

(2004) 05 NCDRC CK 0051

In the National Consumer Disputes Redressal Commission

JUSTIN AUSTIN

APPELLANT

Vs

SRI LANKAN AIRLINES @R

RESPONDENT

Date of Decision : 11-05-2004

Acts Referred:

Citation : 2006 4 CPJ 403

Hon'ble Judges : T.M.Hassan Pillai , A.Radha J.

Final Decision : Ordered accordingly

Judgement

1. WHETHER the complaint filed is entertainable by this Commission on the ground that cause of action arose not within the territorial jurisdiction of this Commission is the question that is to be answered by us. It is the case of both parties that complainant sustained injuries (opposite party is not admitting the assertion of complainant that he sustained all the injuries alleged to have been sustained by him in the complaint) and there is dispute between the parties regarding the manner of sustaining of injuries by the complainant. According to the complainant injuries were sustained by him "while complainant was stepping down to the airport floor from the air craft at the time of disembarkation at Colombo Airport, due to the rush, somebody had pushed him from behind and in consequence of that he fell down flat on face on the steps of gangway attached to the air craft and sustained serious injuries such as multiple injuries on face, fracture of nasal bone and damage to the teeth". That allegation is refuted by the opposite party and his version as to how the complainant sustained injury is that while disembarking at Colombo to catch the flight to Thiruvananthapuram tripped and fell down from the ladder resulting in wounds on his face". We are not here called upon at this stage to decide which version either complainant's version or opposite party's version regarding sustaining of injuries is true and we are not concerned with the question were what the injuries sustained by the complainant.

2. ON the basis of the fact that the complainant sustained injuries at Colombo we entertain no doubt to hold that the cause of action arose not within the territorial jurisdiction of this Commission. From the assertion made in the complaint and

objection filed by the opposite party making a prayer to decide the question of maintainability of the complaint as a preliminary issue it is clear that complainant travelled from Muscat to Trivandrum via Colombo in the flight operated by the opposite parties on 8.12.2000. Opposing the application to decide the question of maintainability and also asserting the complaint is maintainable complainant contended that though the cause of action arose not within the territorial jurisdiction of this Commission the complaint is entertainable by this Commission on the ground that Rule 29(1) of the 2nd Schedule of Carriage by Air Act conferred right on him to action bring for damage before the Court having jurisdiction at the place of destination Rule 29(1) reads thus : "29(1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the high contracting parties, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination. (2) Question of procedure shall be governed by the law of the Court seized of the case."

It is plainly clear from Rule 29(1) option is given to the plaintiff to bring an action for damages before the Court having jurisdiction where the carrier is ordinarily resident. It is not contended before us that carrier is ordinarily resident within the territorial limits of this Commission. Plaintiff can file a suit claiming damages before a Court where the principal place of business of the carrier or carrier has an establishment by which the contract has been made. There is no case for parties that principal place of business of the opposite party is situated in the State of Kerala nor parties have pleaded a case that opposite party has an establishment on Kerala by which the contract has been made (complainant travelled from Muscat and it is thus evident that the establishment of the carrier by which contract has been made is its establishment at Muscat). The other option given to the plaintiff to bring an action for damages is before the Court having jurisdiction over the place of destination. It is beyond controversy that the place of destination is Trivandrum and, therefore, in our view the complaint is entertainable by this Commission.

3. ON the basis of the law laid down in the decision rendered by the Honourable Apex Court in *Union Bank of India v. Seppo Rally Oy & Anr.*, III (1999) CPJ 10 (SC)=VII (1999) SLT 633=(1999) 8 Supreme Court Cases 357, it is argued by the opposite parties that as the cause of action for claiming damages arose outside the territorial jurisdiction of this Commission the complaint is not entertainable. Before proceedings to consider the question whether the legal principle laid down in the above cited decision is to be applied in determining the question of maintainability of the complaint. We have to keep in mind the legal position that Courts should not place reliance on decisions without discussing as to how the factual situation fits in with fact situation of the decision on which reliance is to be placed. In this connection the observation made by the Hon'ble Supreme Court in *Ashwani Kumar v. U.P. Public Service Commission*, IV (2003) SLT 469=AIR 2003 SC 3387, is worthy of extraction. "11. Courts should not place

reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorema nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton*, (1951 AC 737 at p. 761), Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge."

12. In *Home Office v. Dorset Yacht Co.*, 1970 (2) ALL ER 294, Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances". Megarry, J. in *Shepherd Homes Ltd. v. Sandham*, (No. 2) (1971) 1 WLR 1062 observed : "One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament." In *Herrington v. British Railways Board*, 1972 (2) WLR 537, Lord Morris said: "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of particular case."

13. Circumstantial flexibility, one additional or different fact may make a word of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

14. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (a) "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

(b) "Precedent would be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches, else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it." In *Divisional Controller, KSRTC v. Mahadev Shetty, III* (2003) ACC 57 (SC)=IV (2003) SLT 762=2003 AIR 3997, Supreme Court observed thus: "The decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as

a precedent in a case which comes up for decision subsequently. Therefore, while applying the decision to a later case, the Court dealing with it should carefully try to ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as measure of social justice. Precedents sub silentio and without argument are of no moment. Mere casual expression carry no weight at all. Nor every passing expression of a Judge, however, eminent, can be treated as an ex cathedra statement having the weight of authority."

Supreme Court also held in Smt. Kesar Devi v. Union of India & Ors., IV (2003) SLT 934=AIR 2002 SC 3751, the judgment of Court not to be interpreted like a statute where every word as far as possible, has to be given a liberal meaning and no word is to be ignored. Applying the above stated legal position to the facts of the case we are of the view the facts of the case considered by the Apex Court in Union Bank of India's case (supra), is distinguishable and in that decision Apex Court had no occasion to deal with Rule 29(1).

4. AS option is given to complainant under Rule 29(1) to file complaint claiming damages against the carrier before a Court within whose jurisdiction the place of destination is situate we entertain no doubt that complaint is maintainable. The complaint is enertainable by this Commission and the complaint is maintainable. We overrule the preliminary objection raised by the opposite parties. Ordered accordingly.