

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-VI
(NEW DELHI), 'M' BLOCK, 1STFLOOR, VIKAS BHAWAN,
I.P.ESTATE, NEW DELHI-110002.**

Case No. CC/485/2013

IN THE MATTER OF:

Smita Bajaj

W/o Shri Shankar Bajaj,
R/o 119, Vigyan Vihar, 2nd Floor,
Delhi – 110092.

....Complainant

Versus

1. Air India

Airlines House,
113, Gurudwara Rakabganj Road,
New Delhi – 110037.

2. Mr. Paul

Regional Director, Northern Region,
Air India,
113, Gurudwara Rakabganj Road,
New Delhi – 110037.

3. Marketing Manager,

Air India,
Kochi – 14.

....Opposite Parties

Quorum:

Ms. Poonam Chaudhry, President

Mr. Bariq Ahmad, Member

Mr. Shekhar Chandra, Member

Date of Institution:- 22.05.2013

Date of Order:- 22.05.2024

ORDER

SHEKHAR CHANDRA, MEMBER

1. The present complaint has been filed under Section 12 of the Consumer Protection Act, 1986 (in short CP Act) against Opposite Parties (in short OP) alleging deficiency of services.

2. The facts in brief as borne out from the record of the present complaint case are that the complainant is aggrieved by the acts and omission of the OP. The complainant along with her family and two other families had planned to visit *Munnar, Kochi (Cochin) in Kerala*. The complainant's family and her friends had booked to travel on 26.01.2012 on OP's flight to Kochi. On arriving well in time at the airport, the complainant's families and friends got a shock of their live on being informed that the flight had been cancelled (after the baggage check in). The complainant alleges that though the OP had the contact nos., the OP did not care to inform the passengers of the cancellation of flight.

3. The complainant was asked by the OP to go back home and take the next day's flight i.e. on 27.01.2012, thereby jeopardizing the entire holidays as the complainant had already paid for hotel bookings and for rooms for specific dates. It is further alleged that this caused a lot of harassment and

mental agony to the complainant and others especially in her medical condition.

4. After much persuasion, the OP agreed to send the passengers by hopping flights by dividing the groups and accommodated the 3 families in various flights. The entire baggage had been checked in prior to the cancellation news of the flight, which included hard cover suitcases, soft cover suitcase a hand bag and a cricket bat.
5. The complainant's family was sent by a flight via Chennai (Flight No. 439/510). The baggage was to directly transfer by OP's staff to the connecting flight to Kochi. At Chennai the connecting flight to Kochi was late by two hours and again no assistance or facility was extended to the complainant's family at all. Only at the Chennai airport the complainant came to know that the flight would not fly to Kochi directly and hop through Bangalore thereby taking more time to reach destination.
6. It is alleged that the complainant's family had to pay for their food at Chennai airport which is again a deficiency and clear unfair trade practice on the part of OP. The complainant was in the 1st trimester of pregnancy; this fact was in the knowledge of the OP. Thus the medical condition of the complainant was already in the know of the OP but they did not care.
7. After the complainant landed at the Kochi airport it was conveyed to the complainant that two pieces of baggage including the cricket bat had been

lost, which contained the entire clothes of the complainant and her family members. The VIP soft cover suitcase was with transparent plastic cover. They were left with the clothes which they were wearing. No incidental amount was paid or/and emergency kits given as is the rule.

8. The complainant submits that the value of articles lost was approximately Rs.55,000/- as it contained clothes, accessories, shoes, purses cosmetics, a gold chain and a small camera as well. The ground staff of Air India did not cooperate with the complainant. They ushered the complainant's husband to their office while the complainant (a pregnant lady) waited with her son at Kochi Airport with not even a glass of water served to her. The complainant's husband took more than 2 hrs to return while she waited for him to give her some money so that she could buy some food for the child. Even on request, she was not allowed to go in AI office. The husband of the complainant lodged a property irregularity report at Kochi Airport. When he wanted to disclose the contents of the VIP suitcase, the ground staff of the Air India prevented him from disclosing the contents of baggage as they told that FIR was to be written in short.
9. The complainant with her family and son left after lodging FIR with no hope of finding the lost baggage, for the hotel. The son of the complainant vomited in the car but there were no clothes for either of

them to change. They reached hotel after dark, absolutely tired and the whole day was wasted without providing emergency kit.

10. The complainant had to spend extra money for purchasing clothes, under garments, footwear other goods etc. from the local market with no proper market/shop to make purchases as language was the barrier as she could not understand their local language.
11. The complainant submits that the OP is liable to pay for non-compliance of mandatory procedures in such situations like flight cancellation and delayed connecting flights. The OP should pay for or had extended proper medical and hotels facilities to passengers whose flights were delayed and the passengers had to fend for themselves with their expenses which were nothing but being unfair in their trades. The complainant has yet to receive any information about the FIR lodged at Kochi airport about their lost luggage where they were prevented to give details about contents of the baggage.
12. Even after continuous correspondence between the complainant and the OP, complainant requested the OP either to trace the lost baggage or compensate for the same but no heed was paid by the OP. The OP only offered to give petty amount for all the mental agony, pain and deficiency in service.

13. It is further alleged by the complainant that at Kochi Airport, the OP gave the complainant the cricket bat which was lost during the transit but without baggage.
14. Failing to get any any relief from the OP, the complainant has approached this Commission with the following prayers:-
- (A) Direct the OP to pay an amount of Rs. 55,000/- towards the value of the goods lost in transit;
 - (B) Direct the OP to pay Rs. 1,00,000/- for causing mental agony and harassment; and
 - (C) Grant a sum of Rs. 25,000/- towards litigation expenses in favour of the complainant.
15. Notice of the complaint was issued to OP, upon which OP entered appearance and filed written statement contesting the case on various grounds inter alia that the Complaint is false, fabricated, baseless, misleading, an afterthought, and an abuse and misuse of the process of law. It is submitted that the Complainant has not at all approached this Commission with clean hands and she has deliberately concealed true and material facts. It is submitted that the present complaint has been filed by

the complainant in consonance with the trend to file frivolous complaints to extract as much money as possible from the OP.

17. It is alleged by the OP that the complainant has not only filed a false and fabricated complaint against OP but has also failed to add all the necessary and proper parties along with the complaint. Thus as the complaint is bad for non-joinder of the essential necessary and proper parties, the complaint deserves to be rejected with exemplary costs.
18. The OP submits that OP is a carrier inter-alia engaged in the business of carriage of passengers, cargo, baggage and mail by air to and fro various domestic, national and international destinations and operates under the provisions of Air Carriage Act, 1972. General Conditions of Carriage (Passenger and Baggage) conforming to IATA terms and conditions have been laid down by the answering airline. The carriage by air is subject to Indian Contract Act, 1972, being a contract for carriage. The carriage Regulations were laid in exercise of powers conferred under Section 45(2)(g) of Air Corporation Act, 1953 and duly published as non-international carriage passenger and baggage regulations in the official gazette before repeal of the aforesaid Act. Answering Airline also published the terms and conditions of carriage on 27.02.1993, vide Gazette Notification Part-3, Section 4. The said terms and conditions of carriage are amended from time to time and followed as such by the

company even after the repeal of the said Act in 1994 and merger of erstwhile Indian Airlines and AIR India into a single entity "Air India Ltd." The carriage of passengers and baggage is subject to the conditions of contract relating to "Non-International Carriage (Passenger and baggage) which are duly notified to the passengers on the ticket and presently on the website www.airindia.in through Citizen's Charter. These terms and conditions clearly reflect the restricted liability of the answering party as Rs.450/- per kilogram up to the extent of the weight of the lost luggage. Though not admitting to the loss of baggage by the complainant, even if the OP is made to pay any amount to the complainant, it can only be on the basis of the above said authorized conditions/ rules of the contract as mentioned above. Further it is submitted that the complainant had admittedly neither declared the details of the contents of the baggage with their value at the time of check-in, nor paid any supplementary amount towards valuation charges.

19. The true and correct facts of the present case unambiguously and evidently show that the acts of the OP neither smack of any deficiency in service nor any negligence on the part of the OP. Thus, when there is neither any deficiency in service nor any negligence on the part of the OP, the present false, frivolous and concocted complaint of the complainant deserves to be out rightly dismissed with exemplary costs.

20. The OP submits that there is absolutely no cause of action which has accrued in favour of the complainant as alleged for the complainant to file this complaint, which complaint is even otherwise devoid of any merits, basis or justification.
21. The OP further admits that the complainant along with the other families wanted to travel to *Munnar, Kochi in Kerala*. It is, however submitted by the OP that the complainant has not filed any tickets/ booking slips/ PNR no. for the flight booked from Delhi to Munnar with that of the OP along with the said complaint. It is, however, denied that the complainant had at all booked any tickets with the OP for travelling from Delhi to Kochi. The complainant has deliberately concealed the true facts even to the extent of the date on which the complainant had travelled to Munnar, Kochi. It is completely denied that the complainant had booked to Munnar, Kochi or even travelled with the OP to Munnar, Kochi on 26.01.2012. It is vehemently denied by the OP that flight of OP from Delhi to Munnar, Kochi had been cancelled neither on 26.01.2012 nor on 26.12.2011. It is further pertinent to mention here that the complainant had booked tickets from Delhi to Munnar, Kochi with Air India Express vide flight number IX 411 on 26.12.2011 (not on 26.01.2012 as mentioned in the complaint) and not the impleaded the Air India Express as the OP, which fact has been deliberately, mischievously and maliciously concealed by the complainant. It is further stated that there

was no flight of Air India from Delhi to Kochi on that particular date i.e. 26.12.2011. It is submitted by the OP that the complaint has stated that the entire luggage of the complainant had been checked in prior to the cancellation of the flight which flight was not that of the OP but of *Air India Express* which in itself is a separate airline.

22. The main ground on which more stress is being given by the OP is that the cancelled airline does not belong to the OP and in fact it is Air India Express, which is a separate entity, therefore, the OP is not entitled to any amount as claimed by the complainant. On the contrary, there is a communication dated 23rd March, 2012 issued by the OP wherein they have admitted the fact of loss of baggage. The relevant portion of the said communication is reproduced below:-

“..... In this connection we wish to inform you that we have made all possible efforts to trace out your misplaced baggage, but unfortunately it could not be located. We are pleased to offer you Rs. 9,000/- on weight loss basis @ Rs. 450/- per kg. for 20 kg. being the established weight short received by you. This is the maximum amount, which we can offer to you as per the terms and conditions governing to Baggage liability Regulations as full and final settlement. In case, you baggage is subsequently traced, we shall be pleased to restore the same against refund of the compensation amount, being paid to you in respect of your lost baggage.”

23. Nothing cogent documentary evidence has been produced before us to establish that Air India and Air India Express are two separate entities. After hearing the parties and going through the record, we are of the view that there is deficiency in service on the part of the OP and the OP is liable for the claim as claimed by the complainant.
24. Since the complainant has failed to establish the ornaments and other valuable kept in the baggage as she failed to disclose it at the time of lodging of FIR, it is not possible for this Commission to grant any relief for the lost jewellery. However, it is correct that the complainant lost her baggage which cannot be presumed to be empty one; therefore, we are of the view that the complainant must be compensated for the clothes and other wearable articles and luggage.
25. Thus after considering all aspects of the matter, we direct the OP to pay a sum of Rs. 25,000/- towards the luggage lost and Rs. 25,000/- towards the litigation expenses. We hold that there was deficiency in services on the part of the OP, therefore, we direct the OP to pay a sum of Rs. 50,000/- as compensation to the complainant for causing mental agony and harassment. The amount must be paid within six weeks from the date of receipt of this order failing which the complainant shall be entitled to interest @ 9% per annum from the date of journey/purchase of ticket till realization.

A copy of order be sent to all the parties free of cost. The order be also uploaded in the website of the Commission (www.confonet.nic.in).

File be consigned to the record room along with a copy of the order.

[Poonam Chaudhry]
President

[Bariq Ahmad]
Member

[Shekhar Chandra]
Member