

(2003) 04 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

SONALI ARORA

APPELLANT

Vs

AIR FRANCE WORLDWAYS TRAVELS (P) LTD.

RESPONDENT

Date of Decision : 10-04-2003

Acts Referred:

Citation : 2004 1 CLT 16 : 2004 1 CPC 291 : 2004 2 CPJ 515

Hon'ble Judges : H.S.Brar , C.P.Budhiraja J.

Final Decision : Appeal allowed

Judgement

1. IT is an appeal against the order dated 1.9.1999 of the District Consumer Disputes Redressal Forum, Jalandhar (hereinafter called the District Forum).

2. BRIEF facts stated in the complaint are that Mrs. Sonali Arora appellant-complainant (hereinafter called the complainant) had purchased air tickets for herself and for her two daughters from Air Finance Worldways Travels (P.) Ltd., Jalandhar respondent No. 1 (opposite party No. 1 before the District Forum) (hereinafter called opposite party No. 1) on 27.4.1998 for consideration for going on a trip to France, England and USA. Opposite party No. 1 was the agent of Air France, Scindia House, Connaught Place, New Delhi, respondent No. 2 (opposite party No. 2 before the District Forum) (hereinafter called opposite party No. 2) for booking of air tickets. The complainant along with her minor daughters left Chicago on the return journey on 30.6.1998 via Paris and they touched London on 1.7.1998. On the return flight the complainant along with her minor daughters were to leave LHRO on 4.7.1998 by 148 AF-DEL via AF 2471-CDG. The staff posted by opposite party No. 2 at the Air Port did not allow her to carry one of the handbags inside the plane. It was stated in the complaint that this situation was created after all the needful checking like visa, etc. as per the norms for international flights had been done. According to the complainant, the bags, which were within the permissible limits were always allowed by all the International Flights and the said handbag was with the complainant throughout her entire journey inside the plane before this episode. One of the handbags, which was not allowed to be carried in the plane contained valuable articles like

camera, photographs, souvenirs and some normal stuff belonging to the complainant. The complainant had requested the staff posted at the Air Port that the handbag had been allowed by the Air Lines of opposite party No 2 from Chicago via Paris to London as the same was within the stipulated limits of weight and size, but in spite of the requests the staff of opposite party No. 2 flatly refused to allow the complainant to carry the handbag in the Aeroplane and the lady who was on duty at the Airport, an employee of opposite party No. 2, bluntly told the complainant either to leave the handbag or to miss the flight. At that time only 10 minutes were left for the plane to take off and within that time the complainant could not have the bag checked in even after re-distributing all the delicate and valuable stuff therein in such short span of time. It was then alleged in the complaint that due to the non-cooperative attitude of the staff at the Airport, the complainant was left with no other alternative but to leave the said handbag at the Airport in the open and without handing over custody to any one in the peculiar facts of the case, which contained valuable souvenirs along with camera, photographs and other normal stuff. According to the complainant, for this inefficiency and deficiency in service on the part of the opposite parties, the complainant was entitled to Rs. 4,50,000/- as compensation as detailed in the prayer clause of the complaint. It was then prayed in the complaint that by accepting the complaint directions be given to the opposite parties to pay Rs. 4,50,000/- along with costs of the complaint. Notice of the complaint was given to the opposite parties. In its written reply, opposite party No. 1 has taken a number of preliminary objections that opposite party No. 1 was a General Sales Agent of Air France and was carrying its business in the name and style of M/s. Worldways Travels (P) Ltd., Jalandhar. Opposite party No. 1 was only concerned with the booking of the tickets, collection and reservation of the tickets. No cause of action had accrued to the complainant against opposite party No. 1 and the complainant did not fall within the definition of "consumer". It was then stated in the reply that the complainant was not entitled to any relief against opposite party No. 1 regarding the alleged act of opposite party in not allowing her to carry the handbag. It was prayed that the complaint be dismissed.

In the written reply filed by opposite party No. 2, it was stated that the complaint was misconceived for want of permission under Section 86 of the Code of Civil Procedure, 1908. According to the allegations made in the complaint, negligence was attributed to the officials at Heathrow Airport at London, so the District Forum had no jurisdiction to entertain the complaint as no cause of action had arisen to the complainant at Jalandhar. On merits, it was denied if the staff of the opposite party did not allow the complainant to carry one handbag inside the plane. It was stated that each passenger was to carry on board free of costs a hand baggage and this must conform to normal size specifications. As per rules, baggage, which the passenger carries on the aircraft must fit under the seat in front of the passenger or in an enclosed storage compartment in the cabin. If any item was determined by the carrier to be of excessive weight and size, it was not permitted in the cabin. It was admitted that the complainant and her two

accompanying children checked in with 6 pieces of baggage weighing in all 179 kilograms PCE (Piece Concept) was given to her. No excess baggage charges were charged from the complainant. At the time of boarding, if the staff concerned felt that the hand baggage was not conforming to weight, size or dimensional configurations, (1) they asked the passenger to check the hand baggage in the hold free of charge and issue passenger a baggage receipt, (2) do the above but require the passenger to pay for excess baggage charge, (3) or while issuing the passenger with a baggage receipt, send the said baggage by subsequent flight if there was no space available in the said flight. It was stated that there was no occasion for the opposite party to have insisted that the complainant abandon her hand baggage at all as alleged even if only 10 minutes were left and the said hand baggage contained a camera, souvenirs, photographs and some normal stuff. It was ultimately prayed that there was no deficiency in service on part of opposite party No. 2 and thus, the complaint was liable to be dismissed with costs.

3. AFTER going through the record of the case and after having heard the learned Counsels for the parties, District Forum dismissed the complaint. Hence this appeal.

4. WE have heard the learned Counsel for the appellant-complainant and have gone through the record of the case as well as the order of the District Forum. District Forum had held that it had no jurisdiction to entertain the complaint as neither any cause of action nor any part of cause of action even remotely had arisen to the complainant to file the complaint at Jalandhar as opposite party No. 2 had no branch office at Jalandhar. In our view, this finding of the District Forum is not in accordance with the law. Sub-sections (2)(a), (b), (c) of Section 11 of the Consumer Protection Act, 1986 reads as under: "(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 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."

5. ADMITTEDLY, opposite party No. 1 is the general sales agent of opposite party No. 2 through whom the complainant had purchased the air tickets. If opposite party No. 1 was missing then opposite party No. 2 could not carry on his business of selling their tickets to promote their business. Opposite party No. 1 in a way was the agent of opposite party No. 2 to sell their air tickets to the travellers/consumers. Thus, according to us, as the air tickets were sold by

opposite party No. 2 through opposite party No. 1 to the complainant at Jalandhar, District Forum, Jalandhar had jurisdiction to entertain the complaint. This finding of the District Forum that the District Forum at Jalandhar had no jurisdiction to entertain the complaint is, thus, set aside and it is held that the District Forum, Jalandhar had/has got the jurisdiction to entertain the complaint.

6. WE find that the District Forum has also erred in law and on facts in holding that the complaint was liable to be dismissed on merits. District Forum has mentioned that according to Ex. R-2/2 giving guidelines for baggage allowance, their security, etc., the passengers were entitled to the free baggage allowance first 40 kgs., Club 30 kgs., Economy 23 kgs., according to their booking first class and second class. In addition, one piece of cabin baggage was permitted, provided that the sum of its three dimensions did not exceed 115 cms. and that it could be placed under the passenger's seat or in the overhead cabin rack and according to Rule 3, excess baggage could be transported on the same flight on payment of additional charges. Passengers could also avail of the Air France express facilities, details of which were available with Air France Cargo Offices. Security regulations permitted only one piece of hand baggage for which a cabin tag must be obtained at the time of check in. According to the District Forum, as it was explained by the opposite parties that three options were available with the complainant as she could carry three handbags as she was having three tickets with her in the plane and according to her allegations, only one handbag was not allowed to be carried in the plane. If according to the District Forum, opposite parties had insisted that only one handbag would be allowed to be taken in the plane, then the complainant should have exercised three options by handing over the handbag to the opposite parties and get the baggage receipt and offer to pay for excess baggage charges and even if the time was short she should have requested the opposite parties to send the baggage by a subsequent flight if there was no space available in the said flight. It was in this background, the District Forum has held that the complainant had suffered as she abandoned the handbag in the open or without transferring its contents, which could be camera, photographs and souvenirs along with normal stuff. This act of the complainant in view of the District Forum could not be taken as deficiency in service on the part of the opposite parties under the Consumer Protection Act, 1986.

It our view the District Forum has not addressed to the real question in dispute. It was specifically stated by the complainant in her complaint that the staff posted by opposite party No. 2 at the Airport did not allow her to carry one of the handbags inside the plane when all the needful checking like visa, etc. as per norms for international flights had been done. According to the complainant, the bag was within the permissible limits and was always allowed to be carried on in the plane by all the international flights and the said bag was with the complainant throughout her entire journey inside the plane before this episode. It was also specifically stated in the complaint that the handbag, which was not allowed to be carried on in the plane contained valuable articles like camera,

photographs, souvenirs and some normal stuff belonging to the complainant. It has been stated by the complainant in her complaint that the complainant had requested the staff posted at the airport that the said handbag had been allowed by the Air Lines of opposite party No. 2 from Chicago via Paris to London as the same was within the stipulated limit of weight and size. But in spite of the request the staff of opposite party No. 2 flatly refused to allow the complainant to carry the handbag in the aeroplane and the lady who was on duty at the airport as an employee of opposite party No. 2 bluntly told the complainant either to leave the handbag or to miss the flight. In the reply to the above said specific averment made by the complainant in her complaint in para No. 3 it is simply stated as under: "3. In reply to para 3 of the complaint, it is denied that the staff of the answering respondent did not allow the complainant to carry one of the handbags inside the plane."

7. AFTER that opposite party No. 2 has only given the guidelines for carrying on the handbags inside the plane. It is not stated anywhere in the reply that the handbag, which was carried by the complainant did not fit in with the specifications given in the rules quoted by opposite party No. 2. The allegation made by the complainant has been supported by her affidavit. The simple denial made by opposite party No. 2 in its reply is not even supported by an affidavit. Even the affidavit, which is filed to support the simple denial, which is found at page 73 of the record of the case is alleged to be of one Gerard Petit, Principal Officer and duly authorized officer. First of all, we find many additions and alternations in this affidavit, which are not signed. Another interesting thing to be noted is that it is stated in the beginning as under: "I, Gerard Petit, the above named deponent do hereby solemnly affirm and state as under:" Verification has not been signed by Gerard Petit. It is simply stated as under: "Verified at New Delhi on this 13th day of July, 1999. Sd/- For Gerard Petit (Deponent)." In alternations and additions made in the so called affidavit even dates and names have been changed. It can easily be seen from pages 73 to 79 of the alleged affidavit of some Gerard Petit, which means that even reply filed by opposite party No. 2 is not supported by an affidavit. In these circumstances, we find that the contention of the complainant that the staff posted by opposite party No. 2 at the airport did not allow the complainant to carry one handbag, which was within the stipulated limits of weight and size, etc., inside the plane and the handbag contained valuable articles like camera, photographs, souvenirs and some normal stuff belonging to the complainant is correct. In this background, the finding of the District Forum is set aside on merits also and it is held that the action of opposite party No. 2 in not allowing the complainant to carry on the handbag inside the plane amounted to deficiency in service.

8. THE complainant has stated that the hand bag, which had to be left at the airport, contained valuable articles like camera, photographs, souvenirs and some normal stuff. It is not possible for us to evaluate the contents of the handbag. In peculiar circumstances of the case by just guesswork we can hold that the contents contained in the handbag could be of the value of about Rs.

50,000/-. In these circumstances, it will meet the ends of justice, if the complainant is allowed Rs. 50,000/- as damages due to the loss of the contents of the handbag. We order accordingly. We also assess Rs. 50,000/- as damages to be given to the complainant for mental agony, inconvenience and harassment, etc. caused by opposite party No. 2 to the complainant. Opposite party No. 2 is directed to pay Rs. 50,000/- as damages to the complainant. Consequently, this appeal is allowed with costs, which are quantified at Rs. 2,000/-; order of the District Forum is set aside and consequently, the complaint of the complainant is also allowed with costs, which are quantified at Rs. 2,000/-. Appeal allowed. Appeal allowed with costs.