

(2010) 07 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

INDIAN AIRLINES LTD

APPELLANT

Vs

Rajiv Goyal

RESPONDENT

Date of Decision : 19-07-2010

Acts Referred:

Citation : 2010 4 CPJ 397

Hon'ble Judges : R.K.Batta , Vinay Kumar J.

Final Decision : Revision partly allowed.

Judgement

1. WITH the consent of learned Counsel appearing on both sides, the matter was heard finally at the admission stage for final disposal. Ld. Counsel for the petitioner submitted before us that the findings of the Fora below that no satisfactory evidence was led to prove that the aeroplane had developed snag i.e. landing gear not retracting on account of which the flight was cancelled cannot be sustained in view of the affidavit evidence of Shri P.K. Sharma, Area Marketing Manager, Indian Airlines and the affidavit of Capt. G. Bhalla, who was in Command of Indian Airlines Flight which was cancelled, which was filed before the State Commission. He further submitted that the aircraft had in fact taken off and was airborne and at that stage snag was deducted namely; landing gear not retracting on account of which the flight had to be brought back at Jammu airport keeping in view the safety of the passengers. He also contended that the compensation has been enhanced only on the ground of status of the complainant, which cannot be taken into account while granting compensation. He further contends that the revision be allowed and the impugned order of the State Commission dated 29.1.2009 be set aside.

2. COUNSEL appearing on behalf of the respondent/complainant has submitted that compensation which has been awarded is for the family of four persons including the complainant; that the complainant had to pay Rs. 20,000 extra and that financial as well as social cost are required to be compensated and in this connection reliance has been placed on the judgment of this Commission in Union Bank of India v. Seppo Rally Oy and Anr., II (1996) CPJ 128 (NC).

According to him, no case been made out for interference with the impugned order. In fact, we have gone through the said judgment and we do not find any reference or discussion on the issue of financial cost and social cost.

3. THE District Forum had come to the conclusion that the OPs had not produced any record to suggest if there was any defect in the landing gear; report of the repairs of landing gear has not been placed on file; affidavit of any of the pilots or the Aircraft Maintenance Engineer who could prove the technical fault has not been produced; had there been technical defect in landing gear, the aircraft could not have flown from Jammu back to Delhi. The Consumer Forum then finds, on the basis of evidence on record, that the complainant had not produced any document to suggest that he had paid Rs. 60,000 claimed by him as part of financial loss to the tune of Rs. 91,640. The District Forum also did not accept the receipt of Rs. 20,000 produced by the complainant for alternate stay arrangement on 7th and 8th July, 2007 as the stay receipt Annexure ("C2") was neither on the pad of any hotel, nor the affidavit of the person to whom the said amount was paid had been attached. It was further observed even otherwise also the complainant was to make arrangement for stay on 7th and 8th July, 2007. It has been further pointed out by the District Forum that the complainant was accommodated as a special case for helicopter darshan without cancelling their tickets and further as a special case stay for 9th July, 2007 at Grant Inter Continental was provided without charging as a gesture of goodwill. The ticket was thus re-scheduled free of cost. Therefore, the District Forum had disallowed the claim of Rs. 20,000. The claim for cancellation of taxi with travel agent on 7th to 8th July, 2007 amounting to Rs. 10,000 was also not accepted by the District Forum on the ground that package obtained by the complainant included all transfers by A.C. Qualis and Annexure R-3 shows that the transfers were provided to the complainant from 7th to 10th July, 2007 at the same package cost without charging extra. Out of cancellation of Shatabdi from New Delhi to Chandigarh, the complainant had obtained refund of Rs.1640 and as such, a sum of Rs. 1640 was allowed. The District Forum awarded compensation of Rs. 10,000 for mental and physical harassment due to cancellation of flight, the refund of Rs. 1640 and cost of Rs. 2500 towards litigation. Thus, a total amount of Rs. 14,140 was awarded by the District Forum.

4. THE complainant filed appeal against the order of the District Forum with the State Commission and the State Commission came to the conclusion that no satisfactory evidence has been led to prove that the aeroplane had developed snag i.e. landing gear not retracting due to which flight was cancelled. It was noted that as a special case, the complainant and his family members were accommodated and provided free stay on 9th July, 2007 at Grand Inter Continental and were provided transfers from 7th to 10th July, 2007 under the same package without charging extra. The District Forum had noted that as a special case Decaan Aviation had accommodated the complainant for helicopter darshan without cancelling their tickets. The State Commission found that all programme of the complainant was up set and they had to travel by Spicejet

flight to Srinagar on 7.7.2007 causing mental and physical agony and financial loss. The State Commission taking into consideration the status of the complainant as industrialist, enhanced the compensation to Rs. 2,00,000 instead of Rs. 10,000 awarded by the District Forum besides order of refund of Rs. 1640 due to cancellation of Shatabdi tickets from Delhi to Chandigarh as also 12% interest from the date of filing of the complaint till payment.

5. ADMITTEDLY, the flight had taken off from Jammu airport and was airborne for 10 minutes after which the aircraft landed back. The petitioner claimed that the aircraft had to come back due to a technical snag (landing gear not retracting) on account of which the flight had to be cancelled. The petitioner had filed affidavit evidence of Shri P.K. Sharma, Area Marketing Manager, Indian Airlines who has stated that the flight had to be cancelled perforce due to a technical snag (landing gear not retracting) which compelled the pilots/engineers to return the plane after it had remained airborne for about 10 minutes i.e. from 14.32 hrs. to 14.42 hrs. It is further stated in the said affidavit that no risk could be taken, as the safety and security of the passengers was the primary concern. No interrogatories were served by the complainant on Shri P.K. Sharma and taking into consideration the said affidavit of Shri P.K. Sharma and the fact that the aircraft had in fact taken off, it has been prima facie proved by the petitioner that the landing back at Jammu was on account of technical snag which according to it was landing gear not retracting. Obviously, the safety of the passengers could not be compromised. The aircraft had ultimately gone from Jammu to New Delhi would not make much difference because it did not carry any passengers from Jammu to Delhi and the risk involved for such a situation was only of the Indian Airlines and the staff travelling of the said flight. The complainants were provided stay at hotel Harinivas for which the Indian Airlines spent a sum of Rs. 14,197. The affidavit of Shri P.K. Sharma shows that the complainant was given assurance of seat on the first available flight on the next morning. However, it is not disclosed as to when the said flight was available on the next day. May be on account of uncertainty, the complainant made arrangements in Spicejet and flew from Jammu to Srinagar. However, the complainant shall be entitled to refund from the Indian Airlines for the flight between Jammu to Srinagar. The complainant and his family did not suffer any financial loss, as such, since they were accommodated by Deccan Aviation for helicopter darshan without cancelling their tickets and were also given stay at hotel Grand Inter Continental on 9.7.2007 without charging as a gesture of goodwill. The tickets were rescheduled free of cost. They were provided with all transfers from 7th to 10th July, 2007 at the same package cost without extra payment. The complainant had to pay Rs. 20,000 on accommodation but even otherwise they would have incurred such an expenditure and there is nothing to show that they had to pay for the accommodation earlier booked. In fact, the complainants had proved financial loss only of Rs. 1640. However, the whole episode had resulted in mental agony, anxiety and uncertainty on account of which the complainant and his family had to travel by Spicejet.

6. ON the basis of assessment of the material on record, we find that the compensation of Rs. 10,000 granted by the District Forum was too low and the compensation of Rs. 2,00,000 awarded by the State Commission is rather highly excessive. Keeping in view that the petitioner had not challenged the order of the District Forum regarding findings that the petitioner had failed to prove that the aeroplane had developed technical snag, which findings were confirmed, which we find it difficult to uphold on the basis of material on record, we are of the opinion that a lump sum compensation of Rs. 50,000 including cost of litigation and other expenses would be just, fair and sufficient in the facts and circumstances of this case.

7. IN view of the above, the revision is partly allowed and the order of the State Commission is modified by awarding lump sum compensation of Rs. 50,000 instead of compensation of Rs. 2,00,000 and refund of a sum of Rs. 1640. Therefore, the complainants are awarded consolidated compensation of Rs. 50,000 and refund of Rs. 1640 which shall carry 6% interest from the date of filing of the complaint till effective payment is made. Revision partly allowed.