
(2004) 08 NCDRC CK 0096

In the National Consumer Disputes Redressal Commission

Geeta Jethani

APPELLANT

Vs

Airport Authority of India

RESPONDENT

Date of Decision : 05-08-2004

Acts Referred:

Citation : 2004 2 CPC 428 : 2004 3 CLT 221 : 2004 3 CPJ 106 : 2004 3 CPR 60

Hon'ble Judges : M.B.Shah , , R.Rao , B.K.Taimni J.

Final Decision : Disposed Of

Judgement

1. A young child, named, Jyotsna Jethani, met with a horrifying accidental death while getting out of escalator maintained by Airport Authority of India (AAI) (Opp. Party No.1). A weeping mother and the grandfather have filed this complaint alleging deficiency in service on the part of the Opposite Parties which has resulted in chewing or crushing of their beloved daughter and hence claimed compensation for the irreparable loss.

2. THE questions for determination are - (a) whether complaint under the Consumer Protection Act, 1986 (hereinafter referred to as the C.P. Act) is maintainable? (b) If yes, whether there was any deficiency in service? (c) And, if yes, the quantum of damages. The case also illustrates to what extent we have developed the tendency to deny the obvious, in litigation. Except admitting the trapping of young child in the escalator, the AAI has tried to dispute its liability and deficiency in service. We do not know when we would change our Jurisprudence which encourages such attitude of denials and protracts litigation and increases burden on adjudicating forums/courts. Case of the Complainant:

It is the case of the complainant that complainant No.1 is the mother of the deceased, Jyotsna, and was residing in Dubai. Complainant No.2 is the grandfather of Jyotsna, and father of the injured complainant No.3, Rajesh, and is working in Dubai. It is also stated that at the relevant time complainant No.3 was working in Moscow (Russia). Because of tragic incident which occurred on 13.12.1999, complainant No.2, Parmanand Jethani, who is at present residing in Jodhpur (Rajasthan) in India, has left all his business activities in Dubai so as to

make himself available for answering the queries of Commission of Enquiry set up by the Government to enquire into the incident which led to Jyotsna's gruesome death. It is contended that Opposite Party No.1, the AAI, is a Government body responsible for managing Indira Gandhi International Airport (IGI Airport) at New Delhi. It charges Airport Tax from passengers for providing various services at the Airport. Opp. Party No.2, OTIS Elevators, is a company engaged in the manufacture and maintenance of Lifts and Escalators.

3. IT is contended that on the night of 12/13.12.1999, the complainant and the other family members travelled by Air India Flight No.AI-720 from Dubai to New Delhi. They came to India, as the Jethani family had organized Indian wedding on 17.12.1999 for recently married Rajesh Jethani and Vera Jethani (Russian Wife) at Jodhpur. After the flight landed at Delhi, they came to Arrival Terminal of the East Wing of the Airport at about 2.55 AM. IT is the say of the complainant that Parmanand Jethani, Rajesh Jethani and Jyotsna Jethani used the escalator along with other persons. When they were half way down on the escalator, Parmanand Jethani heard shouts from the bottom to run up stairs as there was a gap at the base of the escalator. IT transpired that there was a gaping hole between the comb plates, groove of the final step and the landing platform. People had no way to disembark from the moving escalator without risking falling over and into the gaping hole. Some passengers who were on escalator tried to run back up, i.e., against the direction of escalator which was going down. Some passengers tripped and fell down on the escalator. As Rajesh and Jyotsna were near the base of the escalator, they were sucked into the gaping hole. Jyotsna slipped in, while Rajesh's feet also got sucked in. IT is their say that Parmanand heard the screams of his little grand-daughter and saw her back and flailing legs as she cried for freedom. The comb plate sliced through the flesh on her face. Her head and upper body were trapped. She was crushed, however, Rajesh managed to pull out his profusely bleeding legs from the gap. Complainant and others watched the horror with their eyes and tried desperately to pull Jyotsna out of the gap but they could not do so. They shouted and screamed for help and assistance. They pleaded that someone should stop the escalator. However, no personnel either from the Immigration or Customs Department or of the AAI came over to help. No attendant from the OTIS to manage the escalator was present. There was no emergency assistance of any kind. There was no medical assistance of any kind available to meet the emergency. After an hour, a doctor finally came and declared Jyotsna dead. Rajesh was compelled to go to a private Nursing Home where several stitches were put and he was treated.

4. THEREAFTER, police came and took away the dead body of Jyotsna for postmortem. At about 3.55 AM, FIR for the offence punishable under Section 304A/337 of the IPC was registered. It is contended that complainants were compelled to watch in a helpless position the horrifying death of their daughter aged about 71/2 years. Opposite Parties failed to render any assistance immediately. It is contended that the escalator was not properly maintained nor any assistance nor any person to manage the same was kept. After sometime,

Union Minister of State for Civil Aviation visited the Airport and offered Rs.5 lakhs as compensation to Geeta Jethani. That was not accepted by the crying mother who asked the Minister whether he could bring back her daughter, if she gave him Rs.10 lakhs or even Rs.1 crore. Thereafter, as per the newspaper report, they came to know that a three member Committee was appointed for investigating the incident. It is submitted that complainants came to know in February 2000 that the Committee had submitted its report holding the airport management and staff on duty squarely responsible along with the manufacturer of OTIS for poor maintenance of the escalator and the staff for "lacking alertness and sensitivity". It is contended that by criminal acts of the opposite parties, the family has lost Jyotsna and therefore claimed the compensation as stated above for an amount of Rs.1,40,00,000/-, i.e., about 3 lakh dollars, with interest @ 24% per annum from 13.12.99 and also for injury to complainant No.3, Rajesh Jethani, uncle of the deceased. A sum of Rs.6 lakhs is claimed for loss of business and Rs.4 lakhs for wasted expenditure incurred by the complainants in organizing wedding of Rajesh Jethani, which was required to be cancelled, for which purpose the Jethani family came to India. Submissions by Opposite Party No.1:

5. AS against this, Opp. Party No.1, AAI, has raised various contentions. In substance, they are as under : 1. On the basis of the FIR registered, matter is pending in the court of Additional Chief Metropolitan Magistrate, Patiala House, New Delhi. AS the matter is sub-judice before the Criminal Court, this forum may not adjudicate upon the complicated question of facts which would require voluminous evidence and extensive cross-examination of the witnesses. 2. On 12.12.1999, on routine checking by the officials on duty of the Opp. Party No.1, no defect in the various electrical installations including the escalator in question was observed. 3. The cause of unfortunate incident is still unknown but it cannot be led upon the door of Opp. party No.1. Hence, upon the complainant's own version of events stampede has provided for the tragic incident on account of development of gap at the bottom of the escalator and due to that little Jyotsna fell into the said gap. 4. No service was undertaken by Opp. party No.1, therefore, there was no question of failure or deficiency at the door of Opp. party No.1. Complainant has not hired or availed of any services for consideration from the AAI. Therefore, complaint was not maintainable. 5. In any case, complaint deserves to be dismissed on the ground that complainants have failed to adduce sufficient evidence to substantiate the various constituents of the damages claimed. 6. It is also submitted that AAI had been entrusting the maintenance of the escalator directly to the manufacturer (Opp. party No.2) right from the date of installation till the date of mishap to ensure that only genuine parts are used and maintenance is carried out by Opp. party No.2 as per their norms. It is therefore contended that the possibility of malfunctioning of the escalator on account of some manufacturing defect or other lapse on the part of Opp. party No.2 cannot be ruled out. 7. The Consumer Protection Act is an additional Legislation to the existing law and not in abrogation or substitution thereof. The

liability with respect to the incidents arising in the course of embarkation or disembarkation of the Air Craft qua the AIR passengers is governed by Carriage by AIR Act, 1972. The provision of Article 17 of the IInd Schedule of the said Act makes the carrier liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operation of embarking or disembarking. The complainants have not filed any claim against the carrier "Air India", nor is it impleaded herein as a party. 8. The complaint against AAI, constituted under the Airports Authority of India Act, 1994 (Act No.55 of 1994), is, in any case, unsustainable in view of Section 33 of the said Act. Contentions of the Opposite Party No.2: (a). It is contended by learned Senior Counsel Mr. AShwani Kumar that Opposite Party No.2 is not at all liable. There was no subsisting contract between Opp. party Nos.1 and 2 for maintenance of escalators and elevators, as the contract for maintenance expired on 30th September 1999. Further, Opp. party No.2 was not under any statutory or legal obligation to provide maintenance or any other service including posting of any personnel to supervise and manage escalators at the airport outside its contractual obligations. Maintenance contract which was executed between Opp. party Nos.1 and 2 was subsequently extended by a period of six months, i.e., w.e.f. 1.4.99 to 30.9.99. On the date of incident there was no contract of maintenance by Opp. party No.2. (b). For the plea regarding malfunctioning and fundamental defects in the escalator, it is contended that it is devoid of any substance as escalator has functioned efficiently for 15 years before the date of accident.

6. ENQUIRY Report: Before we discuss the contentions raised by the parties, it would be worthwhile to refer to some findings portion of the report "on Accident Escalator at IGI Airport" given by High Level ENQUIRY Committee, known as Jain Committee, appointed by the Government of India, Ministry of Civil Aviation. The relevant portion thereof is as under: 1. ".....The escalator accident on the 12th /13th December 1999, at Indira Gandhi International Airport (Terminal II) was unprecedented. Innumerable similar and other models of escalators have been installed and are working across the world for decades but it is reported that such an accident, in which a human being was chewed up by the machine, had not ever occurred anywhere else. An escalator installed at an international airport, which is subjected to intensive use particularly during peak hours of traffic, is a very heavy duty machine. It is, therefore, obvious that the accident has taken place under exceptional and extraordinary circumstances.

2. The escalator on which the accident took place, was bought from M/s.OTIS India Ltd. in 1985 and installed in 1986. Thereafter, it has been through out maintained by OTIS, under comprehensive maintenance contracts with AAI. As per the contract conditions, OTIS was required to do both preventive as well as call-back maintenance. The maintenance work of the OTIS had to be supervised by the engineering staff of the AAI. It has been found that the maintenance of the escalator was not being done in a satisfactory manner. The contracting of the

maintenance work does not seem to have been done timely (in fact at the time of the accident, no formal contract for maintenance was sustaining between the AAI and OTIS) and there was poor supervision and monitoring of maintenance work by the staff of the AAI. 3. Proper documentation of maintenance work, like keeping of plant history registers, careful maintenance of log books and hands-on check of the maintenance work done by the OTIS, was not done by the AAI Staff. The OTIS has also been found to be remiss as it did not do the maintenance work in a responsible manner as per contract conditions. D.V. Gupta, Chairman, AAI has pointed out that when the side panels of the escalator's comb plate were opened after the accident, there were cobwebs in it. It is clear that these vital parts of the escalator had not been opened for check for a long time by OTIS.

4. The quality of engineering personnel of the OTIS, who were executing the maintenance work as well as of the supervisors and monitors on the staff of the AAI was also not satisfactory. There was no meaningful interface between the owner and the supplier ; the engineering staff, handling the escalator in the AAI, were never trained to handle the equipment either with OTIS or anywhere else. The net result was that the escalator was subjected to longer duration of shut downs than necessary. A technical examination of the equipment shows that because of negligent maintenance, the comb plate and the foot plate of the escalator as its down-end were loosely held and got shifted under pressure creating a gaping hole, in which some of the passengers fell and sustained injuries and the girl died. 5. The members of the Committee have personally noticed during their normal visits to the airport that even the lifts installed at the terminals were not in working condition on several occasions.

6. The escalator had been in position for about 14 years and although traffic during this period had increased by about 85% and its intensity of use during peak hours had also increased, it was not equipped with several safety features that were provided for in the later models of the equipment. It was observed that certain improvements, operational and mechanical, with a view to making such escalators more safe, had been effected at Mumbai airport. No such thought was given to upgrade the safety mechanics of the escalators in Delhi. Although, as per the statement of Robey Lal, Member (Operations), AAI, the safety features of escalators/lifts, were discussed about 2-3 years back at senior officers level, nothing further seems to have been done to improve the safety measures. 7. The attitude of the functionaries of the authorities present on the spot, (AAI management and general wing, engineering staff and medical staff and other agencies including the police staff sitting near the escalator) lacked alertness and sensitivity in handling the situation. In fact, even the senior officers of the AAI who visited the spot immediately after the incident, seemed to have had little comprehension of the enormity of the accident and the traumatic repercussions that it had on the passengers, particularly those who had been injured or whose relatives had sustained injuries. Their inaction in not extricating the trapped deceased for about 25 minutes, was callous and reprehensible. In his statement

before the Committee, Bindra, the Senior Airport Manager, incharge of the terminal, who had reached the site of the accident soon after, eloquently damns himself and the AAI senior officers in this respect and the overall handling of the situation. "I will like to clarify that I did not see either the doctor, his helper, the police, any functionary of the AAI or the airlines, actually helping in extricating the victims.... I do not know as to who would have been responsible for taking out the body of the deceased girl from the escalator in case fellow passengers could not have done so. Any person who was nearby the spot, could have done it on humanitarian ground." As regards his seniors - "Besides, direction to pacify the passengers, I was not given any other direction or instruction by my senior officers."

8. They also seemed to be totally confused. At the initial stage, when there was scramble at the foot of the escalator, none from the staff present had the presence of mind to switch off the moving escalator. If this had been done, the tragedy would not have taken place. There were inexcusable delays in reaching the site of the accident on the part of the senior and operational staff. This was mainly because of failure of the communication system. The stand-by support communication system was also reported to be out of order for more than three months, prior to the accident but this matter had not been brought to the notice of the superior officers. This shows the utter lack of interest on the part of the senior officers and staff, in doing their work efficiently. The treatment meted out to the relatives of the deceased and other injured persons would, in a normal circumstances, be considered fairly satisfactory, but considering the extraordinary nature of this episode, it was quite inadequate. 9. One of the reasons for this inadequate, less than effective and to some extent, uninformed response, was due to the fact that the AAI/other authorities concerned, had not prepared and exercised any plans for handling such emergencies. It may be clarified that while plans had been prepared and exercises held (though inadequately and infrequently) for dealing with major accidents like air crash, etc., a contingency like the one which occurred on the 12th/13th December 1999, had not been anticipated. No prior preparation to meet a situation arising out of it, was, therefore, made."

Re. Deficiency in service: The aforesaid report leaves no doubt with regard to deficiency in service by the AAI in maintaining, supervising and sensitivity in handling the situation on the part of the staff. In view of the aforesaid finding by the Enquiry Committee, the contention of the learned Counsel for the AAI that on routine check on 3.12.1999 the officials on duty have not found any defect in various electrical installations including the escalator, is not required to be discussed. On the contrary, this would reveal that routine check of electrical installations was itself casual and improper.

For highlighting the deficiency in service the findings of the said report can be further summarised as under: 1. The escalator was purchased from M/s. OTIS India Ltd. in 1985 and installed in 1986. The OTIS was required to do both

preventive as well as call-back maintenance under the supervision of the engineering staff of the AAI. It was found that maintenance of escalator was not being done in a satisfactory manner. 2. The contracting of the maintenance work has not been done timely. There was no contract of maintenance of escalator between the parties and there was poor supervision by the AAI. 3. OTIS did not do maintenance work in a responsible way. Vital parts of the escalator had not been opened for check up for a long time by the OTIS. 4. The quality of the engineering personnel of OTIS and the supervisory staff of the AAI was not satisfactory. 5. Improper documentation of maintenance work. 6. The engineering staff handling the escalator in the AAI were never trained to handle the equipment either with the OTIS or anywhere else. 7. Technical examination of the equipment shows that due to negligence in maintenance a hole was created in which some passengers fell and sustained injuries and the girl died. 8. Even some lifts installed at the airport were not in working condition on several occasions. 9. The escalator was not upgraded though there is increase in passenger traffic by 85% and it was subjected to intensive usage during peak hours. It was not equipped with safety features that were provided for in the later models of equipment. 10. Lack of alertness and sensitivity in handling the situation on the part of the staff present at the time of accident. 11. As per Mr. Bindra, an official of AAI, he did not see at the spot either Doctor, Police or any official of AAI, and even the senior officers did not given any direction or instruction to manage the situation with least possible loss to humans. It shows lack of comprehension on the part of the AAI staff. 12. Absence of the concerned staff at the escalator to switch it off in case of calamity, has really aggravated the situation and this has been the prime reason for the tragedy. 13. Because of communication gap, the technical/operational staff did not reach the spot in time. 14. Stand-by support communication system was out of order for three months prior to the accident and this fact was not within the knowledge of the seniors. 15. The concerned authorities had not planned any mock exercises to meet with the contingencies. 16. Inaction in not extracting the trapped deceased for about 25 minutes was callous and reprehensible.

7. LEARNED Counsel for the AAI submitted that the aforesaid report cannot be held to be conclusive in establishing the deficiency in service with regard to maintenance, quality, supervision and sensitivity in handling the situation on the part of the staff present at the time of accident, as during the inquiry, witnesses were not cross-examined. We agree that report of the Committee may not be conclusive in judicial and quasi-judicial adjudication but at the same time, considering undisputed facts, in our view, it ill behoves the AAI which is a statutory corporation, inter alia, constituted for maintenance of runway and passenger facilities to contend that the finding recorded by the Committee appointed by the Ministry of Civil Aviation, Government of India, is not binding on it. The report is exhaustive on all aspects, after recording the evidence of number of witnesses and after having spot inspection. Secondly, it should be well understood that under the Consumer Protection Act, 1986 the Commission has to

decide the matters de-hors of all technicalities developed under our civil/criminal jurisprudence. This is obvious, because the procedure prescribed under the C.P. Act does not provide for application of Evidence Act or the Civil Procedure Code. The dispute is to be decided on the yardstick of reasonable probability on the basis of facts brought on record.

8. FOR the same reason, we also reject the contention raised by the learned Counsel for the AAI that as the criminal matter is pending before the Additional Chief Metropolitan Magistrate, Patiala House, these proceedings may not be adjudicated. In our view, criminal proceedings are to be decided on the basis of the Evidence Act as well as procedural laws, such as, Criminal Procedure Code and other such relevant provisions. Standard of proof is altogether different in criminal matters. The judgment in these proceedings, qua deficiency in service rendered by the AAI, is not binding in criminal prosecution. Apart from the inquiry report, the principle of *res ipsa loquitur* (the events speak for themselves) is eminently applicable in the instant case. Fortunately, the AAI has not disputed the death of the young child. A young child who came to India for celebrating her uncle's marriage has lost her life, because of crushing injury while using the escalator for going out of the airport. The other passengers were also injured. It was the duty of the AAI to maintain the escalator in proper condition. It was the duty of the concerned officers to be more careful at the time of inspecting such installations and the inspection should not be casual or routine. There is no justifiable ground for not renewing the maintenance contract before the date of its expiry. Admittedly, when thousands of passengers are using such equipments, the authorities owed a duty to take more care for safety of such services. At the time of occurrence of such incident, staff present is required to be more responsible, alert and sensitive, so that damage or injury could be minimised. In any case, not to keep staff at the escalator to switch off in case of calamity, by itself is deficiency in service. Re: Whether complaint under the C.P. Act is maintainable: Learned Counsel for the AAI submitted that Complainant cannot be said to be consumer as no service was undertaken by the Opposite Party No.1 qua the Complainants who landed at the airport from Dubai by Air India.

9. THE aforesaid contention is without any substance, in view of the statutory duty cast on the AAI under Airport Authority of India Act, 1994, which, inter alia, requires the Authority to manage the airports, to provide air traffic service and air transport service, air safety service, to regulate entry and exit of passengers and visitors at the airports, to provide transport facilities to the passengers travelling by air and to have due regard for safety of such service.

10. FOR this, it would be worthwhile to refer to some provisions of the said Act under which AAI is constituted. The relevant Sections are as under: Section 2(b) : "airport" means a landing and taking off area for aircrafts, usually with runway and aircraft maintenance and passenger facilities and includes aerodrome as defined in clause (2) of Section 2 of the Aircraft Act, 1934. Section 2(e) : "air

transport service" means any service, for any kind of remuneration, whatsoever, for the transport by air of persons, mail or any other thing, animate or inanimate, whether such service relates to a single flight or series of flights.

Section 12 : Functions of the Authority - (1) Subject to the rules, if any, made by the Central Government in this behalf, it shall be the function of the Authority to manage the airports, the civil enclaves and the aeronautical communication stations efficiently. (2) It shall be the duty of the Authority to provide air traffic service and air transport service at any airport and civil enclaves. (3) Without prejudice to the generality of the provisions contained in sub-sections (1) and (2), the Authority may - .(a). plan, develop, construct and maintain runways, taxiways, aprons and terminals and ancillary buildings at the airports and civil enclaves ; (b). plan, procure, install and maintain navigational aids, communication equipment, beacons and ground aids at the airports and at such locations as may be considered necessary for safe navigation and operation of aircrafts ; (c). provide air safety services and search and rescue, facilities in co-ordination with other agencies ; (d) establish schools or institutions or centers for the training of its officers and employees in regard to any matter connected with the purposes of this Act ; (e) construct residential buildings for its employees ; (f). establish and maintain hotels, restaurants and restrooms at or near the airports ; (g). establish warehouses and cargo complexes at the airports for the storage or processing of goods ; (h). arrange for postal, money exchange, insurance and telephone facilities for the use of passengers and other persons at the airports and civil enclaves ; (i). make appropriate arrangements for watch and ward at the airports and civil enclaves ; (j). regulate and control the plying of vehicles, and the entry and exit of passengers and visitors, in the airports and civil enclaves with due regard to the security and protocol functions of the Government of India ; (k) develop and provide consultancy, construction or management services, and undertake operations in India and abroad in relation to airports, air-navigation services, ground aids and safety services or any facilities thereat ; (l). establish and manage heliports and airstrips ; (m). provide such transport facilities as are, in the opinion of the Authority, necessary to the passengers travelling by air ; (n). form one or more companies under the Companies Act, 1956 or under any other law relating to companies to further the efficient discharge of the functions imposed on it by this Act ; (o). take all such steps as may be necessary or convenient for, or may be incidental to, the exercise of any power or the discharge of any function conferred or imposed on it by this Act; (p). perform any other function considered necessary or desirable by the Central Government for ensuring the safe and efficient operation of aircraft to, from and across the air space of India ; (q). establish training institutes and workshops ; (r). any other activity at the airports and the civil enclaves in the best commercial interests of the authority including cargo handling, setting up of joint ventures for the discharge of any function assigned to the Authority. 4. In the discharge of its functions under the section, the Authority shall have due regard to the development of air transport service and to the efficiency, economy and safety of such service. 5. Nothing contained in this section shall be construed

as - (a) authorizing the disregard by the Authority of any law for the time being in force ; or (b) authorizing any person to institute any proceeding in respect of duty or liability to which the Authority or its officers or other employees would not otherwise be subject.

Section 22: Power of the Authority to charge fees, rent, etc.- The Authority may (i) with the previous approval of the Central Government, charges fees or rent- (a) for the landing, housing or parking of aircraft or for any other service or facility offered in connection with aircraft operations at any airport, heliport or airstrip; Explanation.- In this sub-clause "aircraft" does not include an aircraft belonging to any armed force of the Union and "aircraft operations" does not include operations of any aircraft belonging to the said force; (b) for providing air traffic services, ground safety services, aeronautical communications and navigational aids and meteorological services at any airports and at any aeronautical communication station; (c) for amenities given to the passengers and visitors at any airport, civil enclave, heliport or airstrip; (d) for the use and employment by persons of facilities and other services provided by the Authority at any airport, civil enclave, heliport or airstrip; (ii) with due regard to the instructions that the Central Government may give to the Authority, from time to time, charge fees or rent from persons who are given by the Authority any facility for carrying on any trade or business at any airport, heliport or airstrip.

Section 25 also empowers the authorities to set apart amounts for the purpose of expanding existing facilities or services or creating new facilities or services at any airport.

11. UNDER Section 42(2)(k) there is a specific power empowering the Authority to make regulations prohibiting or restricting access to any part of the Airport or civil enclave. The aforesaid Sections leave no doubt that AAI is required to provide facilities to the passengers. Passengers may be incoming or outgoing or who enter the airport premises with permission or entry ticket. This is part of terminal service which is required to be rendered by the Corporation. Under Section 12 it is the duty of the Authority to provide air traffic service, air transport service and to maintain and provide services at the terminals including that of escalators. For that service it has to regulate and control the entry and exit of passengers and visitors at the airport. It has also to provide such transport facilities as are in the opinion of the Authority necessary to the passengers travelling by air. The Authority is required to give due regard to development of air transport service and to the efficiency, economy and safety of such service.

12. APART from the statutory function, entry to the airport is restricted. Its exit is also on the basis of entry ticket or air ticket. Those who are having air ticket for coming to India, are required to be permitted to enter the airport. May be that tax/fee for this purpose is collected in other country. The learned Counsel for the AAI submitted that the AAI is charging fees from the passengers who are going out of country, but is not charging any fees for the passengers who are

coming to India. And, therefore, the complaint under the C.P. Act is not maintainable. In our view, this contention is without any substance in view of the statutory functions which are required to be discharged by the statutory body, AAI. Section 22 empowers the AAI for charging fees for providing traffic services and ground safety services [(Sec.22(b))]. It also empowers for charging fees for providing amenities given to the passengers and visitors at any airport.

13. FURTHER, even if such fee is not charged from the passengers coming to India, yet they are required to enter the airport premises on the basis of reciprocal agreement. It is nobody's case that passengers or visitors are permitted to enter the airport premises without paying any fees.

14. FURTHER, Sec.2(d)(ii) specifically provides that consumer includes any beneficiary of such services other than persons who hires the services for consideration paid or promised when such services are availed of with approval of the person who hires such services. In *Indian Medical Association Vs. V.P.Shantha & Ors.* (1995) 6 SCC 651, the Apex Court interpreted Sec.2(b)(ii) with regard to medical services and held, inter alia, that even if some patients are given medical treatment freely, but if some patients are charged, then it would be covered by the C.P. Act. In the said case the Court has specified "in which set of circumstance services rendered by the medical practitioner would not be considered to be covered by the provisions of Section 2(1)(o) of the Act", and "in which cases services rendered by the Government Hospitals would be or would not be covered by the provisions of the Act. In view of Section 2(1)(o) which provides that service does not include the rendering of any service free of charge", the Court divided hospitals and nursing homes in three categories. (i) where services are rendered free of charge to everybody availing of the said services ; (ii) where charges are required to be paid by everybody availing of the services ; and (iii) where charges are required to be paid by persons availing of services but certain categories of persons who cannot afford to pay are rendered service free of charges.

For the first category the Court held that Doctors and Hospitals who render service without any charge whatsoever to every person availing of services would not fall within the ambit of service contained in Section 2(1)(o) of the Act; the payment of token amount for registration purposes only would not alter the provision in respect of such doctors and hospitals. For the second category, there could not be any dispute and it was held that it would clearly fall within the ambit of Section 2(1)(o) of the Act. For the third category, the Court observed thus: "The third category of doctors and hospitals do provide free service to some of the patients belonging to the poor class but the bulk of the service is rendered to the patients on payment basis. The expenses incurred for providing free service are met out of the income from the service rendered to the paying patients. The service rendered by such doctors and hospitals to paying patients undoubtedly falls within the ambit of Section 2(1)(o) of the Act."

15. THEREAFTER, the Court pertinently held thus: "All persons who avail of the

services by doctors and hospitals in category (iii) are required to be treated on the same footing irrespective of the fact that some of them pay for the service and others avail of the same free of charge. Most of the doctors and hospitals work on commercial lines and the expenses incurred for providing services free of charge to patients who are not in a position to bear the charges are met out of the income earned by such doctors and hospitals from services rendered to paying patients..... We are, therefore, of the opinion that service rendered by the doctors and hospitals falling in the category (iii) irrespective of the fact that part of the service is rendered free of charge, would nevertheless fall within the ambit of the expression "service" as defined in Section 2(1)(o) of the Act. We are further of the view that persons who are rendered free service are the "beneficiaries" and as such come within the definition of "consumer" under Section 2(1)(d) of the Act".

The relevant conclusions (para 55) is as under: "(10) Service rendered at a government hospital/health centre/dispensary where services are rendered on payment of charges and also rendered free of charge to other persons availing of such services would fall within the ambit of the expression "service" as defined in Section 2(1)(o) of the Act, irrespective of the fact that the service is rendered free of charge to persons who do not pay for such service. Free service would also be "service" and the recipient a "consumer" under the Act."

In view of the aforesaid decision rendered by the Apex Court, there is no substance in the contention of the AAI that as no consideration is received from the passengers who are coming from other country, the provisions of the Consumer Protection Act would not be applicable. Reasons are: (a) Maintenance of airports is a statutory function of the AAI. (b) Under Section 22 it has power to charge fees for any other service or facility offered in connection with the aircraft operation at any airport, or providing air traffic services or for amenities given to the passengers. (c) The expenses incurred for providing any free service to out going passengers who are coming from other countries are met out of the income from the services rendered other passengers who are required to pay entry fee as well as other fees. (d) Use of airport premises is restricted and regulated. Without using the airport premises, passengers coming from other countries cannot enter into Indian territory.

16. WHETHER Opposite Party No.2 is jointly and severally liable: Once we arrive at the conclusion that AAI is liable for deficiency in service, we do not think that this would be a fit case for deciding the dispute between the AAI and the OTIS. For this purpose Mr. Ashwani Kumar, learned Senior Counsel has rightly submitted that the written contract which expired on 30th September, 1999 was not renewed by the officers of the AAI. He submitted that once the maintenance contract is not renewed the Opposite Party No.2 cannot be held liable. As against this, learned Counsel for the Opposite Party No.1 submitted that even though there was no renewal of the contract, there was an oral understanding with the Opposite Party No.2 for continuing maintenance of the escalator till the renewal

of the contract is not given effect. For this purpose, learned Counsel has sought reliance upon certain documents. For deciding this case, it is not necessary to go into the said dispute, because, admittedly, there is no renewal of the maintenance contract which had expired on 30th September, 1999. We are not expressing our opinion on this issue that it was because of gross negligence or for some other reason. For our purpose, once there is no subsisting written agreement, It would be difficult for us to decide whether there was oral contract as alleged and in any set of circumstances that issue is not necessary to be dealt with by us in this complaint. In any case, if the AAI is of the opinion that there was subsisting contract between it and the OTIS, it is open to the Opposite Party No.1 to take appropriate action against the Opposite Party No.2 for reimbursement of damages paid by it to the Complainant. QUANTUM: For fixing quantum of compensation we have to take into account factors such as age of the deceased, income, occupation, future prospects, life expectancy, the minimum expected income or the income of the parents, or, in the alternative, the minimum standard prescribed for paying compensation to the passengers under any statutory provisions. The Complainant has claimed : 1. For harassment, mental torture. Rs.1,40,00,000 2. For loss of income due to stay in Rs. 6,00,000 India for pursuing the case after the tragedy. (@ Rs.60,000/- p.m.) 3. Wasteful expenditure on account of Rs. 4,00,000 abrupt stoppage of the marriage due to tragedy, which expenditure includes the travelling expenses incurred by the relatives of the Complainant who have come from Russia.

17. IT is also contended that in the United States tortuous acts such as these would have resulted in million of dollars in damages being awarded against the Opposite Parties. In the affidavits by way of evidence filed by the Opposite Parties, nowhere they have challenged the amount of compensation claimed by the Complainants.

18. LEARNED Counsel for the Opposite Party No.1 has contended that the Complainant had not joined the carrier, namely, the Air India, as party. According to her submission the Air India would be liable for the damage to the passenger carried out by it till the passenger leaves the airport premises. Ms. Suman Lata Jain, Senior Manager of AAI, has also filed an affidavit in support of the objection to the maintainability of the complaint by contending that the liability with respect to incidents arising in the course of embarkation or disembarkation of the aircraft qua the air passengers is indicated in the Carriage By Air Act, 1972. Reference is made to Rule 17 of Schedule-II which provides for carrier's liability and, therefore, it is contended that the AAI is not liable. It is contended that the carrier, Air India, is not impleaded as party. The complaint against the AAI is not maintainable as no service was rendered by it.

Further, even if the carrier, Air India, is liable, the escalator is required to be maintained by the AAI, as per the provisions of the Air Port Authority of India Act, 1994. In this view of the matter, even if there is liability of carrier, it would be joint and several liability of the carrier, Air India and the AAI. Non-joinder of

Air India would not be a ground for defeating the claim against the AAI.

19. HOWEVER, we make it clear that the question as to whether this operation of a passenger of going out of airport would be in the course of any operations of embarking or disembarking from the aircraft is not dealt with in this complaint. We are not accepting the said contention, but for the purpose of assessing the damage we can safely rely upon the Schedule-II provided in the Carriage by Air Act, 1972. Section 4 of the said Act, inter alia, provides that the rules contained in second schedule, shall, subject to the provisions of this Act, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage. Section 5(1), inter alia, provides that notwithstanding anything contained in the Fatal Accidents Act, 1855 or any other enactment or rule in force in any part of India, the rules contained in the first Schedule and in the second schedule shall, in all cases to which those rules apply, determine the liability of the carrier in respect of death of a passenger. Rule 17 of Schedule-II provides that the carrier is liable for damage sustained in the event of death or wounding of a passenger or any other bodily injury suffered by a passenger if the accident which caused the damage so sustained took place on board the aircraft or in the course of any operations of embarking or disembarking. Rule 22(1) further provides that in the carriage of persons the liability of the carrier for each passenger is limited to the sum of 2,50,000 Francs. Rule 22 (1) is as under: 22(1): In the carriage of persons the liability of the carrier for each passenger is limited to sum of 2,50,000 francs. Where, in accordance with the law of the Court seized of the case, damages may be awarded in the form of periodical payments the equivalent capital value of the said payments shall not exceed 2,50,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability. (4) The limits prescribed in this rule shall not prevent the Court from awarding in accordance with its own law, in addition, the whole or part of the Court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluded Court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later. (5) The sums mentioned in francs in this rule shall be deemed to refer to a currency unit consisting of sixty-five and a half miligrammes of gold of millesimal fineness nine hundred. These sums may be converted into national currencies in round figures. Conversion of sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of the judgment."

20. ON the basis of the aforesaid Act and the Schedule, if we assess the liability of the AAI, then it is liable to pay a compensation equivalent to 2,50,000 Francs. No doubt, it is to be made clear that liability prescribed under the Act is for the carrier and not for the AAI, but, considering the fact that for embarking or

disembarking a passenger is required to use the airport which is maintained by the AAI. The assessment of damages on that basis would be just and proper. Admittedly, the Complainants are Non-resident Indians. It is true that there is no evidence on record for assessing the quantum of damages. As stated above, when Rs.5 lakhs were offered by the Hon"ble Minister on the spot, the same was not accepted by the aggrieved mother. It has been pointed out that Complainant No.2 was earning \$ 1,400 per month. If we take minimum earning of the minor at \$ 1,400 then yearly income can safely be assessed at \$16,800, applying the standard multiplier of 18 years because of the young age of the child the said amount comes to \$ 3,02,400. After taking 1/3rd amount in consideration of the expenses which the victim had incurred towards maintaining herself, had she been alive, the amount comes to approximately \$ 2 lakhs. This would be in conformity with the Second Schedule of the Motor Vehicle Act which provides for compensation in cases of fatal accidents. Instead of Rupees, calculation is on the basis of Dollars. So, the question is whether we should adopt the minimum compensation prescribed under the Carriage by Air Act or on the basis of the Schedule prescribed under the Motor Vehicles Act. Loss of child to the parents is irrecompable and no amount of money could compensate the parents. Further, there can be no exact or uniform rule for measuring the value of human life. But, having regard to the environment from which the child was brought compensation is required to be determined. Hence, it would be just and proper to adopt the criteria under the Carriage by Air Act, because, admittedly, the Complainants were non-resident Indians and they were coming from Dubai to India for celebration of marriage of Complainant No.3.

21. HENCE, Opposite Party No.1 (AAI) is directed to pay 2,50,000 French Francs or its equivalent in Rupees as on today, along with interest at the rate of 10% per annum from January 1, 2000 till the date of payment. The amount shall be paid within a period of four weeks from today.

22. COMPLAINT is disposed of accordingly. There shall be no order as to costs.