

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,  
ERNAKULAM**

Dated this the 13<sup>th</sup> day of August, 2024

Filed On: 19/08/2022

**PRESENT**

Shri. D.B. Binu  
Shri. V. Ramachandran  
Smt. Sreevidhia T.N.

President  
Member  
Member

**C.C. NO. 389/2022**

**COMPLAINANT**

Chandramohanam Kavunkal, Late P. Kumara Menon, Kavunkal House, Mannam Road, MRRA-5 Kunnumpuram, N. Edappally, Kochi 682024

V/s

**OPPOSITE PARTY**

Benny, Managing Director, Benny's Royal Tours Pvt. Ltd., Oxford Business Center, Office 2D, Sreekandath Road, Ravipuram, Ernakulam 682016.

(Rep. by Adv. T.J.Lakhmanan, Mega Arcade, Power House Road, Cochin-18)

**FINAL ORDER**

**D.B. Binu, President**

**1. A brief statement of facts of this complaint is as stated below:**

The complainant filed a complaint under Section 35 of the Consumer Protection Act, 2019, against the opposite party, a tour operator who organized a tour of Egypt and Jordan for a group of 25 people, including the complainant, from 16th January 2022 to 26th January 2022. The tour package included insurance coverage arranged by the tour operator.

Upon entering Jordan from Egypt, all members of the group were required to undergo an RTPCR test, resulting in 7 members, including the complainant, testing positive for COVID-19. These 7 individuals had to cancel the remainder of the tour and were placed in quarantine under the supervision of the Jordanian health department and police, while the rest of the group, including the complainant's spouse, completed the tour and returned to India as scheduled. The complainant and the other affected members were isolated until testing negative

on 28th January 2022 and returned to Cochin on 30th January 2022. The tour operator charged the complainant an additional Rs. 24,500/- for new flight tickets, hotel accommodation, and transportation.

The complainant sought compensation of \$1000 from the insurance company for trip cancellation, hotel expenses, fresh flight charges, and mental agony suffered during the quarantine period. However, the insurance claim was denied because the insurance policy covered the period from 16th February 2022 to 27th February 2022, instead of the actual tour dates. The complainant alleges that this error in the insurance coverage was due to the tour operator's negligence.

**The complainant seeks the following reliefs:**

Rs. 25,000/- for trip cancellation charges.

Rs. 24,500/- for additional expenses incurred.

Rs. 25,500/- for mental agony, stress, and tension due to quarantine.

**2. NOTICE:**

The Commission issued a notice to the opposite party, who subsequently filed their version.

**3. THE VERSION OF THE OPPOSITE PARTY:**

The opposite party contends that the complaint filed by the complainant is not maintainable in law or on facts. The opposite party stated that the real issue is the denial of the insurance claim by M/s ICICI Lombard General Insurance Co. Ltd., who should have been made a necessary party to the complaint. The failure to include the insurance company renders the complaint defective due to the non-joinder of necessary parties.

The complainant and his wife were part of a 25-member group that booked an Egypt-Jordan tour package with the opposite party, scheduled for departure on 16th January 2022. The complainant, being over 70 years of age, was informed

by the opposite party that he was ineligible for the travel insurance offered. Despite this, the complainant insisted on obtaining insurance coverage, which the opposite party facilitated with M/s ICICI Lombard General Insurance Co. Ltd., providing all necessary travel details via email on 12th January 2022.

The opposite party further argues that the complainant falsely claims the insurance policy was handed over at the airport, attempting to mislead the Commission. The opposite party asserts that all insurance details were provided well before the journey began.

During the tour, the complainant and six others tested positive for COVID-19 during the transition from Egypt to Jordan, resulting in quarantine under Jordanian health authorities. The opposite party covered additional costs, including new flight tickets and accommodation, amounting to Rs. 24,500/-, as stipulated in the tour itinerary, which allowed the opposite party to claim extra expenses due to unforeseen circumstances like illness or quarantine.

The complainant's claim with the insurance company was rejected due to a mismatch in the policy coverage dates, which the opposite party attributes to the insurance company's negligence, not their own.

The opposite party maintains that all services were duly provided, with no deficiency in service or unfair trade practices on their part. The complaint is baseless, and the opposite party requests the dismissal of the complaint with costs.

#### **4. Evidence:**

The complainant submitted a proof affidavit along with seven documents. The documents in the complaint are marked as **Exhibits A1 to A4:**

- **Exhibit A1:** Copy of the tour cost portion paid to the tour operator.
- **Exhibit A2:** Copy of the insurance policy taken by the tour operator.
- **Exhibit A3:** Receipt for the additional payment of Rs. 24,500/- made to the tour operator for fresh flight tickets, hotel stay, and transportation.
- **Exhibit A4:** Email correspondence from the insurance company rejecting the complainant's claim of \$1000.



## **5. Points for Consideration:**

**The main points to be analyzed in this case are as follows:**

- i) Whether the complaint is maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?
- iii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- iv) Costs of the proceedings, if any?

## **6. ARGUMENT NOTES FILED BY THE COMPLAINANT**

The complainant joined a foreign tour to Egypt and Jordan conducted by the opposite party during the period from 16th January 2022 to 26th January 2022. The consolidated cost of the tour, as advertised by the tour operator, was Rs. 1,73,500/- per person, covering all expenses such as flight tickets, hotels, visas, and insurance. Due to the complainant being above 70 years of age, an additional payment was made to cover extra insurance charges, bringing the total amount paid to Rs. 1,80,450/-. The tour group consisted of 25 people.

During the tour, after completing the Egypt portion, the group was required to undergo an RT-PCR test for entry into Jordan. On 23rd January 2022, seven members of the group, including the complainant, tested positive for COVID-19. Consequently, these seven individuals had to cancel the remaining four days of the tour and were placed under quarantine by the Jordanian health department, under police supervision. Meanwhile, the rest of the group, including the spouses of the quarantined individuals, completed the tour and returned to India on 26th January 2022. The quarantined individuals, including the complainant, were subjected to mental tension and agony due to their solitary confinement and were unable to return to Kerala until 30th January 2022. In addition, the tour operator charged an additional Rs. 24,500/- to cover the costs of new flight tickets, hotel accommodations, and transportation, as the original flight had to be cancelled.

Upon returning to Kerala, the complainant approached the insurance company, M/s. ICICI Lombard General Insurance Co. Ltd., seeking compensation of \$1000 for the four-day trip cancellation, additional hotel expenses, fresh flight charges, and mental tension and agony suffered during the quarantine period in Jordan. After numerous follow-ups and submitting all necessary documents, the insurance company rejected the claim, stating that the tour was undertaken outside the period covered by the insurance policy. Upon

review, it was discovered that the insurance policy had been erroneously issued for the period of 16th February 2022 to 27th February 2022, instead of the correct tour dates of 16th January 2022 to 26th January 2022.

In a group tour, the tour operator assumes the role of a guardian for the entire group, responsible for arranging flights, hotels, transportation, food, and insurance coverage. The operator charges an all-inclusive fee for these services and is obligated to ensure the safety and well-being of all tourists throughout the journey, including their safe return to India.

All documents related to the tour, including flight tickets, hotel details, visas, and insurance papers, were handed over to the tourists at the airport just before the flight's departure. Given the circumstances, it was impractical for the tourists to verify these documents, and they placed their trust entirely in the tour operator. The opposite party has conceded that the insurance policy was taken for the wrong period. Despite being aware of this issue as early as 12th January 2022, the tour operator failed to take corrective action before the tour commenced on 16th January 2022. This negligence represents a serious lapse in responsibility and constitutes a criminal act, as it left 25 tourists without proper insurance coverage, thereby endangering their lives.

Due to the tour operator's failure to arrange insurance coverage for the correct period, the insurance company rejected the complainant's claims for the following:

- a) USD 750 for hotel bookings that were lost during the last four days.
- b) USD 500 for trip cancellation and/or interruption.
- c) USD 100 for a four-day trip delay.

Given the above, it is clear that the tour operator's serious and deliberate lapse led to the rejection of the complainant's insurance claim. The complainant, therefore, requests that the Commission direct the opposite party to compensate the complainant.

We have meticulously considered the detailed submissions of both parties, as well as thoroughly reviewed the entire record of evidence, including the argument notes.

#### **A. Maintainability of the Complaint:**

The opposite party argues that the complaint is not maintainable due to the non-joinder of the insurance company, M/s ICICI Lombard General Insurance Co. Ltd. However, it is well-settled that a complaint against a service provider is



maintainable even if a related third party is not implemented, as long as the primary grievance pertains to the service provider's actions.

In this case, the primary grievance is against the tour operator, who failed to secure the correct insurance coverage for the complainant and other members of the tour. The insurance company's involvement is secondary, and their non-joinder does not render the complaint non-maintainable. The service provider is responsible for ensuring the correctness of the services provided. Therefore, the complaint is maintainable.

### **B. Deficiency in Service and Negligence:**

The crux of the complaint is whether the opposite party was deficient in service by failing to secure appropriate insurance coverage for the complainant and other tourists during the correct period of the tour.

The complainant availed of a foreign tour package to Egypt and Jordan, conducted by the opposite party, from 16th January 2022 to 26th January 2022. The tour package, as advertised, was all-inclusive, covering expenses such as flight tickets, hotels, visas, and insurance. However, when seven members of the group, including the complainant, tested positive for COVID-19, they were quarantined in Jordan, leading to additional expenses and significant mental agony.

The opposite party was responsible for ensuring that the insurance coverage was properly arranged for the tour dates. By failing to do so, despite having been informed of the error as early as 12th January 2022, the opposite party demonstrated gross negligence and a deficiency in service. This failure deprived the complainant and other tourists of insurance coverage during a critical period, exposing them to financial and psychological hardships.

### **Relevant Case Laws:**

**In Lucknow Development Authority v. M.K. Gupta (1994) 1 SCC 243**, the landmark judgment of the Hon'ble Supreme Court of India elaborated on the scope of deficiency in service and unfair trade practice, emphasizing the protection of consumer rights against such deficiencies and practices. Drawing from this precedent, it is clear that the opposite parties' failure to act as per the contractual obligations and statutory duties constitutes a deficiency in service. Similarly, in **Ghaziabad Development Authority v. Balbir Singh (2004) 5 SCC 65**, it was held that the consumer is entitled to compensation for mental agony and harassment due to the deficiency in service.

Applying these principles, it is clear that the opposite party's failure to arrange appropriate insurance coverage constitutes a deficiency in service.

### **C. Liability of the Opposite Party:**

The opposite party is liable for the financial losses and mental agony suffered by the complainant due to their failure to ensure proper insurance coverage. The opposite party's attempt to shift the blame onto the insurance company is unfounded, as the error originated from the opposite party's negligence in providing correct travel details to the insurer.

### **D. Relief to the Complainant:**

Given the facts and circumstances, the Commission finds it just and proper to direct the opposite party to compensate the complainant for the losses and suffering incurred.

*The tour operator, entrusted with the responsibility of ensuring a seamless and safe travel experience, failed in their duty to provide the necessary insurance coverage, a basic yet crucial aspect of international travel. This oversight not only resulted in financial loss but also caused significant emotional distress for the complainant, a 73-year-old senior citizen. As a consumer, the complainant placed his trust in the tour operator, expecting a secure and enjoyable journey. Unfortunately, that trust was betrayed, transforming what should have been a joyful adventure into an ordeal filled with anxiety and hardship. The emotional toll of such an experience, especially for an elderly traveler, is profound, highlighting the gravity of the tour operator's negligence.*

We determine that issue numbers (I) to (IV) are resolved in the complainant's favour due to the significant service deficiency and the unfair trade practices on the part of the opposite party in connection with the unauthorized debit from the complainant's account. Consequently, the complainant has endured considerable inconvenience, mental distress, hardships, and financial losses as a result of the negligence of the opposite party.

In view of the above facts and circumstances of the case, we are of the opinion that the opposite party is liable to compensate the complainant for the unauthorized debit from the complainant's account

**Hence, the prayer is allowed as follows:**

- I. The Opposite Party shall pay ₹25,000/- (Rupees Twenty-Five Thousand Only) to the complainant for the trip cancellation.
- II. The Opposite Party shall refund ₹24,500/- (Rupees Twenty-Four Thousand Five Hundred Only) to the complainant as the additional amount charged for new flight tickets, hotel accommodations, and transportation.
- III. The Opposite Party shall pay ₹15,000/- (Rupees Fifteen Thousand Only) as compensation for mental agony, stress, and tension suffered by the complainant. This amount is awarded for the deficiency in service and unfair trade practices, as well as for the mental agony and physical hardships endured by the complainant.
- IV. The Opposite Party shall pay ₹10,000/- (Rupees Ten Thousand Only) to the complainant towards the cost of the proceedings.

The Opposite Party is mandated to comply with the directives mentioned above within 45 days from the date of receipt of this order. Failure to comply with the payment orders under points I, II, and III will result in interest accruing at the rate of 9% per annum, calculated from the date of filing the complaint (19.08.2022) until the date of full payment realization.

Pronounced in the open Commission on this the 13<sup>th</sup> day of July, 2024

D.B.Binu, President

V.Ramachandran, Member

Sreevidhia.T.N., Member

Appendix