

IN THE DELHI STATE CONSUMER DISPUTES

REDRESSAL COMMISSION

Date of Institution: 29.07.2016

Date of hearing: 29.05.2024

Date of Decision: 17.09.2024

COMPLAINT CASE NO: - 831/2016

IN THE MATTER OF:

MS. ASHA DEVI

D/O NARENDER NATH

RESIDENT OF:

N-21, BLOCK N, RAJIV NAGAR EXTN,

BEGUMPUR, DELHI

(Through: Ms. Shikha Chibbar, Authorized Person)

...Complainant

VERSUS

M/S ETIHAD AIRWAYS

REGISTERED OFFICE:

03 LEVEL 4(+20)

INDIRA GANDHI INTERNATIONAL AIRPORT

TERMINAL-3, NEW DELHI

(Through: Ms. Ritu Singh & Mr. Dheeraj K. Garg, Advocates)

...Opposite Party

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)****HON'ABLE MR. J.P. AGRAWAL MEMBER (GENERAL)**

Present: Dr. Shikha Chhibbar (Ph. No. 9818529708, email id mcshikha@gmail.com), authorized person of the complainant. Ms. Ritu Singh (Enrl. No. D/192/1992, Ph. No. 9540043105, email id ritu@vikramphilipassociates.com) and Mr. Dheeraj K. Garg (Enrl. No. D/2536/2006, Ph. No. 9968443127), counsel for OP.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)**JUDGEMENT**

1. The present Complaint has been filed by the Complainant before this commission alleging deficiency of service and breach on the part of Opposite Party and has prayed the following reliefs:

“The Total loss from the Cabin Baggage is insurmountable

i. 24lacs Swedish Kroner = 30 lacs ++ INR

ii. One gold chain + locket = 30grams gold

iii) Sony Handphone (gift) - Don't know

iv. Rado wrist watch (gift) - Don't know

v. Woollen leggings (3) 5000INR

vi. Marks & Spencer Undergarments - 5 pcs x 5000/ea

A. In the light of above mentioned facts and circumstances and

in the utmost interest of justice, it is most humbly and

respectfully prayed that this Hon'ble State Consumer Redressal Forum may graciously be pleased to:

B. The above and pas pass order for penalty, whatever the Hon'ble Forum may deem just and proper in the breach of trust, unfair and restrictive trade practices committed by the OP. Pass any other order as this Hon'ble Forum may deem proper and justified in the wake of facts and circumstances of the instant case.”

2. Brief facts necessary for the adjudication of the present complaint are that the Complainant, Asha Devi is a bona fide citizen of Sweden, residing in the Delhi region under PIO (Person of Indian Origin) Visa. The Complainant purchased an Etihad Airways ticket to travel from Sweden to Delhi, with a stopover at Berlin and Abu Dhabi. At the Berlin Airport Transit lounge, the Complainant was upgraded to Business class due to a full flight. Upon boarding, a non-English speaking Airhostess suggested to move the Complainant's cabin baggage to a different location due to an alleged lack of space in the over-head cabin locker. The Complainant protested to the above as the cabin baggage contained valuables and was not locked either. Due to a communication barrier, the Airhostess walked away with the said cabin baggage. The Complainant alleges that throughout the flight, the complainant asked for her bag, but was denied the same, and asked to receive it at the destination, i.e. Delhi. Upon landing, the Complainant could not locate the Airhostess, and was asked to proceed to the Immigration and Baggage claim. The Complainant moved to the baggage claim belt, but her cabin baggage was not found. Upon enquiring, the Complainant was directed to report the Cabin Baggage at the Etihad

Airways counter in the Indira Gandhi International Airport premises. Subsequently, an application for Lost Cabin Baggage was submitted, and the Complainant was handed a carbon copy of the same. The Complainant had to leave ultimately, without any relief from the Etihad counter personnel. The following morning, the Complainant called several personnel for the lost cabin baggage, but was verbally assured that her baggage will reach her. The Complainant spent almost a thousand Rupees on such attempts. After several days, the Complainant received her baggage, wrapped in plastic. However, the Complainant was asked to return the copy of the Application for Lost Cabin Baggage, and the courier boy refused to give the parcel before taking the said copy. Upon unwrapping, the Complainant discovered that her money amounting to 24 lakh Swedish Kroner, her gold chain and locket weighing 30 grams, her Rado wristwatch, her Sony Handphone, her new undergarments and new leggings were all missing. The Complainant immediately called Etihad Airways personnel, who verbally assured her of an enquiry but did not reply afterwards, and her calls were kept on hold. Thereafter, the Complainant wrote to Etihad Airways Office in Barakhamba, Connaught Place and to their cargo office in IGI Airport. There were no replies from either of the offices. Aggrieved by the aforesaid conduct of the Opposite Parties, the Complainant has preferred the present Complaint before this Commission.

3. The Opposite Party has filed its written statement and has raised preliminary objections as to the maintainability of the complaint case, submitting that there has been no deficiency of service or negligence on the part of the OP; submitting further that the complaint is barred by Rule 31 of Schedule III to the Carriage by Air Act, 1972. The OP claims that firstly, the Complainant's claims are based on concocted facts, as is evident

from the fact that the Complainant approached Etihad Airways at the IGI Airport Delhi, and not Air Berlin whose crew the alleged airhostess was part of. Secondly, the OP submits that the baggage in question was checked-in baggage, and not cabin baggage, in which case no airline is liable for loss of valuables per IATA General Conditions of Carriage (Passage And Baggage). The OP further contends the facts as presented in the complaint on the grounds that there is no dearth of space for cabin baggage in the business class, where a passenger has the option to store their bags under their seats in addition to the overhead bin storage. The plausibility of the airhostess taking the bag from the Complaint could have thus arisen only in case the said cabin bag exceeded the specifications of cabin baggage and needed to be checked in. The OP also points to the fact that the Complainant did not make any complaints at the Abu Dhabi Airport when her bag was taken on the flight to Abu Dhabi. The OP further contests the fact that the valuables in dispute were in fact in the bag, as the Complainant had not disclosed the same in the PIR. The fact that the Complainant did not make any declaration of possession of the large amount of money in Swedish Kroner or valuable gold items thus renders the OP not liable for the same.

4. The Complainant has filed the Rejoinder rebutting the written statement filed by the Opposite Party. Both the parties have filed their Evidence by way of Affidavit in order to prove their averments on record.
5. We have perused the material available on record and heard the counsel for the parties.
6. We shall refer to section 17(2) of the Consumer Protection Act, 1986 which provides as under:

“(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction-

(a) the opposite party or each 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; 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 State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.”

7. The above cited provision provides for the extent of the territorial jurisdiction, wherein it has been provided that the state commissions shall have jurisdiction to entertain cases where the cause of action arises, whether wholly or in part.
8. A perusal of the record divulges that the Complainant filed a complaint with the Opposite Party at the Delhi airport counter. Since, IGI Airport falls within the territory of Delhi, this commission therefore has the jurisdiction to adjudicate the matter.
9. The ***only question*** that falls for our consideration is ***whether the Opposite Party provided deficient service to the Complainant.***
10. It is the contention of the Complainant that her bag containing valuables, jewellery and Swedish Kroners was misplaced by Opposite Party causing financial loss to the Complainant. In order to resolve the aforesaid controversy, we deem it appropriate to refer the copy of the Property

Irregularity Report (annexed as Annexure R-1 alongwith the written statement), reproduced hereunder for ready reference:

ANNEXURE-R-1

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1. FILE INFORMATION

File Reference Number : DELEY20287
File Type : Delayed
Number of bags : 1
Creation Date : 02JUN16 1612 GMT
Closing Date : 07JUN16 1108 GMT
Tracing Date : 02JUN
Date Questionnaire Sent : 02JUN
Retired Date : 13JUN

2. PASSENGER INFORMATION

Passenger Identification

Names : DEVI
ASHA
Initials : AD
Title : MS
Language : ENG
Class of Service / Status : Y

Permanent Contact Information

Address : RAJVNAGAR EXT BEGAMPUR ROHANI NEW DELHI
Cell/Mobile Phone Number : 09718565791

Automated Messages

Automated Messages : Receive SMS messages
Handled Airline Copy : Don't send

3. FLIGHTS INFORMATION

FLIGHTS INFORMATION

Flight : EY1419 / 01JUN
EY1402 / 01JUN
EY224 / 02JUN
Route : GOT / TXL / AUH / DEL

Passenger Booking

FNR # : XXXXXX
Ticket Number : 6071691017592
Number of Passengers : 01

Bag Routing

Flight : EY1419 / 01JUN
EY1402 / 01JUN
EY224 / 02JUN

Tracing Stations

Tracing Stations : GOT / TXL / AUH / DEL

4. BAG INFORMATION

Bag 1 details

Tag # : AB 398389
Color Type : RD 02 CHW
Brand Information : YY/
Category : DRESS
Description 1 : CLOTHES

Common information

Total Baggage Weight : 01/10
Total Weight of Missing Baggage : 01/10
Delivery Weight : 0/0
Destination on Baggage Claim : DEL
Check
Location where Bag Last Seen : GOT

5. CLAIM INFORMATION

Comments

Further Information : DELEY

Quantity

Male Toilet Kits : 0
Female Toilet Kits : 0

Liability Information

Insurance : NO
Reason for loss : 53
Fault Station : AUH

Dates

Questionnaire sent : 02JUN

11. A perusal of the aforesaid report divulges that the description of the baggage as provided by the Complainant under the head “Baggage Information” makes a mention of only dresses and clothes in the said baggage, as is reflected against the head “category: dress, Description 1: clothes”. It is abysmally surprising that the Complainant had made no mention of the valuables at the time of a registering a complaint with the Opposite Party. It is to be noted further that the PIR report makes a clear mention that the bag was last seen at Gothenburg where the Complainant commenced her journey. However, the Complainant has alleged in the Complaint that her bag was taken away from her by the crew member in the aircraft at Berlin. Thus, the contention of the Complainant in the Complaint that the bag was taken by an airhostess in Berlin whereas the PIR, which is written on the basis of information provided by the passenger at the destination airport mentions that the bag was last seen at Gothenburg. This creates an avenue for raising an adverse inference against the Complainant that the contents of the present complaint seems only to be an afterthought, in so much so that the material on record speaks contrary to the submissions made in the Complaint.
12. At this juncture, it is found that the Complainant has not even filed her own Evidence Affidavit in order to prove the averments made in the Complaint and one Ms. Shikha Chibber, has filed the evidence on behalf of the Complainant, which is against the established norms of procedural law.
13. It is to be further noted that though the Complainant has submitted that she was carrying a foreign currency of about 24,00,000/- Swedish Kroner and other valuables in her missing bag. However, no declaration to this effect has been made by the Complainant neither at the Gothenburg airport nor at Delhi airport. Here, it is pertinent to note that as per the law of the land, the

Complainant was bound by law to make an appropriate declaration regarding high value items, if any, with the customs authorities at both airports i.e. Gothenburg airport & Indira Gandhi International Airport, Delhi. No cogent material has been placed on record to show that the Complainant was carrying such high value currency, jewellery etc during the travel.

14. Therefore, in view of the aforesaid discussion, no credence can be attributed to the allegations made in the Complaint and we find no merit in the present Complaint regarding loss of high value items.

15. However, in view of the facts of the case, it is clear that the bag of the complainant, which was rather a check-in baggage was misplaced and was handed over to the Complainant in Delhi at her given address on 07.06.2016. We find that this a deficiency of service on part of the Opposite Party, as it caused great inconvenience to the Complainant due to delay in getting her clothes etc. Therefore, we partly allow the present Complaint and direct the Opposite Party :

A) To pay a sum of Rs.50,000/- to the Complainant as compensation for the physical and mental agony suffered by the Complainant.

B) To pay cost of litigation to the extent of Rs. 25,000/-

16. The Opposite Party is directed to comply with the directions as contained in the aforesaid para 15 of this judgment within two months from the date of the present judgment i.e. on or before 17.11.2024, failing which the entire sum shall be paid alongwith 9% simple interest from the date of the present judgment till the actual realisation of the amount.

17. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

18. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
19. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)

PRESIDENT

(J. P. AGRAWAL)

MEMBER (GENERAL)

Pronounced on:

17.09.2024

LR-G.P.K