
(2012) 07 NCDRC CK 0066

In the National Consumer Disputes Redressal Commission

Cox And Kings India Limited

APPELLANT

Vs

Prashant Aggarwal , Jyoti Bansal , Lankan Airlines

RESPONDENT

Date of Decision : 31-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 413 : 2012 3 CPJ 537

Hon'ble Judges : Anupam Dasgupta , Suresh Chandra J.

Advocate : Swati Sinha , A.C.Mittal

Judgement

1.THIS revision petition (filed after a delay of 47 days) challenges the order dated 06.07.2010 of the Delhi State Consumer Disputes Redressal Commission, Delhi (in short, "the State Commission") in Appeals no. FA-08/166 and FA-08/728 filed respectively by Cox & Kings (India) Limited (hereafter, "CKL") and Srilankan Airlines (hereafter, "SLA") against the order dated 07.01.2008 of the District Consumer Disputes Redressal Forum, New Delhi (in short, "the District Forum") in complaint case no. 31/2006. The petitioner in this revision petition was one of the opposite parties (OPs) in the consumer complaint before the District Forum and the respondents were the original complainants. The District Forum partly allowed the complaint that alleged deficiency in service by both the OPs. Both OPs went up in appeal. By the above-mentioned order, the State Commission dismissed both appeals but only CKL has come up in revision against that order.

2. (i) The admitted facts include that the complainants booked themselves with CKL for a holiday tour (01 - 11.06.2005) from Delhi to Kuala Lumpur/Genting, Singapore and back and Paid for the air tickets, visa Processing fees, hotel accommodation, meals, sightseeing and a cruise on a luxury liner at Singapore. CKL, as agent of SLA and Star Cruise, booked them on the respective SLA flights (via Colombo) and also on the Cruise. (ii) The dispute is about the status of the ticket issued to complainant no.1 by CKL for the Colombo-Delhi leg of the air journey on 11.06.2005. The complainants claimed that the ticket of complainant no.1 for this leg of the journey showed "OK" status right from its issuance at

Delhi but he was not allowed to board the flight at Colombo by the SLA ground staff. CKL claimed that though the ticket showed "OK" status, the CKL staff had informed comPlainant no. 1 at the time of issuing that it was actually waitlisted but all the same he chose to go ahead with the tour. (iii) ComPlainants also claimed that according to the SLA ground staff, the ticket of comPlainant no. 2 (wife of comPlainant no. 1) on the same flight was confirmed and he was offered a confirmed seat in the higher class on that flight but he did not agree to Pay the difference because his ticket clearly showed "OK" status. Thus, as comPlainant no.1 was not allowed on board that flight, both had to stay back in Colombo because they were a newly married couPle and she could not travel back to Delhi alone. This led to not only extra exPenditure on their forced extended stay in Colombo but also considerable harassment and mental agony till they were both able to get confirmed seats to Delhi on an SLA flight deParting on 13.06.2005. The comPlainants also alleged that contrary to what they were told by the booking staff of CKL at Delhi, the Star Cruise was not for three days and two nights but only two days and two nights. (iv) On return, the comPlainants got legal notices issued to CKL and SLA. CKL rePlied denying any liability for availability of seats on the Colombo-Delhi flight according to the terms of the contract between the Passengers and CKL and also that the confirmation sliP for the Star Cruise clearly gave the details of deParture and arrival from/at SingaPore. SLA rePlied that there was no Privy of contract between the SLA and the comPlainants as they had not bought the air tickets from nor made any Payment to it directly. (v) This led the comPlainants to file a consumer comPlaint with the District Forum alleging deficiency in service on the Part of CKL and SLA and claiming Payment of Rs. 9,000/- on account of exPenses at Colombo, Rs. 2 lakh towards comPensation for mental agony and harassment, Rs. 50,000/- towards comPensation for loss of goodwill, Rs. 5,500/- towards notice charges and Rs. 15,000/- towards costs of litigation along with interest @ 15% Per annum on the entire amount held liable for Payment from the date of the comPlaint till realisation. (vi) CKL contested the allegations and raised Preliminary objection relating to jurisdiction of the District Forum to adjudicate uPon the disPute under the terms of the contract between the Parties and denying any deficiency in service. SLA, though served, did not aPPear before the District Forum nor filed any written version in resPonse to the comPlaint. (vii) On consideration of the comPlaint, the District Forum Partly allowed the comPlaint and, holding both OPs guilty of deficiency in service, directed CKL to Pay Rs. 20,000/- towards reimbursement of costs of the comPlainants" extended stay at Colombo and Rs. 10,000/- towards cost of litigation and, jointly and severally with SLA, Rs. 1 lakh to each comPlainant towards comPensation for harassment within 30 days of the date of the order. (ix) As stated above, the State Commission dismissed the aPPeals of both CKL and SLA, holding that the District Forum had the jurisdiction under the Consumer Protection Act, 1986 (hereafter, "the Act") to deal with the comPlaint and that there was deficiency in service on the Part of both the OPs, thus confirming both the findings as well as the quantum of the award of the District Forum.

3. WE have heard Ms Swati Sinha, learned counsel for CKL and Mr. A. C. Mittal, learned counsel for respondents 1 and 2 (complainants). No one was, however, present on behalf SLA which was held to have been served notice by direction of 28th July 2011.

4. THE revision petition has been filed after a delay of 47 days and an application has also been filed seeking its condonation. For the reasons stated in the application, the delay is condoned, subject to the petitioner depositing a cost of Rs. 5,000/- with the Consumer Legal Aid Account of this Commission within 30 days of this order.

5. AS already noticed, the dispute is limited. Photocopies of the tickets issued by CKL to complainant 1 (Mr. Prashant Aggarwal) and complainant 2 (Mrs. Jyoti Bansal) are on record and clearly show that the status of both the tickets was marked "OK" for the class of travel L by flight no. UL 0191 departing Colombo for Delhi at 1915 pm on 11.06.2005. In the face of this clear documentary evidence, it is simply not possible to accept the long-winded explanation of CKL that though the tickets showed "OK" status, they were actually not so for this leg of the journey for both passengers and while Ms Bansal's ticket got confirmed subsequently that of Mr. Aggarwal, her husband did not, even till the date of the journey. The entry in the ticket of Mr. Aggarwal in respect of the admittedly "OK" status journey from Singapore Changi to Colombo earlier on 11.06.2005 was in no way different from that in respect of the Colombo-Delhi leg of the journey on the same day. Similarly, the entry in the ticket of Ms Bansal for the same leg was also identical. In such a situation, it has to be held that the District Forum's finding of deficiency in service on the part of the OPs, as affirmed by the State Commission cannot be faulted. The contention regarding lack of jurisdiction of the District Forum is also totally untenable in view of the provisions of section 3 read with section 11(1)(a) of the Act.

6. HOWEVER, the allegation in respect of duration of the Star Cruise is not supported by the documentary evidence brought on record. The petitioner's other point regarding the quantum of the award in respect of reimbursement of the cost of the complainants' extended stay in Colombo is also valid: the complainants had sought Rs. 9,000/- on this count and the awarded amount cannot be higher at Rs. 20,000/-.

7. IN conclusion, we allow the revision petition only to the limited extent that the petitioner CKL shall pay to the complainants Rs. 9,000/- as against Rs. 20,000/- towards the cost of the latter's extended stay in Colombo, all other amounts awarded on account of compensation for harassment and mental agony and costs of proceedings remaining undisturbed. The payment, including the costs for delay condonation, shall be made within 30 days of the date of this order.