wrote a letter to Air India on 17th November, 2003 to which he received a reply on 28th November, 2003 in which Air India regretted for discomfort and bad experience by the complainant. The relevant part of the letter is produced hereunder: we note from our Flight Information Report that our crew were unable to offer you an alternate seat out of Mumbai as the flight was fully booked. This is a newly refurnished aircraft and we are at a loss to understand why the seat recline mechanism failed. Whatever the reason, we do appreciate the discomfort you must have suffered on this account on a long flight. We do apologies sincerely for this failure. As a token of our regret, we would be happy to offer you an upgrade to First Class when you next travel with us. " thereafter another letter dated 5th December, 2003 sent by Air India's office offering the up-gradation to First Class whenever he travels next or a complimentary First/executive Class ticket to Dubai or Delhi. Again on 8th December, 2003 one Mr. Subroto Ghosal, Member Secretary - PFRC wrote a letter to the complainant and part of it is produced herein under: "flying on Boeing 707 "kanchanjanga" must have been a memorable experience. It is our dream too to make our present fleet as air-worthy, and in trying to do so, your comments and constructive criticism are of great help. Please accept our apology for the inconvenience you had to undergo during the flight. You will be happy to learn that we have now put a process in place which will block the sale of defective seats. "

The complainant averred that reply dated 8th December, 2003 by Subroto Ghosal

itself is clear admission that earlier they did not have any procedure not to sell defective seats and they have only now started such procedure after receiving the complaint from the complainant. In their letter dated 5th December, 2003 they also admitted that the complainant suffered a lot in the flight and they were apologetic.

3. IT is averred by the complainant that before upgrading economy passengers to business class and giving free seats to staff, opposite party would have verified regarding the seat that has been allocated to the complainant. It is further submitted that amongst 26 business class passengers he checked in at Sl. No. 6. He had put in a request while booking in the PNR, giving a choice of aisle seat in the front section considering his age which although has been registered, but last row seat which is defective was given. On the other hand, the opposite party had upgraded three passengers to 1st Class without any payment of money, 4 to 5 passengers in business class were upgraded from economy class. Complainant got very disheartened by the conduct of Air India staff for their indifferent attitude and he was required to sit in an awkward position throughout the flight and the staff did not offer any other seat. From the flight manifest upto London it is seen that there were two free passengers in business class, nine passengers were such who were either going free being Member of staff or who were upgraded on that particular date. It is contended by the complainant that in the said flight some other passengers were upgraded but Dr. Shrikhande was confined to the defective seat throughout his journey from Mumbai to London. The learned Counsel for the complainant further submitted that Air India flight staff could have easily made a request to the passengers who were from the staff members of the Air India to accommodate Dr. Shrikhande and to see that their revenue passenger got requisite comfort and luxury while travelling vis-a-vis the free passengers or upgraded passengers.

4. IT is contended that no free passenger or upgraded passenger have any right of priority whatever over a revenue passenger that too when revenue passenger is a senior citizen and has undergone an open-heart surgery. Learned Counsel for the complainant contended how any responsible officer, that too Legal Officer Mr. Narendra Kumar could file the written statement and affidavit in a casual, apathetic and reckless manner totally denying that the seat 18k was not defective at all without checking up with the cabin crew as to whether any complaint was given to mechanical section and if any action has been taken. Filing false affidavit by T. Narendra Kumar is nothing but act of perjury and the State Commission rightly observed the same and directed to issue notice to him to appear. The opposite party has not shown any record to prove what action has been taken about the defective seat 18k after his complaint to the cabin crew and the pilot. Total silence and noncommittal approach regarding any action taken of the opposite party clearly indicates that for some time nothing has been done. The complainant averred that the seat was defective to start with when it was allotted to him and the cabin staff stated so to him during the flight.

5. THE complainant filed the present appeal for enhancement of amount of compensation and prayed for Rs. 25 lakh and further prayed that this enhancement should be commensurate to the mental and physical harm done to him considering his age, reputation and for mental tension. Opposite party's submission:

6. COUNSEL for the opposite party - Air India submitted that: 1. Firstly all possible and sincere efforts were made by the cabin staff to rectify the defect noticed during the flight and that this was not appreciated by the State Commission.

2. Secondly, even the pilot also personally attended to the alleged grievance of the complainant and despite sincere efforts and since it was a mechanical failure, the defect could not be rectified because the plane was already air-borne.

3. Thirdly, the nature of the seat that was allotted to the complainant has an initial inclination of 14 degrees with a pitch of 57/59 inches and seat width of 19.7 inches, which means the seat as it is sans the reclining mechanism, afford adequate comfort to the passengers occupying such seats. Seat in the business class, has this in-built mechanism of degree recline and the passenger could not be so deprived of comfort as alleged by him. The defective seat still gave minimum comfort to the passenger and hence deficiency in service for the defective seat cannot be magnified by the complainant.

4. The opposite party vide a letter dated 23. 11. 2003 sincerely apologised for any inconvenience or hardship during his travel which was immediate response to the letter dated 17. 11. 2003 by the complainant.

5. As the token of regret an offer was given to upgrade to first class whenever the complainant travels with Air India or a complimentary first/executive class ticket to Dubai or Delhi was given (at the choice of the complainant) which was not appreciated by the complainant or the State Commission.

6. An appreciation of complainant's feedback was also informed vide letter dated 8. 12. 2003 by the opposite party. It is submitted that as per log report of that particular sector no such defect was noticed at the time of allotting the seat to the complainant, which proves that the plea taken by the complainant that a defective seat was allotted to him prior to taking the flight is not justified.

7. The Written Statement and Affidavit filed by the General Manager (Legal) T. Narinder Kumar, was not appreciated that he has only given this Affidavit based on the findings that was adduced on the basis of the information derived from the records maintained by the opposite party in ordinary course of business and hence issuance of show cause notice to him is without any justification and that he cannot be penalised for dutifully discharging his official duties and hence initiation of perjury proceedings against Shri T. Narinder Kumar may be set aside.

8. Lastly, as per policy, upgradation is open to those passengers who are desirous of travelling in the executive class but owing to unavailability of seat in

that class had taken an economy class. Such passengers are upgraded only upon availability of seats in the executive class arising out of last minute cancellations. Further as per policy, the Air India officers on duty who have been given free tickets can be accommodated in a flight subject to availability of seats.

It is submitted that irrespective of all the efforts made by the pilot and cabin staff of flight No. AI-101 and the apologetical letters and offers given by Air India were not appreciated by the complainant or by the State Commission. It was never intended to give bad service to the complainant and non-reclining of seats and seat belt being jammed was not anticipated and these also occurred after take-off which can only be termed as a freak incident. Learned Counsel for the opposite party urged that their Appeal should be allowed and the complaint should be dismissed. Findings:

We heard the learned Counsel for both the parties and perused the documents and record. In our view, the State Commission has rightly come to the conclusion that there was deficiency in service by Air India.

7. FIRSTLY, Mr. Shrikhande has put a request for a seat in the front row and also brought to their notice that as a senior citizen aged 72 during the booking in the PNR itself. Air India could not allot him the seat that was requested for. Instead they gave a defective seat at the back in the last row. There is no explanation as to why they could not accommodate him as per his request, which could have been done at that very stage itself knowing he has paid full price for the "j"-class ticket. Secondly, the contention of the complainant is that the cabin staff of flight No. AI-101 was aware of the malfunctioning of the seat 18-K and did not bother to take any precautionary measures either not to allot that seat or get it repaired before the scheduled departure.

8. THIRDLY, the opposite party relied on copies of relevant portion of the sector, log report and the seat maintenance manual placed at Annexures P-7 and P-8. Annexure P-7 mentions about the condition of tyres, body gear, engine functioning, etc. on 11. 10. 2003. On 12. 10. 2003, it refers to defects, heading bottles on tyre and replenishing the same u/s engine ignition and light to medium turbulence for which necessary rectifications were also done. There was no mention by the pilot Captain B. M. Jha, who is fully aware about the malfunctioning of the seat 18-K and Annexure P-8 is regarding cancellation of new business seats on 18. 8. 2003. It is evident from these documents, which opposite party are relying upon that they do not have any mention of malfunctioning of seat 18-K. It is obvious that it was not brought to the notice of the staff and pilot had not brought the information regarding the defect in the seat to the management or to the mechanical staff seeking rectification. These documents do not inspire confidence and reveal that the opposite party was not aware of the malfunctioning of the seat 18-K till 18. 8. 2003. Further, the letter dated December 8, 2003 of Subroto Ghosh of Air India which acknowledges the inconvenience the complainant had undergone during the flight and appreciates his constructive criticism being of great help is given as under: "you will be

happy to learn that we have now put a process in place which will block the sale of defective seats. "

In our view, this is a clear admission by Air India that seat 18-K was sold although it was a defective seat and till 8. 12. 2003 the process was not also in place which could block the sale of defective seats. There is no reason to disbelieve the contention raised by the complainant regarding the unfriendly attitude and indifference displayed by the cabin staff. Obviously, they were aware that this is a malfunctioning, before departure itself. Air India has not succeeded to prove that the defect in the seat was rectified on the next day or any comments by the pilot referring to the same. They have not produced on record when the defect of the seat was rectified. If they have rectified they could have easily produced the relevant record which they have not done. Hence, we hold that there is deficiency on the part of the Air India in selling the defective seat to the complainant. Fourthly, when the complainant had checked in number at six out of 26 business class passengers opposite party could have easily accommodated him at the seat that he requested front aisle seat while booking. The complainant has brought on record the upgraded passengers from economy and free passengers to the executive class who are normally accommodated only when there is vacancy after fulfilling the requirements of the fully paid "j-class" passengers. Here, Air India has adopted unfair trade practice in upgrading economy passengers on the grounds that they were preferring to travel by "j-class" earlier and due to non-availability of seats they had booked seats in economy class. By doing this upgradation and giving free seats without considering the convenience of the complainant, opposite parties have committed deficiency in service.

9. FIFTHLY, the offer that was made by Air India at the first instance to give him an up-gradation from business class to first class and then later on offering a "j-class" ticket from Mumbai to Dubai or Mumbai to Delhi does not help the complainant, because as he was not keen on travelling by Air India after being humiliated. This offer cannot be considered as genuine offer as the complainant may never want to travel by the airline and if so it need not be to Dubai or Delhi. The State Commission has correctly ordered compensation of Rs. 2,00,000 for the same and the refund of the amount that has been spent on the Mumbai-London sector. It is worthwhile to rely on the judgment rendered by the National Commission in *U. S. Awasthy v. Gulf Air and Anr.*, IV (2003) CPJ 114 (NC), in which it was held as follows: "in the case before us Appellant was promised his seat in the business class with all the attendant facilities. He is not told before embarking in the plane that his seat is at a place where he could not recline as there was no reclining seat and for this the airline committed breach of the promise for which it is certainly liable. As to the reasons why the seat could not be reclining is of no concern to the passenger, as we said earlier. If he had been told when he purchased the ticket or before boarding card was issued to him that his seat is not reclining, he could have changed his mind and opted for some other airlines or some other flight. He is, therefore, certainly entitled to refund of

an amount treating the seat given to him of the lower value. We think it is quite reasonable to hold that petitioner was given a seat in the economy class and not in the business class and would, therefore, be entitled to difference of the fare between the two. Further, for the breach of promise petitioner will also be entitled to damages which we assess at Rs. 1. 00 lakh. "

Sixthly, as per the wrong Written Statement and Affidavit filed by Mr. T. Narinder Kumar, General Manager (Legal) denying the contents of the complaint and without checking with the cabin crew and other departments such as engineering, repairs, etc. without adducing evidence, and denying averments made by the complainant is on the face of it is wrong and without application of mind. The State Commission directed to issue notice to Mr. T. Narinder Kumar for perjury for filing false written statement and affidavit in support of Air India's evidence. The execution of the order was stayed subject to payment of Rs. 1,75,000 to the complainant by order dated 24. 5. 2006. We direct Air India to conduct inquiry internally and take necessary action against Mr. T. Narinder Kumar.

10. LASTLY, in our view, complainant's appeal to enhance compensation of Rs. 25 lakh lacks merit as the complainant has been adequately compensated by the order of the State Commission taking into consideration the mental agony and harassment caused due to the false affidavit filed by Mr. T. Narinder Kumar. For the cost that he had to incur to appear in the State Commission and the National Commission, we direct Air India to pay an enhanced amount of Rs. 20,000 over and above what was awarded by the State Commission. In view of the aforesaid discussion, we dismiss FA No. 234 of 2006 with costs of Rs. 20,000 and direct Air India to comply with the order of the State Commission within four weeks from the date of this order. FA No. 235 of 2006 is dismissed. Appeals dismissed.