

(1998) 04 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

RAJENDRA KUMAR

APPELLANT

Vs

POLSKIELINIE LOTNICZE, POLISH AIRLINES

RESPONDENT

Date of Decision : 24-04-1998

Acts Referred:

Citation : 1998 3 CPJ 407 : 1999 1 CLT 399 : 1999 1 CPR 289

Hon'ble Judges : S.Parvatha Rao , T.Ranga Rao , Mamata Lakshmana J.

Final Decision : Appeal dismissed

Judgement

1. THE appellants herein namely Rajendra Kumar and his wife Mary Anuradha filed a complaint C.D.C. No. 685/1990 before the District Forum, Hyderabad alleging against the respondents herein (opposite parties) with the following allegations.

2. THE 1st complainant is the husband and the 2nd complainant is his wife. THE 2nd complainant was sponsored by various Institutes including Jawaharlal Nehru Tata Endowment Institute for Higher Education for Indians abroad. THE 1st complainant took the 2nd complainant to London for further studies and left her there and returned to India. After completion of the study and research, the 2nd complainant made arrangements for her return journey from London to India. THE 1st complainant purchased a ticket for himself from opposite party No. 3 to go to London to bring back the 2nd complainant (his wife) to India and accordingly he went to London. At that time the 2nd complainant was in an advance stage of pregnancy. THE 1st complainant and his wife, the 2nd complainant came to the Terminal L.O. of London Heathrow Air Port on 10.1.1990 with three suit-cases. THE British Airways personnel after checking the luggage informed the complainants that they had luggage of 10 kgs. excess and since 5 kgs. luggage per head was permissible no excess baggage need be paid for the said 10 kgs. As there was some intervening time for departure of the flight the complainants purchased some chocolates and went to board the aircraft. THEN the officials of the British Airways once again weighed the luggage in possession of the complainants and found them to weigh 20 kgs. and informed

the complainants that unless a sum of 231.60 UK pounds was paid, they would not be permitted to travel with the said luggage. THE complainants were forced to pay the said amount of 231.60 UK pounds. THEN the two suit-cases were taken away by the British Airways personnel assuring that they could be collected at Delhi. After they returned to Delhi Airport the two suit-cases were found missing. THE complainants addressed letters to the opposite parties and the opposite party No. 1 by its letter dated 2.2.1990 informed the complainants that the matter would be inquired into. Subsequently one suit-case was recovered and handed over to the complainants, but the other suit-case was not delivered and the opposite party No. 1 informed the complainants that it was sorry for the loss of the baggage and that they would compensate for the said loss. THE said suit-case contains a computer, Focal Zoom, Head Flashgun, used clothes, baby wipes, chocolates, sweaters, wind sheeter and invaluable research papers of the 2nd complainant. THE articles other than the research papers of the 2nd complainant worth Rs. 570 UK pounds equivalent to Rs. 19,950/-. THE research papers of the 2nd complainant are valid at Rs. 25,000/-. THE complainants are entitled to Rs. 10,000/- additional amount as compensation for mental agony. THEREfore, the complainants approached for a direction to the opposite parties to pay a sum of Rs. 65,552/- being the value of the missing articles, the research papers and the damages for me mental agony. The opposite parties filed a counter contending that the Courts in India have no jurisdiction to try the case that the District Forum at Delhi alone has jurisdiction to try the complaint subject to other objections, that the opposite parties tendered some amount as compensation as per the terms of the Warsaw Convention of 1929 and no cause of action survives. On facts the opposite parties stated that the complainants travelled by Polish Airlines from Heathrow Airport, that the check in at the said Airport was managed by the British Airways personnel, that the opposite parties have no knowledge about the two suit-cases carried by the complainants and the contents of the said suit-cases that according to Warsaw Convention the liability of the opposite parties is restricted to 20 US dollars per kg. of baggage, that the opposite parties forwarded a cheque for an amount of Rs. 5,748/- being the restricted liability for the loss of the baggage and that the complainants returned the said cheque with their letter dated 20.8.1991. It is also stated in the counter that apart from the said amount no further amount is payable by the opposite parties. At the time of enquiry the first complainant filed his affidavit testifying to the facts mentioned in the complaint and filed Exs. A-1 to A-17 in support of his case. Ex. B-1 was marked on behalf of the opposite party.

The District Forum took up the question as to territorial jurisdiction and held on consideration of the facts and circumstances of the case that the loss of two suit-cases of the complainants was occurred in between London and New Delhi and the loss of the bags reported at Delhi and that no part of the cause of action arose within its jurisdiction. Accordingly the District Forum passed an order on 20.2.1993 directing the return of the complaint to the complainants for presentation to the District Forum having jurisdiction to entertain it. Aggrieved

by the said order, the complainants preferred this appeal.

3. WE have gone through the order of the District Forum and the material available on record. The very case of the complainants is that the two suit-cases which were taken into custody by the British Airways personnel at London on the ground that their weight was in excess of the permitted load to be carried alongwith the complainants during the journey and that they were lost in transit and their loss was reported at Delhi. The complaint was filed before the District Forum at Hyderabad simply on the ground that the opposite party No. 3 being the agent of opposite parties 1 and 2 at Hyderabad sold a ticket to the first complainant to go to London from Hyderabad. It is not the case of the complainants that their luggage was found missing at Hyderabad. It is also not the case of the complainants that opposite parties 1 and 2 have a branch office at Hyderabad. The 1st opposite party's office is at London and the 2nd opposite party's office is at New Delhi and the 3rd opposite party is only a travel agent of the 1st and 2nd opposite parties. Merely because the 3rd opposite party being travel agent to the opposite parties 1 and 2 sold a ticket to the 1st complainant to go to London from Hyderabad, it cannot be said a part of the cause of action arose at Hyderabad, since the loss of the suit-cases of the complainants took place either at London or at Delhi. Admittedly the suit-cases which were reported to have lost were taken into custody by the British Airways personnel at London on the ground that their weight exceeded to permitted load and at New Delhi the complainants reported that the suit cases were found missing. In the circumstances, we hold that no part of cause of action arose within the State of Andhra Pradesh and, therefore, we hold that the District Forum is right in holding that it has no jurisdiction to entertain the complaint. In the result, the appeal is dismissed but without costs in the circumstances of the case. Appeal dismissed.