

(2001) 12 NCDRC CK 0054

In the National Consumer Disputes Redressal Commission

BHARAT S.MODI

APPELLANT

Vs

British Airways

RESPONDENT

Date of Decision : 10-12-2001

Acts Referred:

Citation : 2002 2 CPJ 120 : 2003 1 CLT 51

Hon'ble Judges : D.P.Wadhwa , J.K.Mehra , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Complaint dismissed

Judgement

1. THIS complaint pertains to deficiency in service by the respondent, British Airways. The claim is for Rs. 3,99,50,000/- as compensation. It arises out of the flight of British Airways which was to take off from Heathrow Airport, London to Bombay on 13th February, 1994 which flight, in fact, took off prior to the time intimated on the ticket of the complainant. Complainant was a first class passenger. No information was given to him about the change in time. He boarded the flight on the next day and arrived in India on 15.2.1994. THIS complaint was filed on 18.3.1996. In the counter affidavit, filed on 31.7.1996, British Airways has taken the objection that the claim is barred by limitation, as cause of action, if any arose on 15.2.1994. Reference has been drawn to Rule 30 of Schedule II of the Carriage by Air Act, 1972. The rule is as under : "(1) The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped. (2) The method of calculating the period of limitation shall be determined by the law of the Court seized of the case."

2. UNDER this rule, limitation for filing the present complaint would be two years from the date the complainant arrived at Bombay. UNDER Section 24A of the Consumer Protection Act, 1986, no complaint shall be admitted unless it is filed within 2 years from the date on which the cause of action has arisen. This delay can be condoned if the complainant shows sufficient cause for not having filed the complaint within the prescribed period. But, then, under Rule 30, which we

quoted above, there cannot be any condonation of delay, even if any sufficient cause is shown, as right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped. Since Carriage by Air Act, 1972 is a special provision provided for liability of the air carrier, complainant is barred if he brings an action for damages after 2 years. He cannot refer to the provisions of Section 24-A of the Consumer Protection Act and seek condonation of the delay in filing the complaint after 2 years, even if sufficient cause is shown. The proviso to Section 24-A extending period of limitation would be inapplicable as that is contrary to the law as laid down in the Carriage by Air Act, 1972, under which right accrues to the complainant to seek compensation against air carrier for any default committed by the air carrier within two years, otherwise the right gets extinguished. In any case, there is no application by the complainant seeking condonation of delay in filing the complaint after expiry of period of limitation of 2 years. It was submitted by learned Counsel for the complainant that he may be granted time to file application seeking condonation of delay. No such application would lie. In any case, we will not grant any permission to file any such application at this stage as objection regarding limitation was raised by the opposite party as far back in July, 1996. This complaint is, therefore, barred by limitation and is dismissed. We would leave the parties to bear their own costs. Complaint dismissed.