

(2000) 11 NCDRC CK 0017

In the National Consumer Disputes Redressal Commission

INACIA P.CARVALHO

APPELLANT

Vs

DESK TO DESK COURIER AND CARGO LTD.

RESPONDENT

Date of Decision : 30-11-2000

Acts Referred:

Citation : 2001 3 CPJ 183 : 2001 3 CPR 248 : 2002 1 CPC 136

Hon'ble Judges : J.N.Prabhudessai , Sandra Vaz E.Correia J.

Final Decision : Appeal partly allowed

Judgement

1. THE appellant is the complainant and respondent the opposite party before the District Forum, North Goa in Complaint No. 202/98 on its file.

2. THE case of the appellant in brief is as follows : She had purchased an air ticket of Rs. 15,605/- for her son Shri Elvis Carvalho to travel from Mumbai to Dubai and back. Her son flew to Dubai on 23.2.1998. THE return ticket from Dubai to Mumbai was an open ticket and the date of the return journey was not endorsed thereon as it depended on the outcome of the interview for employment of the said Elvis Carvalho. THE said Elvis was not selected and, therefore, it was required to send the confirmed return ticket to Dubai before 22.5.1998 as his visa was expiring on that date. THE appellant approached the respondents office at Panaji on 19.5.1998 who assured her that her son would receive the ticket on or before 22.5.1998. THE appellant hired the services of the respondent and paid an amount of Rs. 525/- for delivery of the ticket. However, the consignment was not delivered to her son on 22.5.1998 and as a result the ticket sent through the respondent remained unutilised. THE said Elvis had to purchase a new ticket at Dubai for the return journey. THE appellant filed a complaint before the District Forum, North Goa claimed an amount of Rs. 19,825/- as compensation towards costs of the tickets, telephone calls, etc. Upon being noticed, the respondent filed its statement and affidavit-in-evidence. It was contended that the consignment was accepted on 19.5.1998 and was despatched to Bangalore office on the same day. On 20.5.1998, the consignment was despatched to Dubai and reached there on 21.5.1998. The same could not be

delivered on the next day i.e. 22.5.1998 as it was a public holiday in Dubai being a Friday. When the consignment was taken for delivery on 23.5.1998, it was refused by the addressee. The respondent claimed that their liability undertaken in the contract was limited to Rs. 100/- for loss or damage caused to the consignment.

The District Forum, North Goa, after conducting due enquiry, came to the conclusion that the consignee ought to have insured the consignment and that the liability of the respondent was limited to Rs. 100/- under the contract. The complaint was partly allowed and the respondent was directed to pay to the appellant an amount of Rs. 100/- towards compensation and Rs. 500/- as costs. Aggrieved, the appellants have preferred this appeal before this Commission.

3. WE have heard lengthy arguments advanced by Counsel for the parties. Counsel for the appellant submitted that there was nothing brought on record by the respondent showing that the consignment had in fact reached Dubai. He denied that the addressee, the appellants brother Shri Michael D'Sa, had refused the consignment on 23.5.1998. He argued that the appellant had suffered loss by way of cost of un-utilised ticket, telephone calls to Dubai, mental tension, etc. because of the negligence and deficiency in service of the respondent. He brought to our notice 1993 (3) CPR 32, 1998 (2) CPR 111, and this Commissions order in 1999 (1) CPR 81. On the other hand, Counsel for the respondent argued that there was no deficiency of service and that the consignment could not be delivered on 22.5.1998, it being a public holiday even though it reached Dubai on 21.5.1998. He further submitted that when the consignment was delivered on 23.5.1998, the same was refused by the addressee and this was evidenced by the P.O.D. report on record. He further contended that the courier companies' liability was limited to Rs. 100/- as per the terms of contract printed on the reverse of the consignment note and duly accepted by the appellant. He cited the ratio laid down by National Commission in 1986-99 Consumer (NS) and "National Commission"s Rulings on Consumer 496".

4. WE have perused the impugned order and records of the District Forum. We are not in agreement with the opinion expressed by the District Forum in the impugned order. The District Forum ought to have applied its mind to the negligence aspect which was so obvious in the matter before it. Admittedly, the appellant booked the consignment on 19.5.1998 at 3.34 p.m. The cover containing the consignment and relied by the respondent had a remark in bold letters "ticket inside very urgent". The address of the receiver also contained his telephone number. According to the respondent, the consignment reached its Bangalore office on 20.5.1998 at 7 a.m. Thereafter, by Air-way Bill No. 1833621 dated 20.5.1998 of DTDC International Courier Division, the consignment was despatched to Dubai. According to the respondent, the consignment reached Dubai on 21.5.1998. The same was not delivered on 22.5.1998 as it was a holiday and was despatched to the addressee only on 23.5.1998. Being in the business of international courier services, it was incumbent upon the respondent

to ensure that the consignment was delivered to the addressee on a time-bound basis. The respondent's Dubai office ought to have telephonically informed the addressee about the status of the consignment particularly since the following day was a holiday. Instead, the respondent has come out with a thoroughly unprofessional excuse that 22.5.1998 being a holiday, the consignment was delivered on 23.5.1998. The respondent did not take due care and attention in ensuring the delivery of the consignment within the shortest time-frame as can be expected from an international courier company. The appellant had hired the services of the courier company by payment of Rs. 525/- in the hope and expectation that the consignment would be delivered within 3 days i.e. by 22.5.1998. We have gone through the various rulings cited by the respondent. With due respect, we opine that the issue of negligence was not addressed in those judgments probably either because it did not exist or because it was not raised by the parties.

5. A consumer is entitled to compensation for loss and damage caused to him owing to the negligence of the opposite party. In 1993 (3) CPR 32, the National Commission held that whatever be the binding nature of the "limited liability" in the contract, it cannot restrict the liability of the courier for consequences flowing out of its negligence and deficiency in service. In our view, the "pigeon hole" approach applied by some Consumer Dispute Redressal Agencies, in fact, put a premium on loss and damage to the consignment by the courier companies and courier companies will find it convenient to report loss or damage to the consignment rather than delay in delivery. The reasons of loss and damage or delay in delivery of the consignment can be accepted only in cases of "force majeure" or genuine circumstances beyond control. Neither has been made out by the respondent before us.

6. WE may also add that the Consumer Protection Act was enacted to give speedy relief to harassed consumers from the clutches of unscrupulous traders and service providers. Courier companies carry consignments entrusted to them by consumers who part with an enormous charge in the hope of delivery in the shortest possible time. The object of the Consumer Protection Act would be defeated if the courier company before us is allowed to get away with "limited liability" of Rs. 100/-. In view of what is discussed above, we pass the following order : (i) this appeal is partly allowed; (ii) the impugned order dated 28.12.1999 is quashed and set aside; (iii) the respondent is directed to pay to the appellant an amount of Rs. 7,800/- as cost of the ticket and Rs. 525/- as cost of courier charges along with interest at 18% p.a., and further amount of Rs. 1,500/- towards cost of the litigation, within 30 days. Order accordingly. Appeal partly allowed.