

(1996) 02 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

SUNILKUMAR NAIR

APPELLANT

Vs

GENERAL MANAGER, INTERNATIONAL AIRPORT AUTHORITY
OF INDIA

RESPONDENT

Date of Decision : 05-02-1996

Acts Referred:

Citation : 1996 1 CPC 547 : 1996 1 CPR 361 : 1996 2 CPJ 25

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

Final Decision : Complaint allowed

Judgement

1. THE case of the complainant Sunilkumar Nair is that after his Master's degree in Loyola College, Madras, he wanted to pursue his studies in the United States of America and he secured admission in SOM (School of Organisation and Management) Yale University. On his way to United States by flight on 25.8.93 at the Madras International Airport, while the complainant was waiting for his luggage to be scanned, a heavy iron rod fell from the conveyor belt on his right foot and he was seriously injured. He could not walk even an inch and the Airport Doctor Mr. Badrinaryanan attended on him and he was taken to the aircraft in a wheelchair. Even though he had sustained serious injuries, he had to proceed lest he would lose his admission for which he had worked hard. THE Doctor at the Airport advised the complainant to check-up either in Bombay or New York Airport. At the Bombay Airport, the Medical Officer there, examined the complainant and prescribed medicines and advised X-ray and review. Since the time left for boarding was short nothing could be done in Bombay. In the meanwhile, the complainant's father had requested the 2nd opposite party Regional Manager, Air India, Madras to see that necessary medical assistance is given to the complainant at New York Airport so that the complainant would be able to report to Yale University on the stipulated date. THE complainant's father was assured that necessary message would be sent to New York to that effect, but nobody took care of the complainant at the New York Airport. THEREfore, with great difficulty the complainant proceeded further to New Haven, Connecticut. Throughout his journey, he was suffering from pain. As soon as he reached Yale

University the complainant consulted a Doctor there and the injury was diagnosed as distal phalax fracture of the right second toe. THE complainant had to undergo continuous treatment and had to walk with the support of a stick for weeks together. Because of the injury, he could not take up any assistantship which is common in all Universities in U.S.A. since education is very expensive there. But for the injury, the complainant would have been entitled to assistantship. Without assistantship, the complainant was put to great embarrassment and sustained monetary loss. THE further case of the complainant is that it was solely due to the negligence of the 1st opposite party International Airport Authority of India, the injury had happened to him. THE 2nd opposite party had hired the services and amenities of the 1st opposite party and is equally responsible. THE negligence of the opposite parties amounts to deficiency in service and therefore both the opposite parties are jointly and severally liable to compensate the complainant. Inspite of demand for compensation, the opposite parties have not come forward with a favourable reply. On these grounds, the complaint has been filed for compensation of Rs. 3,72,000/- for losing assistantship and Rs. 2,00,000/- for physical pain and mental agony, totalling to Rs. 5,72,000/-.

2. THE two opposite parties have filed separate written versions opposing the complaint. THE 1st opposite party International Airport Authority of India contended that since no consideration is paid by the complainant to this opposite party, there is no consumer relationship between them and hence the complaint against the 1st opposite party is not maintainable. It is further contended that the x-ray baggage scanning machine in question has been provided by the 2nd opposite party-Air India and therefore only they are responsible for the incident, and no negligence can be attributed to this opposite party. It is therefore seen that this 1st opposite party has been unnecessarily implicated in the case. It is further contended that the complaint is bad for non-joinder of necessary parties since the General Insurance Company with which the 1st opposite party - International Airport Authority is had insured covering any Airport liability, has not been impleaded. For these reasons the complaint has to be dismissed as against this 1st opposite party. The 2nd opposite party in its written version contended that the conveyor belts are maintained by the 1st opposite party International Airport Authority of India and therefore this opposite party is not responsible for any incident as mentioned in the complaint. If at all there was negligence or deficiency in service as alleged, it can be attributed to the 1st opposite party only. It is denied that the Air India had assured this complainant's father that message would be sent to New York for medical assistance as alleged. It is denied that the complainant has sustained any loss or injury. It is contended that this opposite party is not liable to pay any compensation to the complainant.

The points for consideration are :- 1. Whether it is true that the complainant has sustained injuries in the Madras International Airport as alleged by him ? 2. If any such incident had happened, whether it was due to deficiency of service on the part of the 1st opposite party or the 2nd opposite party or both ? and 3. To

what relief if any is the complainant entitled ?

3. POINT No. 1: It is not in dispute that the complainant was at the Madras International Airport on 25.8.93 to travel from there to United States. The case in the complaint that a heavy iron rod fell on his foot from the conveyor belt of the baggage scanning machine is not specifically disputed either by the 1st opposite party or the 2nd opposite party. It is also not disputed that the complainant sustained injury at the Airport. The Doctor at the Madras International Airport has given a certificate dated 17.9.93 to the effect that he examined the complainant on 24.8.93 at the Departure Hall of Madras International Airport and the complainant was suffering from severe pain and mild swelling on the forefoot (R) which was due to an iron rod falling on the foot and he was treated as a contusion (R) foot, given dressing and analgesics." Of course, according to the complainant the incident happened on 25.8.93 but in this certificate it is mentioned as 24.8.93. But it appears to have happened so because the incident occurred during the night, and therefore, there is no material discrepancy regarding the date. Thus the complainant's case that he sustained injury in his right foot due to fall of an iron rod is corroborated by Ex. A-8 Doctor's certificate. It was argued that it is nobody's case that at the time of the alleged incident the Doctor was present in the Airport and therefore how could the Doctor know that the injury happened due to a fall of an iron rod. But it is apparent that the Doctor has soon after the incident, attended on the complainant and he could have been told by the complainant or his father, who was with him, as to the manner of the incident. Such an information given soon after the incident, for the purpose of evidence, has to be considered in law as part of the same transaction of the incident and therefore the said statement made in the Doctor's certificate can be considered as evidence. Then during the mid- night at 3.40 a.m. as per Ex. A-5 certificate dated 25.8.93, the Medical Officer at I.A.A.I. at Bombay Airport has examined the complainant and he has also noted "A injury in the right 2nd toe". For all these reasons, it can be safely held that there was an incident at the Madras International Airport in which an iron rod from the conveyor belt of the luggage scanning machine fell down on the 2nd right toe of right foot of the complainant. During the arguments it was pointed out that in Ex. A7 certificate filed by the complainant, as issued by the Yale University Health Services, the date of the alleged incident has been mentioned as 22.8.93 and not 25.8.93. But we are clearly of the view that it is only a mistake and nothing can be made out of it. Point No. 2: There is no doubt that it was only due to the negligence in the maintenance or operation of the conveyor belt that the iron rod fell down. Since the two opposite parties are trying to shift the blame on each other, it has to be found as to who among them was or whether both of them were in custody of the baggage scanning machine. For this purpose, an Advocate Commissioner was appointed to get identified the machine and ascertain from the top officials of both the opposite parties as to whom the machine belonged. The Commissioner submitted a report stating that the machine was identified by the complainant and it belonged to the 2nd

opposite party Air India. As against this the 1st opposite party has not filed any objection. But the 2nd opposite party has filed an objection but we do not find anything worthy of considering in it. It is beyond any doubt whatsoever that the concerned machine belonged to the 2nd opposite party only and has been operated by it. Therefore, the negligence was that of the 2nd opposite party. The complainant has purchased the ticket from Air India to travel and during the course of that travel the incident had happened and therefore there was deficiency in service on the part of the 2nd opposite party which comes within the purview of the Consumer Protection Act.

4. POINT No. 3 : Coming to the question of compensation, as held above, it is manifest that the complainant sustained injury in the 2nd toe of right foot as evidenced by Ex. A 8 - a certificate given by a Doctor at the Madras Airport and Ex. A 5 - a certificate given by the Medical Officer at the Bombay Airport. It is understandable that due to shortage of time the injury could not have been x-rayed in these Airports. Ex. A 6 has been filed which is said to be a certificate dated 31.8.93 (8/31/93 as per the practice in USA) issued by the Yale University Health Services. We find no reason to discredit it as a false one. In this certificate, it is stated that x-ray has been taken, and the injury has been described as "distal phalanx fracture at tuft." It is further stated that the patient was seen in the Department on 26.8.93 and 31.8.93 and "the patient will continue to care here until injury is resolved". Ex. A7 mentioned above, is an other certificate dated 8.9.93 issued by the Yale University Health Services which is almost of the same effect as Ex. A 6. From all these, it would appear that the complainant should have suffered from severe pain throughout his journey from Madras to New Haven, Connecticut and sometime thereafter. In our view, for this pain and suffering the complainant can be awarded a sum of Rs. 30,000/- as compensation. It is not the case of the complainant that he had incurred any expenditure for the cure of the injury. It is claimed that because of this injury sustained by him, he had lost the chance of getting the assistantship in the Yale University. But regarding this aspect of the matter, apart from the complainant's own version in the complaint, there is absolutely no other material. No record whatsoever has been filed to show that he was offered assistantship and that because of the injury the assistantship was denied to him. Therefore, it is not possible to give any compensation on the alleged ground that he could not get assistantship from the Yale University. In the result, the 2nd opposite party Air India is directed to pay to the complainant a sum of Rs. 30,000/- as compensation for the pain and suffering. Time for payment 1 month from today. The complaint against the 1st opposite party is dismissed. Considering the circumstances, there will be no order as to costs. Complaint allowed.