
(2015) 09 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

Case No : 74 of 2008

RAM JOSHI & ANR

APPELLANT

Vs

LUFTHANSA GERMAN AIRLINES & ORS

RESPONDENT

Date of Decision : 15-09-2015

Acts Referred:

Citation : 2016 1 CPJ 315

Hon'ble Judges : Ajit Bharihoke, Rekha Gupta

Advocate : Lokesh Bhola, Mansha Anand, Mumtaz Bhalla, Ayush Malhotra

Judgement

1. Ram Joshi and Priya Bishnoi, the complainants herein are husband and wife. In October 2007, the complainant travelled to Zurich, Switzerland. Their five year old son Aditya Joshi was supposed to join them later at Zurich. The complainants, before leaving for Zurich approached Opposite Party No.1 Airlines to find out about their policy governing travel of unaccompanied minor. The Opposite Party no.1 explained to the complainants that they provide service for travel of minor children unaccompanied by their relatives and parents. The Opposite Party no.1 assured

the complainants that if they book a ticket of their child, the Opposite Party no.1 shall ensure that once the custody of unaccompanied child is transferred to the care of Opposite Party No.1, the child would remain in direct adult supervision at all times. Believing the assurances and representation of Opposite Party No.1, the complainants hired the services of Opposite Party No.1 by booking a business class ticket for the travel of their unaccompanied son Aditya Joshi on 17 th October, 2007 from Delhi to Frankfurt on Flight No.LH761 and on connecting flight number LH1010 from Frankfurt to Zurich. It is the case of the complainants that on the night of 17 th October 2007, grand mother of Aditya Joshi dropped him in the custody of employee of Opposite Party No.1 at IGI Airport, New Delhi. The grand mother had put the identification tag provided by Opposite Party No.1 on the child. The identification tag, however, was removed by the representative of Opposite Party No.1 on the premise that same would not be required as child

would always remain in the company of adult supervisor till the time of handing over the child to the parents at Zurich. The grand mother, however, as a matter of abundant caution wrote phone numbers of the complainants on a piece of paper and put that in the child's trousers' pocket. It is further alleged that on the night intervening 17 & 18 October, 2007, the complainants were th th shocked to receive a call from staff member of ITC Business Lounge at IGI Airport, New Delhi informing the complainants that staff member had found the child alone and crying in the ITC business lounge. The said staff member also informed the complainants that the child was disturbed and apprehensive and that he was unattended and unaccompanied by anyone. On being informed about the said incident, the complainants immediately called upon Opposite Party No.3, (Station Manager of Opposite Party No.1 at IGI Airport) and protested against their child being left alone and unaccompanied by the representative of Opposite Party No.1. The complainants requested Opposite Party No.3 to immediately send their representatives to escort the child. The Opposite Party No.3 instead of showing any concern as to the seriousness of the issue denied that child was alone and insisted that escort was around and he may have stepped out for a minute. The Opposite Party No.3 instead of accepting the negligence on the part of representative of Opposite Party No.1, went on to the extent of threatening the complainants to offload the child from the flight. It is alleged that after a while, the complainants received a call from Opposite Party No.3 confirming that the official of Opposite Party No.3 has found the child and the child was in the custody of Opposite Party No.1. Claiming the aforesaid conduct of Opposite Party No.1 to be deficient in service, the complainants have filed consumer complaint seeking compensation to the tune of Rs.15.00 lacs for refund of full airfare, special fee paid by the complainants and compensation for deficiency in service. The complainant also prayed for compensation of Rs.1.00 crore for damages for mental agony, harassment and turmoil suffered by the complainants and their minor child.

2. The opposite parties resisted the complaint. In their joint written statement they have raised a preliminary objection that so far as Opposite Parties No.2 & 3 are concerned, they have no privity of contract with the complainants. As such, complaint against them is not maintainable. On merits, the opposite parties have admitted that complainants had booked a return class ticket with Opposite Party No.1 airline for travel of their minor son Aditya Joshi from New Delhi to Zurich via Frankfurt and back. It is alleged that at the time of booking of tickets, all the terms and conditions and the kind of facilities that are extended to an unaccompanied minor were explained in detail to the complainants. According to Opposite Party No.1, it follows a standard procedure worldwide with respect to travel of an unaccompanied minor. It is pleaded that immediately after the custody of unaccompanied minor was handed over to Opposite Party No.1 by the guardian, an unaccompanied minor identification pouch was hung around his neck to ensure his safety and visibility. All the necessary documents like airline tickets, valid passport, child's identity card, visa and travel insurance etc. were

in the pouch. The stand of the opposite parties are that minor child of the complainants was at no occasion left unattended. It is pleaded that unlike other airports in the world, Delhi Airport at the relevant time did not have provision for separate enclosure / cabin for unaccompanied minor child waiting the departure of his flight. Thus, the adult escort after check in and immigration check with a view to provide maximum possible comfort to the minor child arranged for use of ITC business lounge facility at the airport for which Opposite Party No.1 had to incur extra expenses. That the lounge area is highly secured and restricted area and the excess to the passengers is by invitation. As per the applicable regulations, the adult escort was not permitted to enter the lounge area and sit with the minor unaccompanied child. In these circumstances, the adult escort informed a staff member at the lounge about the minor and requested the said personnel to allow the minor to use the telephone facility if he so desires. After specifically briefing the staff of the lounge to extend special care to the minor child, the adult escort left the child in the care and custody of the staff of the lounge and stood guard at the entry / exit point of the lounge. Thus, unaccompanied minor all along remained in the supervision of the adult escort at all times till boarding the plane. It is alleged that entire misunderstanding arose when on the receipt of telephone call made from the lounge by the minor, complainant no.2 wrongly assumed that the minor was unattended. The Opposite Parties have thus pleaded that there has been no deficiency in service on their part and prays for dismissal of complaint.

3. In order to prove their case, the complainants have filed their affidavits affirming the allegations made in the complaint. In rebuttal, the Opposite Party No.1 has filed affidavit of Ms. Manjari Gauba, Manager Finance and Personnel of Opposite Party no.1 as also the affidavit of Opposite Party no.3 Pervaiz Alamgir Khan, concerned Station Manager.

4. We have heard learned counsel for the parties and perused the record. Learned Shri Lokesh Bhalla, Advocate for the complainants have contended that admittedly before purchasing the business class travel ticket for their minor child for travel from Delhi to Zurich via Frankfurt and back, they inquired about the facilities for unaccompanied minor child and they were assured that the unaccompanied minor child is treated by the Opposite Party No.1 airline as a special attention passenger and once the custody of the child is transferred to the care of Opposite Party no.1, the child would remain under direct adult supervision at all times till the journey is complete. It is contended that believing the said representation, the complainants decided to buy return business class travel ticket for their minor child. However, admittedly before the commencement of journey on the night of 17 October, 2007 at Delhi airport, the child was left th unattended by the escort provided by Opposite Party No.1 in ITC Business Lounge where he was noticed crying by the staff of lounge and that is why the said staff member who had come across the slip containing the telephone number of the complainants and rang them up. It is contended that this amounts to deficiency in service which became a cause of great mental trauma not only to

the child but for the parents for which the complainants should be compensated.

5. Learned counsel for the opposite parties on the contrary has argued that after taking over the custody by the Opposite Party, the child always remained in company and continuous supervision of adult escort assigned to him. It was argued that actually at the relevant time, at Delhi airport, there was no waiting room / lounge for unaccompanied minor child. Therefore, for the sake of convenience and comfort of the child, the adult escort arranged for comfortable stay of the minor child at ITC Business Lounge till the announcement of departure of flight. Learned counsel contended that since as per the regulations of the ITC Business Lounge, the escort was not permitted to sit in the lounge with the child. The adult escort left the child in the care of the staff of ITC Business Lounge after discussing with the senior official and stationed himself outside the lounge at the entrance / exit gate to keep an eye on the child. Thus, it cannot be said that child was left unattended or there was any deficiency in service on the part of the Opposite Party.

6. We have considered the rival contentions and perused the record. The facts of the case are more or less admitted. It is not in dispute that the complainant paid full air fare payable for adult passenger to Opposite Party no.1 on the assurance that Opposite Party no.1 airline would provide special attention and care to the child and the child would never be left alone or unattended at any point of time after taking his custody at Delhi airport till the time the child is picked up by the complainants at Zurich airport. The grievance of the complainants is that despite of the aforesaid assurance, their child was left unaccompanied and unattended by the adult escort provided by the Opposite Party in the ITC Business Lounge and they came to know about this fact on receiving telephone call from the staff member of ITC Business Lounge. It is not disputed by the Opposite Party that minor child of the complainants was left by the adult escort in the ITC business lounge and that an official of ITC Business Lounge made a telephone call to the complainants that their child was disturbed and crying in the lounge. The Opposite Party has tried to explain this lapse on the plea that the adult escort after necessary formalities and immigration clearance with a view to make the child comfortable took him to ITC Business Lounge and made him sit there awaiting the announcement of departure of his flight. It is contended by the learned counsel for the Opposite Party that as per the rules, the adult escort was not permitted to sit in the lounge with the child. Therefore, the said escort after informing the staff member of the lounge and seeking assurance that that he would take care of the child, went outside the lounge and stationed himself at the entrance / exit of the lounge to keep an eye on the child.

7. Above explanation of the Opposite Party is not believable for the reason that Opposite Party has neither examined the staff member of ITC business lounge nor the adult escort assigned to the child to substantiate the allegations. Otherwise also, had the story of Opposite Party been correct, then on seeing the child crying and perturbed, under the natural course of circumstances, the staff

member of ITC Business Lounge was expected to contact the adult escort at the entrance / exit gate instead of searching the child and making the telephone call to the complainants. Thus, we are convinced with the explanation that adult escort left the minor child in the custody and care of staff member of ITC business lounge and waited at the exit gate. Thus, it is clear that the child was left unattended and unaccompanied in violation of the assurance given to the complainant. This, in our view, amounts to deficiency in service.

8. Now the question is as to what should be the compensation to be awarded to the complainants. The complainants have prayed for a sum of Rs.15.00 lacs towards refund of full air fare and special fee paid by the complainants plus compensation for the deficiency in service. Besides, the complainants have also claimed damages to the tune of Rs.1.00 crore for mental agony and harassment undergone by them and the child. The aforesaid claim of the complainants is highly unrealistic and disproportionate. No doubt, for a small duration, the son of the complainants was left unattended and unaccompanied by the adult escort in ITC Business Lounge at Delhi airport but this does not mean that safety of the child was put to any risk, particularly when the business lounge at the airport is a secured place where the entry of unauthorised persons is restricted. So far as quantum of damages is concerned, it is necessary to have a look on the salient facts. Admittedly, the complainants who claim themselves to be the concerned parents travelled to Zurich a week before the travel date of their five year child. There is no cogent explanation as to why the complainants did not take the child along and why they decided that child should travel alone and join them at Zurich a week later. This shows the concern of the complainants about psychological well being of the child. Further, from the evidence it is clear

that the staff member of ITC Business Lounge rang up the complainants and informed them that their son was crying and perturbed. From this one fact is clear that if the complainants received an information from the staff member of ITC Business Lounge, they were given an assurance that the child was in safe hands and within a short time, the Station Manager of the Opposite Party No.1 on being contacted ensured that child was again in custody of Opposite Party no.1. In spite of their anxiety at their son's distress and their concern at the alleged negligent behaviour of the Opposite Party No.1, the parents chose to allow their minor son to continue with his journey to Frankfurt in their care. Taking into the aforesaid circumstances, we are of the view that compensation of Rs.50,000/- (Rupees Fifty Thousand only) shall meet the ends of justice for the mental trauma suffered by the complainants and the child.

9. In view of the discussion above, we allow the complaint and direct the Opposite Party no.1 to pay to the complainants a sum of Rs.50,000/-(Rupees Fifty Thousand only) as compensation for deficiency in service as also the mental trauma and anxiety suffered by the complainants and their minor son.