

(1998) 12 NCDRC CK 0070

In the National Consumer Disputes Redressal Commission

KARUR KNITTING COMPANY

APPELLANT

Vs

TRANSLANKA AIR TRAVELS PVT. LTD

RESPONDENT

Date of Decision : 09-12-1998

Acts Referred:

Citation : 1999 1 CPJ 609 : 1999 1 CPR 525 : 1999 2 CPC 36

Hon'ble Judges : E.J.Bellie , Pulavar V.S.Kandasamy J.

Final Decision : Complaint allowed

Judgement

1. THE complainant is a registered partnership firm, engaged in the manufacture and export of knitwear.

2. ON the basis of orders placed by a foreign buyer in Amsterdam (Netherlands), the complainant entrusted two consignments of knitted cotton wear on 17.3.1997 with the opposite party, for carriage by aircraft and delivery of the same at Amsterdam. Any timely delivery of the cargo from Madras to Amsterdam in terms of flying time is about 24 hours. In the case of transshipment, taking into account the time taken for completing all the formalities after taking all the cargo, the maximum time taken for delivery will be 48 to 72 hours. The cargo was entrusted to the opposite party on 17.3.1997. The port of discharge was Amsterdam in Netherlands and the name of the consignee was "M/s. Teidem B.V., Post Box No. 180,2350 AD Leiderdorp, The Netherlands". The complainant has also filed copies of invoices showing the actual price of the goods described {(Exs. A1 and A1(a)}.

At the time of entrustment of the consignment, the opposite party issued airway bills {(Exs. A2 & A2(a)}. The freight charges were prepaid.

3. IT is the case of the complainant that before entrusting the cargo there was a categorical assurance from the opposite party that there will be timely delivery of the goods. At the time of acceptance of the cargo, the opposite party is reported to have indicated the delivery date as 25.3.1997. But the cargo was actually delivered on 18.4.1997. The complainant has contended that after the goods

were entrusted to the opposite party the complainant sent messages to the consignees about the flight details, price of the airway bills and other details. Based on the information furnished by the complainant, the consignee had entered into specific contract with the 3rd parties for delivery of goods within a specified period of time. However, the consignee informed the complainant that the cargo had not reached the destination for a long time. The complainant has stated that when contacted, the opposite party admitted that the cargo did not reach the destination in time.

4. AS the cargo reached the destination after considerable delay, the consignees refused to take delivery of the goods. It is the case of the complainant that after negotiation and much persuasion, the consignees agreed to take delivery of the cargo subject to a trade discount of 30% of the value of the cargo. The complainant has claimed that it had no other option but to agree to do so because in case of refusal to give the discount, the cargo would have to be sold to other parties for whatever price offered, resulting in heavy loss to the complainant. With a view to mitigate the loss, the complainant had no other alternative but to agree to sell the cargo at a discount of 30% of the value of cargo. In his letter Ex. A5 dated 10.7.1997, addressed to the opposite party, the complainant had informed the opposite party about the loss suffered because of the delay in the delivery of the cargo and asked the opposite party to make good the loss. The opposite party had contended that the delay in the delivery of the cargo was due to factors beyond their comprehension and control meaning thereby that the opposite party was not prepared to make good the loss suffered by the complainant.

5. HENCE the complaint. In its complaint, the complainant has prayed for an award for a sum of Rs. 6,92,666.40 being the amount of discount allowed at the time of sale together with interest @ 21% p.a. from the date of lodgement of the claim till the date of payment in full. The complainant has also prayed for a sum of Rs. 10,000/- as costs of the proceedings.

6. THE opposite party remained ex-parte and it did not even file its version. Exs. A1 to A7 have been marked on the side of the complainant. Oral evidence has also been let in by the Managing Partner of the complainant firm.

The fact that the complainant had hired the services of the opposite party for airlifting its cargo to Amsterdam, considerable delay has been caused in delivery of the cargo to the consignees and delay in the delivery of the cargo has resulted in the loss to the complainant are not disputed and hence the complainant is entitled for compensation from the opposite party by way of adjustment of the loss suffered by it.

7. THE complainant has claimed a sum of Rs. 6,92,666.40 being the amount of discount given to the consignees for the purchase of cargo because of delay in delivery of the cargo. This claim is not disputed by the opposite party. THE complainant had no other alternative but to give the discount to dispose of the

cargo on account of the delay caused by the opposite party in delivery of the cargo to the consignees. We are,, therefore, of the opinion that the complainant is entitled for this amount. THE complainant has claimed a sum of Rs. 10,000/- being the cost of the proceedings. In our view, this amount is excessive. A sum of Rs. 2,000/- is allowed as costs. In the result, the complaint is allowed and the opposite party is directed to pay a sum of Rs. 6,92,666.40 to the complainant to compensate the loss suffered by the complainant in the business which has resulted on account of the delay in delivery of the cargo to the consignee, together with interest thereon @ 18% p.a. from the date of complaint till date of payment. The opposite party is also directed to pay a sum of Rs. 2,000/- as costs of the proceedings. The opposite party is further directed to pay the said sums within one month from today. Complaint allowed.