

**(2000) 09 NCDRC CK 0034**

**In the National Consumer Disputes Redressal Commission**

L.R.GUPTA

APPELLANT

Vs

SINGAPORE AIRLINES LTD.

RESPONDENT

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**Date of Decision :** 27-09-2000

**Acts Referred:**

**Citation :** 2001 1 CPJ 443 : 2002 1 CPC 177

**Hon'ble Judges :** Lokeshwar Prasad , Rumnita Mittal J.

**Final Decision :** Complaint allowed with costs

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**Judgement**

1. THE brief facts of this complaint, filed under Section 17 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act") are that the complainants purchased confirmed tickets from the opposite party for their return journey from Singapore to New Delhi by Flight No. SQ 408, leaving Singapore on 24.5.1992 and also got their request for a wheel chair recorded on the computer at the time of booking their tickets. Before leaving for the Singalore Airport, the complainants once again contacted and requested the commercial staff of the opposite party through computer as well as orally to provide one wheel chair at the Airport to enable the complainant No. 2 to board the aircraft, which request was duly confirmed by the opposite party.

2. IT is alleged by the complainants that despite confirmation and assurance by opposite party in this regard, no wheel chair was provided to the complainants at the Singapore Airport, as a result of which while proceeding from the check-in counter to the boarding lounge, both the complainants who were supporting each other, fell down and sustained serious injuries. IT is further stated in the complaint that the information of the said accident was brought to the notice of the ground staff of the Airport Authority who in turn apprised the commercial staff of opposite party in that regard. Thus, assisted by co-passengers the complainants boarded the flight but their journey was a tough ordeal due to the negligence and carelessness of the staff of opposite party in not providing a wheel chair. IT is further stated in the complaint that on reaching Delhi a medical examination revealed that the complainant No. 2 had fractured her right knee

bone resulting in her permanent disablement for which the opposite party was liable to compensate the complainants. A legal notice dated 7.7.1992 was also got served by the complainants on the opposite party. However, the opposite party vide its reply dated 2.11.1992, denied their liability and as such the complainants were constrained to file the present complaint praying for the award of Rs. 11,20,000/- as compensation/damages for the pain, agony and harassment undergone by the complainants as well as for the permanent disability suffered by the complainant No. 2. On notice, the opposite party entered its appearance and filed its written version/reply taking several preliminary objections; that since the contract of carriage between the complainants and the opposite party for their journey from Singapore to Delhi was entered into at Singapore, this Commission had no jurisdiction to entertain the present complaint with regard to services rendered by opposite party outside India, as the Act extends only to India and is not applicable to services rendered outside India, that the complainants had neither booked themselves as medical stretcher case and paid the fare accordingly nor declared themselves as disabled passengers but had merely demanded an additional facility of wheel chair which is provided free of cost and as such the non-providing of the same does not amount to deficiency in service; that the complainants had not requested for a wheel chair before alighting from their vehicle at the airport, and since there was no request made for a wheel chair on the part of the complainants at any time, to the staff of the opposite party or to the concerned staff of the Airport Authority, there was no deficiency in service on the part of opposite party; that as per Article 17 of the conditions of the issue of ticket and contract of carriage of the passengers, if a passenger whose mental or physical condition is such as to involve any hazard or risk to himself, the carrier is not liable for any illness, injury or disability including death attributable to such condition or for the aggravation of such condition and since in the present case, the injury was clearly attributable to the mental or physical condition of the complainants, the carrier could not be made liable for the same; that Rule 21 of Schedule-II to the Carriage by Air Act, 1972 entitles the Court to absolve the carrier wholly or partly from liability if it is proved that the damage was caused by or attributed to the negligence of the injured person himself, and in the present case, the condition of the complainants was such and it was within the knowledge of the complainants that they could fall if a wheel chair was not provided and despite that the complainants had alighted from their vehicle and walked upto the check-in counter as well as ventured to walk till boarding lounge without requesting for a wheel chair; that the jurisdiction of this Commission was barred under Rule 29(1) of Schedule II to Carriage by Air Act, 1972 which specifically provides that an action for damages can be brought before a "Court" and this Commission not being a "Court" cannot entertain the present complaint.

On merits, it was stated by the opposite party that the complainants had purchased the tickets from Air India International and had made their requests for a wheel chair at the Air India Computer System. Since booking were made

twice, the first booking got cancelled at the time of making the second booking. Though in both the bookings, the complainants had requested for one wheel chair, the request for a wheel chair in the second booking could not be transferred by Air India to Kris Com DCS of the opposite party due to Computer failure. It was further stated that wheel chairs were easily available in adequate number at the Singapore Airport and even if there is no special request from a passenger, the said facility is provided on the spot on the oral request of the passenger and since the complainants did not make any such request and opted to walk to the check-in counter and thereafter to the boarding lounge, the complainants were themselves responsible for the accident. The opposite party had also denied the factum of the accident as well as the injuries suffered by the complainants on the ground that there was no mention of the same in their records. The opposite party had further challenged the validity of medical certificate filed by the complainant and had prayed for the rejection of the present complaint with costs under Section 26 of the Act.

3. THE complainants filed a rejoinder to the written version of the opposite party controverting the averments made therein and reiterating their case. THE complainants also filed an affidavit of complainant No. 1 as evidence on their behalf, whereas the opposite party filed an affidavit of Mr. Moksim S, Manager (Northern India), Singapore Airlines. We have gone through the documents/ material and evidence placed on record, as well as have heard the arguments advanced of behalf of the complainant, however none appeared for the opposite party and, therefore, we could not have the benefit of hearing arguments on behalf of opposite party.

4. WE will first proceed to deal with the legal objections raised by the opposite party in its reply/written version. The first being that the jurisdiction of this Commission to entertain the present complaint is barred as the alleged cause of action/deficiency in service occurred at Singapore Airport, i.e. beyond the territorial jurisdiction of this Commission under the Act. The said objection of the opposite party is devoid of merit in view of the provisions of Section 11 of the Act which reads as under : "Jurisdiction of the District Forum-(1) xxx xxx xxx (2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or (carries on business or has a branch office or) personally works for gain; or (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or (carries on business or has a branch office), or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or (carry on business or have a branch office), or personally work for gain, as the case may be, acquiesce in such institution; or (c) the cause of action, wholly or in part, arises."

Thus, this Commission would have jurisdiction to entertain the present

complaint, if the cause of action had wholly or in part arisen within its territorial jurisdiction, i.e. Delhi. It is an admitted fact that the tickets for journey from Delhi-Singapore-Delhi were purchased and confirmed at Delhi and, therefore, a part of cause of action had arisen in Delhi. Further, it is also not denied that the opposite party has its branch offices in Delhi and, therefore, in terms of provisions of Section 11(2), Clause (a) above, this Commission has the jurisdiction to entertain the present complaint under the Act. The opposite party has also raised the objection that the entire evidence relating to the incident as well as witnesses are at Singapore and the same being neither under the control and power of the opposite party nor within the jurisdiction of this Commission, cannot be procured or summoned and as such the present complaint cannot be adjudicated upon effectively by this Commission. The said objection of the opposite party stands belied by the fact that both the parties have furnished their evidence by way of affidavits. Further the relevant records information can be obtained and transmitted by the opposite party through its branches in Delhi, and as such, no legal hurdle is envisaged in this regard. The opposite party has also taken a preliminary objection that in view of Article 17 of the conditions of issue of ticket and contract of carriage of the passengers by the opposite party, the opposite party is not liable for the injury alleged to have been caused to the complainant on account of their fall due to the non-providing them with a wheel chair by the opposite party. Article 17 referred to by the opposite party is not relevant to the facts of the present case as it cannot be said that the mental or physical condition of the complainants was such as to involve any hazard or risk to themselves. The opposite party has also not mentioned as to how the mental or physical condition of the complainants was responsible or contributed to the accidental fall, so as to attract the provisions of Article 17.

5. THE opposite party has further taken a preliminary objection that Rule 21 of the Schedule II to the Carriage by Air Act, 1972 states that if the carrier proves that the damage was caused or contributed to by the negligence of the injured person, the carrier can be wholly or partly exonerated from its liability and that in the instant case, the complainants were aware of their condition that they would fall if a wheel chair was not provided to them and despite that they alighted at the Singapore Airport and walked upto the check-in counter without requesting the staff of the opposite party for a wheel chair. THE said preliminary objection is contrary to the facts established on record. It is in fact, the case of the complainants that despite repeated requests of the complainant for a wheel chair at every stage, i.e. from recording the request for wheel chair at the time of booking the tickets in the Computer of the opposite party as well as confirmation with regard to the same before starting from their hotel for the airport and even on alighting from their vehicle at the Singapore Airport, despite numerous request for a wheel chair, the same was not provided by the staff of the opposite party and as such, the said objection of the opposite party that the complainant had themselves been negligent in not requesting for wheel chair is not sustainable and, therefore, the provisions of the above mentioned Rule 21

are not attracted to the facts of the present case.

6. ANOTHER legal objection raised by the opposite party in its reply/written version filed before us is that in terms of Rule 29, Sub-rule (1) of Schedule II to Carriage by Air Act, 1972 only a "Court" is competent to entertain an action for damages and since this Commission is not a "Court" therefore, this Commission has no jurisdiction to entertain the present complaint. In this regard, it is pertinent to point out that an action for damages under the Carriage by Air Act, 1972 is maintainable before a "Court" whereas, a complainant seeking compensation/damages for deficiency in service is maintainable under the provisions of the Act. Further, Section 3 of the Act provides for an additional remedy which is in addition to and not in derogation of any other law. Moreover according to Section 13(5) of the Act, "every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code and the District Forum shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973". Section 18 of the Act makes the provisions of Sections 12, 13 and 14 and Rules made thereunder, applicable to the disposal of disputes by the State Commission, therefore, both the aforesaid sections of the Act read together state that this Commission has powers to act as a Civil Court and in view of the said provisions, the objection of the opposite party with regard to the jurisdiction of this Commission to entertain the present complaint is not sustainable in law. In the written version/reply filed by the opposite party another preliminary objection which has been taken is that the facility of wheel chairs is provided free of charge by the opposite party and as such, the present dispute does not fall within the ambit of the Consumer Protection Act. In this regard cognizance has to be taken of the fact that the opposite party is providing the services at considerably high rates which also takes care of the other ancillary amenities provided to a passenger. It is not denied that only passengers who have purchased tickets for a particular airline are provided with the facility of a wheel chair and other such additional services, the consideration for the said additional facilities is included in the fair charged for the flight from all the passengers. As such, it cannot be said that the services availed of by the complainants in the present case were without consideration. A similar view was expressed by the National Commission in the case *Delta Airlines Inc. v. The Consumer Education and Research Society & Anr.*, reported as I (1998) CPJ 26 (NC)=1986-99 Consumer Cases 4420. In the said case, the airlines had issued free tickets to the complainants in pursuance of a scheme floated to the effect that if a passenger accumulates 70,000 mileage by travelling on the same airline, i.e. Pan AM Airlines, he would be entitled to two free tickets. However, the benefit of the free tickets was not given to the complainant in that case who, therefore, filed a complaint under the Consumer Protection Act. The opposite party therein raised an objection that the tickets being given free of charge, no consideration had passed on to the airline and as such the complainant, therein was not a "consumer" availing "services" and as such, the

dispute could not be adjudicated upon under the Consumer Protection Act. On the said issue, the National Commission held : "The airlines were alluring the travellers by extending such benefits for consideration which they were paying for travelling by such airlines. The travel at initial stage was not without charges. The airlines being commercial companies would certainly consider the cost which they had to bear for granting such facilities in future in the cost structure of the tickets. Pan AM was not operating the flights gratis but was doing it on commercial basis and, therefore, whatever the cost which were incurred for advertisement or giving such facilities in future would also be calculated and would be considered as part of the consideration for such future facilities. Therefore, it cannot be accepted that world pass tickets and facilities provided were gratis or without any consideration. Consideration did not necessarily mean that was required to be paid in terms of money. The consideration which was already paid was also included in the broad definition of the consumer who had hired services. Post consideration for any service is consideration for the services which the consumer hires or avails." (Emphasis supplied)

Therefore, the objection of the opposite party that the facility of a wheel chair being provided free of cost would not amount to rendering of "service" for "consideration" under the Act, is also devoid of merit and as such not tenable.

In the remaining preliminary objections as well as on merits, the stand of the opposite party has been quite inconsistent throughout. On one hand, it is alleged by the opposite party that the complainants did not fall and injure themselves as there is no mention of the alleged accident/fall in their records. Whereas, on the other hand, the defence of opposite party is that the fall/accident was occasioned by the own default of the complainants on account of their failure to request either the commercial staff of opposite party or of the Singapore Airport Authority for a wheel chair and instead choosing to walk the length of the area till the boarding lounge. Further, in the same breath, the opposite party has also admitted the fact that complainants had in fact sent a requisition for a wheel chair at the time of booking their tickets, but due to Computer failure, the same could not be recorded. After making the said admission that a request for a wheel chair had come from the complainants, in their reply to the legal notice, the opposite party has laid the blame of the fall/accident on the complainants, inasmuch as, the complainant should not have alighted from their vehicle at the Singapore Airport, till a wheel chair had been provided to them, and that since the complainants did not make such a request for a wheel chair, it was on account of their own negligence that they fell and sustained injuries.

7. WHEREAS, the consistent stand of the complainants have been that despite a recorded request for a wheel chair and number of oral requests to the staff of the opposite party in this regard they were not provided a wheel chair and were forced to walk the long passage upto the checking counter and thereafter to the boarding lounge resulting in their fall. The complainants have in their affidavit by way of evidence stated on oath that the complainants had ensured that a wheel

chair was available to them immediately on arrival at the Singapore Airport by having their requirement for a wheel chair fed into the Computer of the opposite party. Not only that, the complainants had also confirmed the requirement of a wheel chair before starting from their hotel at Singapore and the availability of the wheel chair had been assured to the complainants by the commercial staff of the opposite party whereas even on reaching the airport, the said wheel chair facility was not made available to the complainants by the staff of the opposite party and even their oral requests in this regard were ignored. The complainants who had taken the precaution of getting their requirement for a wheel chair registered in the Computer of the opposite party at the time of booking the tickets, which fact has been specifically admitted by the opposite party in its reply to the legal notice of the complainant and it is also the admitted case of the opposite party that the wheel chairs are available on request without prior reservation at the airport and despite the said fact if the complainants had to walk till the check-in counter and from there to the boarding lounge, it only stands to reason that on failure of the staff of opposite party in providing a wheel chair the complainants were forced to walk till the boarding lounge, resulting in their fall and injuries. The affidavit of the complainants in their regard is supported by relevant documents. It is, further established from record of medical certificate and X-rays as well as prescriptions etc. that the complainant No. 2 had fractured her knee bone and was treated for the same after coming back to Delhi. The non-rebuttal of the statement on oath of the complainants in this regard would only lead to a conclusion that the version of the facts as stated by the complainants was correct that the complainants did sustain a fall while proceeding from the check-in counter to the boarding lounge at the Singapore Airport and sustained injuries due to the said fall. On behalf of the opposite party only an affidavit of one Shri Moxsin S, Manager of Northern India Singapore Airlines has been filed who has merely based its evidence on possibilities and not on actual facts. Further, no evidence of opposite party's staff either present at the airport at the time of the incident or of the cabin crew of the aircraft in which the complainants had travelled has been produced to rebut the averments made by the complainants and as such the same have virtually gone un-rebutted. The opposite party had been directed to summon the flight chart dated 24.5.1992 on an application made by the complainants. In their reply to the said application of the complainants, the opposite party had stated that the said data is deleted and is not preserved beyond 6 months in the Computer and, therefore, the opposite party was unable to produce the said flight chart. Vide proceedings/order dated 17.12.1998, the opposite party was given the option to produce the relevant instructions or an affidavit regarding the above mentioned practice being followed by the airlines with regard to the flight chart, however, the opposite party has failed either to produce the flight chart or any rule/regulation that the said data is not preserved beyond 6 months in the Computer. Neither any affidavit of the concerned official has been filed by the opposite party in this regard. Therefore, a presumption can be raised in the circumstances that the flight chart of 25.5.1992 would have reinforced the case of the complainants that

the cabin crew provided them pain killers and hot pads, which in turn would prove that the complainant had fallen and hurt themselves prior to boarding the flight and belied the contentions of the opposite party and it is because of the said reason that the same has not been produced before this Commission. Therefore, in the absence of any supportive document or evidence on the part of the opposite party, the necessary conclusion is that the version of facts as stated by the complainants is correct. Since it is established that despite a recorded request in the Computer at the time of booking of tickets and reminders to the opposite party thereafter and an assurance by the opposite party that a wheel chair would be provided to the complainants at the airport, the same was not provided. There could be no incident of a grosser negligence on the part of the opposite party. Under these circumstances, it would be fair and just that the complainants are awarded a suitable compensation for the pain and sufferings and harassment as well as injuries sustained by them due to the deficiency in service on the part of the opposite party.

8. AS regards the question of quantum of compensation to be granted to the complainants, it is pointed out by the opposite party in its written version reply that the complainants had requested for one wheel chair only and, therefore, deficiency in service would only be with regard to the person for whom the said wheel chair was requisitioned, and so both the complainants cannot claim compensation. Whereas, it was submitted by the complainants in their written submissions filed on 28.8.2000, that they were not claiming medical expenses incurred on their treatment as the same had been reimbursed to them, but they needed to be compensated for the mental agony and harassment as well as physical pain undergone by them, due to the negligence and deficiency in service on the part of opposite party. It has been established on the basis of material on record that due to non-availability of a wheel chair both the complainants under compelling circumstances had to undergo the ordeal of walking on foot for a long distance and since each was supporting the other, when one fell the other also fell and thus both suffered injuries. Therefore, both the complainants suffered physical injury and pain as well as extreme harassment and agony on account of the default of the opposite party, with the result that the complainant No. 2 even sustained a fracture of knee bone resulting in her permanent disability, as certified by Dr. J.S. Arora, in the medical certificate issued by him dated 18.5.1993 (Annexure "A" of the complaint). Therefore, in view of the aforesaid discussion, we allow the present complaint of the complainants with directions to the opposite party to pay to the complainants jointly a sum of Rs. 50,000/- (Rupees fifty thousand only) as compensation for mental agony, harassment and pain undergone by them. The opposite party shall further pay the cost of present proceedings fixed at Rs. 5,000/-. The above amount of compensation and costs be paid by the opposite party to the complainants within a period of 60 days from the date of receipt of this order, failing which the said amounts would carry interest @ of 12% per annum from the date of order till actual payment. Complaint allowed with costs.