(2010) 02 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

J W F Exports APPELLANT

Vs

New Globe Air Services Limited RESPONDENT

Date of Decision : 17-02-2010

Acts Referred:

Citation : 2010 1 CPR 147 : 2010 2 CPJ 99

Hon'ble Judges : R.C.Jain , Anupam Dasgupta J.

Final Decision : Appeals dismissed

Judgement

1. MR. Anupam Dasgupta, Member-J.W.F. Exports was the complainant before the Karnataka State Consumer Disputes Redressal Commission, Bangalore (hereafter, ''the State Commission'') in complaint case No. 84 of 2001 in which it alleged deficiency in service on the part of the appellant, Singapore Airlines Limited (hereafter, ''the Carrier'') and New Globe Air Services Limited, the Cargo Agent of the Carrier (herafter, ''the Cargo Agent'') because a consignment of silk fabrics valued at US $ 13,989.19 (equivalent to Rs. 6,51,796 at the then prevailing exchange rate) handed over by the complainant at Bangalore for air-freighting to a buyer in Los Angeles, USA was misdelivered. The complainant accordingly prayed for direction to the Opposite Parties (O.Ps.) to refund the sum of Rs. 6,51,796 with interest @ 24% per annum from 16.2.2001 till payment as well as compensation on other counts. The allegations were opposed by the O.Ps. denying any deficiency in service on their part. The State Commission, however, found both the Carrier and the Cargo Agent (the appellants before us) guilty of deficiency in service and directed these O.Ps. by its order of 24.10.2005, to jointly and severally pay to the complainant the sum of Rs. 6,51,796 with interest @ 12% per annum from the date of the air waybill (25.1.2001) till payment, along with cost of Rs. 10,000. Aggrieved, the two O.Ps. have filed these two appeals against the order of the State Commission.

2. FOR effective adjudication of the dispute, the documented/undisputed facts of the case need to be noticed in some detail: (i) Through OP 3, a Clearing House Agent, the complainant (''the Shipper/Consignor'') handed over the above-

mentioned consignment to the Cargo Agent for air-freighting it, per the Carrier, from Bangalore to Los Angeles and delivery to the buyer, Chador Tex Inc., Suite No. 841, S. Wall Street, Los Angeles, USA (hereafter, ''the first buyer'') on the latter presenting (to the Carrier at Los Angeles) the requisite bank release order (BRO) after payment to/through Hanmi Bank, Downtown Office, 950 South Los Angeles, USA. Accordingly, the Cargo Agent prepared the air waybill No. 618 2342 3315 dated 25.1.2001 and handed over the consignment to the Carrier on the same day. The air waybill showed the Hanmi Bank as the "Consignee" and Chador Tex Inc., at the above-mentioned address, as the ''Notify Party'', i.e., the party to be notified by the Carrier (or, by the Consignee, on the latter being informed by the Carrier) of the arrival of the consignment at the destination, so that it could take necessary action through the Consignee bank to get the consignment released. The freight was pre-paid by the Shipper and the value of the consignment declared to the Customs, though not to the Carrier, was US $ 13,989.19. However, the said consignment value of US $ 13,989.19 declared to the customs was explicitly written on the same air waybill. (ii) The first buyer, however, sent a message dated 31.1.2001 to the Shipper expressing difficulty in arranging payment for the consignment (through the Consignee bank) and requesting direct release of the consignment with the facility of sending the payment as soon as possible. The documents on record show that the Shipper conveyed to the first buyer its inability to accommodate the request by its message of the same date and wrote a letter dated 14.2.2001 to the Manager of the Carrier at Bangalore to the effect that in view of the first buyer seeking change in the terms of payment to which the Shipper was not agreeable, it (the Shipper) had decided to change the Consignee to ''Dillu Inc., 117, West 9th Street, Suite No. 509, Los Angeles'' (hereafter, ''the second buyer'') for direct delivery to the new Consignee (i.e., not through the Hanmi Bank which was the ''Consignee'' in the first air waybill). (iii) (a) The next of the facts that are borne out by the documents on record is that the Cargo Agent modified the airway bill dated 25.1.2001 to the following effect:

"Consignee''s Name and Address: CHADOR TEX INC DILLU INC 117 WEST 9th STREET SUITE # 509 CA 90015, U.S.A." [Emphasis supplied] (b) There was no endorsement of the date of this amendment to the air waybill (No. 618 2342 3315, first issued on 25.1.2001) and the above-mentioned entries were made on the same air waybill (i.e., on the copy available with the Cargo Agent) by striking out the name and address of the Hanmi Bank as the Consignee and also those of the earlier "Notify Party", namely, Chador Tex Inc. Further, it is an admitted position (in the written version of the Cargo Agent) that this amended air waybill was handed over on 14.2.2001 by the Cargo Agent, along with a forwarding letter of the same date and a copy of the Shipper''s letter seeking amendment to the air waybill, to a representative of OP 3, the Clearing House Agent acting on behalf of the Shipper. The latter, in turn, delivered these documents the same day to the Carrier at its Bangalore office. (c) The material part of the covering letter dated 14.2.2001 written by the Cargo Agent to the Cargo Manager of the

Carrier reads as under: "Re: Amendment of AWB Ref: 618 2342 3315 With reference to the captioned shipment, we would like to consign the consignment directly to Consignee instead of bank. Consignee column to read as under: M/s. Chador Tex Inc Dillu Inc, 117, West 9th Street Suite # No. 509 Los Angeles, CA - 90015 We are enclosing herewith copy of letter received from Shipper for your ready reference. We are also enclosing cheque for Inr. 500.00 vide cheque No. 007289 dated 14.2.2001 towards amendment charges. Kindly do the needful." [Emphasis supplied] (d) On record, there is also a copy of a telex message, sent (date not decipherable) apparently by the Cargo Agent to the Carrier at the latter''s office (telex) addresses in Bangalore, Singapore and Los Angeles, citing the reference of the consignment in question, to the effect: "AS PER REQUEST CN (illegible) HAS BEEN AMENDED AS FOLLOWS MS CHADOR TEX INC DILLU INC 117 WEST 9th STREET SUITE No. 509 LOS ANGELES CA 90015 PH No. 213 627 9472 RGDS KEIKI" [Emphasis supplied] (iv) The next undisputed fact is that the consignment, which had reached Los Angeles on 27.1.2001, was actually delivered by the Carrier to Chador Tex Inc. on 16.2.2001. However, no intimation of this delivery was given to the Shipper despite its repeated enquiries. It was the case of the Shipper before the State Commission that its representative discovered the fact of delivery of the consignment to Chador Tex Inc. only after checking the Carrier''s website. This allegation was also not disputed by the Carrier in its written version.

3. AGAINST this background of documented and/or undisputed facts we have heard Mr. Dileep Poolakkut, learned Counsel for the appellant Carrier and Mr. Lalit Bhasin, learned Counsel for the appellant Cargo Agent. None was present on behalf of the Complainant/Shipper and the Clearing House Agent despite service of notice. During the pendency of these appeals, the appellant Cargo Agent also moved a miscellaneous application seeking impleadment of Chador Tex Inc., Dillu Inc. and Hanmi Bank as necessary parties, alleging that both the Carrier and its Cargo Agent had been duped by some crime syndicate.

4. ON behalf of the Carrier, Mr. Poolakkut argued that in delivering the consignment to Chador Tex Inc., the Carrier had acted in accordance with the terms of the air waybill, as amended by the Cargo Agent, which showed Ms. Chador Tex Inc Dillu Inc as the consignee. In his written note of arguments, he emphasised that the Carrier airlines was bound to act only as per the instructions in the amended air waybill and that the Carrier did not receive any letter dated 14.2.2001 purported to have been written by the Shipper directly to the Bangalore office of the Carrier. He also took the plea that since the Shipper did not declare the value of the consignment to the Carrier by the, the maximum compensation that the Shipper would have been entitled to (assuming but not admitting that the consignment was misdelivered) would be US $ 3,360 @ US $ 20 per kg of the weight (168 kg) of the consignment, according to the terms and conditions of carriage.

5. ON the other hand, Mr. Bhasin, learned Counsel for the Cargo Agent argued

that it had acted in accordance with the Clearing House Agent''s instructions, on behalf of the Shipper, in amending the air waybill. Moreover, in accordance with the Air Cargo Rules, it was only the Shipper who was authorised to request any amendment to an air waybill. The Shipper in this case had written directly to the Carrier vide its letter of 14.2.2001 informing the latter of the change in the Consignee from Hanmi Bank to Dillu Inc. with full details of the latter''s address. It was thus imperative for the Carrier to act accordingly. Even from the amended air waybill, the Carrier had the full address of the amended consignee, namely, Dillu Inc. (i.e., 117, West 9th Street, Suite No. 509, Los Angeles). Yet, it delivered the consignment to Chador Tex Inc., at the address 841 S. Wall Street, Los Angeles.

6. BEFORE proceeding further, we may simply observe that the belated request of the Cargo Agent to implead the US-based parties in this dispute is, to put it mildly, wholly unnecessary. In our view, the documents and evidence on record are sufficient to adjudicate the matter. The miscellaneous application is thus dismissed.

7. FROM the documents on record, it is crystal clear that despite the unambiguous instructions of the Shipper in its letter of 14.2.2001, the Cargo Agent committed a gross error in typing out the name of the amended Consignee as "Chador Tex Inc. Dillu Inc." This error was not only in the endorsement in the amended air waybill-it was also repeated in the letter dated 14.2.2001 written by the Assistant Manager of the Clearing Agent to the Cargo Manager of the Carrier at Bangalore as well as in the telex messages sent by the Cargo Agent to the Carrier''s offices not only in Bangalore but also in Los Angeles. The saving grace was that the address of the new Consignee, Dillu Inc. was correctly written in the amended air waybill and the above-mentioned letter also mentioned the telephone number of the new Consignee. This negligent action in recording, one after the other, the names of two separate incorporated entities that were obviously different was the starting point of a series of further negligence/ deficiency in service.

8. THE Carrier also performed miserably in this case. It obviously had the first air waybill in its possession when it received the amended air waybill from the Cargo Agent on 14.2.2001. The first air waybill had the detailed address of Chador Tex Inc. as the Party to be notified and Hanmi Bank as the Consignee. There is no doubt that there was an error in recording "Chador Tex Inc. Dillu Inc." as the revised consignee. However, the error should have been obvious to any reasonably careful employee of the Carrier because the address of Dillu Inc. was very different from that of Chador Tex Inc. The Cargo Agent''s letter dated 14.2.2001 also gave the telephone number of Dillu Inc. Surely, before delivery of the consignment some one in the office of the Carrier at Los Angeles was expected to notify the consignee and verify its credentials. If that had been done at the address given in the revised air waybill, the discrepancy would have come to notice. Moreover, we are not prepared to believe the bald statement of the

Carrier that it did not receive the communication dated 14.2.2001 written directly by the Shipper to the Cargo Manager of the Carrier at Bangalore. In any case, the Cargo Agent''s letter of even date to the Cargo Manager of the Carrier at Bangalore specifically mentioned that a copy of the Shipper''s letter in this behalf was also enclosed. When the said Cargo Manager evidently received the revised air waybill and acted thereon, it cannot be held he did not receive even this copy of the Shipper''s letter of 14.2.2001. A cursory reference to this letter of the Shipper would have left no doubt that the consignment was now to be delivered to Dillu Inc. (as against Chador Tex Inc. via Hanmi Bank) because of the circumstances described in that letter. Finally, as per the Carrier''s own admission, the consignment reached Los Angeles on 27.1.2001. What prevented it from informing the original Consignee Hanmi Bank immediately thereafter, along with Chador Tex Inc. which was the original party to be notified according to the first air waybill? If it did so, what was the result, particularly the response of Chador Tex Inc.? Why did it wait till 16.2.2001 to deliver the consignment to the same Chador Tex Inc.? Clearly, in its defence, the Carrier has not come out clean.

9. IN view of the discussion above, we agree with the State Commission that in this case there was clear deficiency in service on the part of both the Cargo Agent and the Carrier. Hence, the State Commission''s award in favour of the complainant, considering the facts of the case, is valid. Accordingly, we dismiss both the appeals and direct the appellants to comply with the order of the State Commission within four weeks of the date of this order, failing which the rate of interest awarded by the State Commission on the sum of Rs. 6,51,796 shall be enhanced to 15% per annum. The appellants shall also pay cost of Rs. 10,000 each for these proceedings to the Complainant/Shipper. Appeals dismissed.