

Date of Filing: 30.10.2023
Date of Order: 05.06.2024

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION – I, HYDERABAD
P r e s e n t

HON'BLE MRS. B. UMA VENKATA SUBBA LAKSHMI, PRESIDENT
HON'BLE MRS. C. LAKSHMI PRASANNA, MEMBER
HON'BLE MRS. D. MADHAVI LATHA, MEMBER

On this the Wednesday, the 05th day of June, 2024.

C.C.No. 505/2023

Between:-

Mr. Syed Javed Akhtar Zaidi,
S/o Late Major General Syed Ali Akhtar Zaidi,
8-2-268/1/7/A, Sri Niketan Colony,
Road No.3, Banjara Hills, Hyderabad.

Represented by GPA holder,
Krishnan Unni P. S/o Late K.V.P. Panicker,
Aged about 62 years, R/o: Plot No. 112C,
Eshwaripuri Colony, Sainikpuri,
Hyderabad -500094, Mobile No. 9246504579.

....Complainant

AND

M/s. INDIGO AIRLINES,
Central Wing, Ground Floor,
Thapar House, 124, Janpath Lane,
Janpath, New Delhi 110001,
Sanjeev, Ramdas@goindigo.in
Main + 91 – 124 -435 2500
Rep. by Mr. Sanjeev Ramdas,
Executive Vice President Consumer Service & Operations,

....Opposite Party

Counsel for the Complainant : Party-In-Person
Counsel for the Opposite party : B. Aruna

O R D E R

(By HON'BLE MRS. C. LAKSHMI PRASANNA, MEMBER
on behalf of the bench)

1. The present complaint is filed U/Sec.35 of The Consumer Protection Act,2019 alleging deficiency of service on the part of the Opposite Party and seeking the following reliefs-
 - i) To pay a sum of Rs.80,000/- (Rupees Eighty Thousand only) towards purchase of clothes, accessories, toiletries etc incurred by the complainant;

- ii) To pay Rs.1,80,000/- towards the cost of Air Ticket and compensation for loss of business and damages suffered by the complainant;
- iii) To pay costs of the litigation.

Brief facts of the case are:-

2. The complainant is represented by his GPA Holder, who is authorized by the complainant vide Ex A-1 dt.06/07/2023. As per the averments of the complaint, the complainant travelled from Jeddah to Hyderabad on 27/06/2023 by Flight No.6E 68, Seat No.4c, PNR No.MSP3QG run by the Opposite Party Airlines, and on arrival at Hyderabad, the complainant's baggage containing personal clothes, important business documents was missing. It is averred by the complainant that on informing the same to the Lost Baggage Section of the Opposite Party, he was told that his baggage would be delivered within the next 12 hours. It is further submitted that the complainant's representative sent an e-mail dt.11/07/2023 (Ex A-6) to the Vice President, Customer Care of the Opposite Party Airlines, when the Opposite Party failed to deliver the complainant's baggage even after several phone calls to the customer care of the Opposite Party. It is submitted by that the complainant's baggage was delivered on 15/07/2023 around 3 pm by the staff of the Opposite Party Airlines after a delay of 18 days from the day it ought to have arrived along with the passenger/complainant herein. It is the case of the complainant that due to the unforeseen incident of non-delivery of his baggage which contained important documents, the purpose of his visit was defeated and most of the business meetings were cancelled due to non-availability of documents etc. and that he had to spend about Rs.80,000/- (Rupees Eighty Thousand Only) to purchase clothes, accessories etc to manage during the 18 days of his stay in Hyderabad, owing to the delay in delivering of his baggage by the Opposite Party. Aggrieved by the same, the present complaint is filed alleging deficiency of service on the part of the Opposite Party and seeking appropriate compensation for the inconvenience and loss caused to the complainant.
3. In the written version, while denying the allegations, the Opposite Party raised the preliminary objection that the complaint is bad for

misjoinder/non-joinder of necessary party i.e the third party travel agent M/s Tek Travels DMCC through whom the complainant booked his ticket for travel on 27/06/2023 on the Flight No.6E-68 of the Opposite Party Airlines. While submitting that the Complainant duly boarded the schedule Flight No.6E-68 along with his luggage bearing Baggage Tag No.0157188409 weighing 23 kgs (check-in luggage) in Jeddah on 27/06/2023 (Ex.B-3) and arrived at Hyderabad Airport, but as he could not find his luggage, he reported the same to the Arrivals in the Hyderabad Airport and lodged a Property Irregularity Report (PIR) at the Hyderabad Airport (Ex B-5), it is contended that there is no deficiency of service as they made all efforts to trace the complainant's luggage and delivered the same on 14/07/2023. It is contended that the Central Baggage Tracing Unit (CBTU) of the Opposite Party immediately initiated tracing of the check-in luggage and forwarded the said issue to their staff at both Jeddah and Hyderabad Airports for their inputs. It is also contended that when the complainant called on 04/07/2023 and on receiving the complainant's mail dt.11/07/2023 enquiring about his luggage, they responded stating that the status of his check-in luggage is under tracing and told to wait. It is submitted that on 13/07/2023, the CBTU team successfully traced the complainant's luggage and informed the complainant and sent a mail dt.13/07/2023 on the same day to the complainant and offered a travel voucher of Rs.3,000/- (Rupees Three Thousand Only) to the complainant as a good will gesture, and finally the complainant's luggage bearing Baggage Tag No.0157188409 was delivered on 14/07/2023 in good condition and the same was acknowledged as per Ex B-4) and thus resolved the issue and closed from their end. It is submitted by the Opposite Party that they take all precautions to avoid any damage, delay or loss of baggage but due to some unforeseeable circumstances, which were neither deliberate nor intentional, the complainant's luggage bearing Baggage Tag No.0157188409 was not delivered on arrival of the passenger/complainant herein on 27/06/2023 but was delivered on 14/07/2023 after successfully tracing the luggage by their CBTU team. Referring to Clause 17 of Schedule-3 of The Carriage by Air Act, 1972, it was contended that in cases of delayed baggage, the liability of the carrier only arises if the carrier fails to deliver the checked-in baggage within a period of

21 days after the date on which it ought to have arrived, and that in the present case, the complainant's luggage was delivered to him with a delay of 17 days after the date on which it ought to have arrived and hence, the complainant has no right to claim for damages or compensation on account of delay in receiving his checked-in luggage as per Clause-17 Schedule -3 of The Carriage by Air Act, 1972. It is further contended that by entering the click-wrap agreement with the Opposite Party Airlines at the time of booking the ticket, the passenger/complainant herein, both the parties are bound by the terms and conditions therein and relied on the Judgment of the Hon'ble Supreme Court in the matter of Inter Globe Aviation Ltd. vs N.Satchidanand (2011) 7 SCC 463 wherein, it was inter alia held that, " *The e-tickets do not contain the complete conditions of carriage but incorporate the conditions of carriage by reference. The interested passengers can ask the airline for a copy of the contract of carriage or visit the web-site and ascertain the same. Placing the conditions of carriage on the web-site and referring to the same in the e-ticket and making copies of conditions of carriage available at the airport counters for inspection is sufficient notice in regard to the terms of conditions of the carriage and will bind the parties. The mere fact that a passenger may not read or may not demand a copy does not mean that he will not be bound by the terms of contract of carriage.*" With the above contentions, it was submitted by the Opposite Party that the complaint is not maintainable and deserves to be dismissed because they have taken all reasonable measures to trace the complainant's luggage and delivered it to him on 14/07/2023 and hence there is no deficiency of service on their part and fortified their arguments with the Judgment of the Hon'ble Apex Court in Ravneet Singh Bagga vs KLM Ryal Dutch Airlines and Anr (2000) 1 SCC 66, wherein it was held that, " *The deficiency in service cannot be alleged without attributing fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be performed by a person in pursuance of a contract or otherwise in relation to any service. The burden of proving the deficiency in service is upon the person who alleges it. The complainant has, on facts, been found to have not established any wilful fault, imperfection, shortcoming or inadequacy in the service of the respondent.*"

4. During the course of enquiry, the Evidence Affidavit was filed by the GPA Holder of the complainant, reiterating the averments of the complaint and Ex A-1 to A-8 including the Invoice of the Airline Ticket, Boarding Pass, Baggage Tag, Property Irregularity Report, E-Mail sent to the Opposite Party and the bills of the expenses incurred by the complainant during the 17 days at Hyderabad and the Airlines ticket payment for Hyd/Delhi Amsterdam/Washington, are marked in support of his claim. The Evidence Affidavit of the Senior Legal Counsel of the Opposite Party is filed on their behalf along with their Vakalatnama and Authorisation Letter and the Copy of the PNR screen shot evidencing the check-in luggage of the complainant, bearing Baggage Tag No.0157188409, copy of the acknowledgment slip dt.14/07/2023 signed by the complainant on receipt of the luggage, copy of the relevant conditions of the Carriage-COC Domestic/International are marked as Ex B-1 to B-5.
5. Based on the material on record, the oral and written submissions of both the parties, the following points have emerged for consideration:
 - Whether the complainant could make out a case of deficiency of service on the part of the Opposite party?
 - Whether the complainant is entitled for the claim/compensation made in the complaint? To what relief?
6. The undisputed facts of the case are that the complainant booked his ticket for travel on 27/06/2023 on the Flight No.6E-68 of the Opposite Party Airlines and it is also not disputed that the Complainant duly boarded the schedule Flight No.6E-68 along with his luggage bearing Baggage Tag No.0157188409 weighing 23 kgs (check-in luggage) in Jeddah on 27/06/2023 (Ex.B-3) and arrived at Hyderabad Airport. It is also not in dispute that the complainant reported at the Opposite Party customer care desk at the Hyderabad Airport about non-delivery of his luggage when he arrived at Hyderabad Airport and lodged a Property Irregularity Report (PIR) at the Hyderabad Airport (Ex B-5). It is the case of the complainant that due to the inordinate delay of 17 days by the Opposite Party in tracing his baggage even after several reminders amounts to deficiency of service on the part of the Opposite Party and are hence liable to compensate for the ensuing loss of

business and additional expenses incurred by the complainant during the 17 days delay in delivery of his baggage after arrival in Hyderabad on 27/06/2023. It is the contention of the Opposite Party that as per Clause 17 of Schedule-3 of The Carriage by Air Act, 1972, in cases of delayed baggage, the liability of the carrier only arises if the carrier fails to deliver the checked-in baggage within a period of 21 days after the date on which it ought to have arrived, and that in the present case, the complainant's luggage was delivered to him with a delay of 17 days after the date on which it ought to have arrived and hence, the complainant has no right to claim for damages or compensation on account of delay in receiving his checked-in luggage as per Clause-17 Schedule -3 of The Carriage by Air Act, 1972.

On the preliminary objection of misjoinder/non-joinder of necessary party taken by the Opposite Party, it is pertinent to mention that in the instant case, the alleged deficiency of service pertains to delay of delivery of checked-in baggage by the Opposite Party Airlines and the consequential inconvenience and loss/damage suffered by the complainant which, by no stretch of imagination relates to the services of the third party travel agent M/s Tek Travels DMCC through whom the complainant booked his ticket for travel on 27/06/2023 on the Flight No.6E-68 of the Opposite Party Airlines. Hence, the said objection is not sustainable.

So, the issues for consideration are

- a) whether the delay of 17 days in delivering the complainant's luggage bearing Baggage Tag No.0157188409 on 14/07/2023 after his arrival in Hyderabad Airport on 27/06/2023 from Jeddah by the Flight No.6E-68 of the Opposite Party Airlines?
- b) If so, whether the complainant is entitled for compensation?

6.1. It is not disputed and is evident from the e-mail dt.13/07/2023 to the Opposite Party filed under Ex A-6/1 the reply e-mail from the Opposite party dt.13/07/2023 filed under Ex A-6/2 that the Opposite Party admittedly acknowledged that there is a delay in delivering the checked-in bag of the complainant and that they would be delivering the same on 14/07/2023 and also offered a travel voucher of Rs.3,000/- (Rupees Three Thousand Only) as a

good will gesture, regretting for the inconvenience caused. However, in the written version the Opposite Party contested that the Complainant is not entitled for any claims as per Clause 117.3 (Page-62 of The Conditions of the Carriage filed under Ex B-5. For better appreciation of the said relevant clause 17.3 read with the provisions of the Carriage by Air Act, 1972 is reproduced hereunder-

“ For damaged, delayed or lost Checked-in Baggage, IndiGo’s liability will be limited in accordance with the provisions of Carriage by Air Act, 1972 and the rules framed thereunder with certain exceptions, adaptations and modifications as notified by the Ministry of Civil Aviation, Government of India, and as amended from time to time. Subject to the foregoing, IndiGo’s liability for lost or damaged Checked-in Baggage is limited to INR 350 per kg. For delayed Checked-in Baggage, Customers agree that IndiGo’s liability shall be limited and determined by IndiGo as per its discretion and based upon its prevailing policy.

IndiGo shall not pay any compensation to Customers on account of any indirect, consequential or remote reasons attributable to IndiGo for lost, delayed or damaged Checked-in Baggage.

IndiGo will not be liable for lost, delayed or damaged Checked-in Baggage to the extent such loss, delay or damage is a result of inherent defect or quality of the Checked-in Baggage or any negligence on part of Customers.

IndiGo shall not be liable for lost, delayed or damaged Checked-in-Baggage if it proves that it took all measures that could reasonably be required to avoid such loss, delay or damage or that it was impossible for it to take such measures.

If IndiGo proves that the negligence or other wrongful act or omission of the Customer claiming compensation, or the person from whom he or she derives his or her rights caused or contributed to the loss, delay or damage to the Checked-in Baggage, IndiGo shall be wholly or partly exonerated from its liability to the extent that such negligence or wrongful act or

omission caused or contributed to such loss, delay or damage to the Checked-in Baggage.

Customers will be solely responsible for carriage of their Hand Baggage / personal belongings and IndiGo will not be liable for any loss or damage in relation thereto.

IndiGo assumes no liability for fragile or perishable articles. IndiGo will not be liable for loss or damage to articles not permitted to be carried in Checked-in Baggage.

IndiGo shall make reasonable endeavours to ensure safe custody of Customer's Baggage while the same is in charge with IndiGo i.e., from checking-in at the departure airport until the placement of the same on the relevant conveyor belt of the arrival airport/ destination.

However, IndiGo assumes no liability for wear and tear to Checked-in Baggage, which includes:

- a) Broken wheels or base;*
- b) Loss of external locks or security straps;*
- c) Damage to any protruding part of the baggage;*
- d) Damage resulting from over-packing;*
- e) Damage to retractable luggage handles;*
- f) Scratches, torn zippers, straps and handles scuffing, denting, soiling or manufacturing defects;*
- g) Damage to perishable or fragile baggage; or*
- h) Any other wear and tear.*

A Customer shall be held solely responsible for any loss or damage caused by the Customer's Checked-in Baggage to any other person or property, including IndiGo's property, and IndiGo will not be held liable to any third person in relation thereto.

The Conditions of Carriage and the exclusions or limits on liability mentioned herein, apply to Travel Agents, servants, employees and representatives of IndiGo to the same extent as are applicable to IndiGo.

It is clarified that IndiGo will not be liable for any loss, delay or damage arising from IndiGo's compliance with applicable laws or from a Customer's failure to comply with the same. In any event, IndiGo's liability shall not exceed the amount of proven damages under any circumstances."

- 6.2. It is further contended by the Opposite Party that both the parties including the passenger/complainant here and the Opposite Party are bound by the terms and conditions of the contract.
- 6.3. It is pertinent to mention that there is neither any contributory negligence on the part of the passenger/complainant herein as mentioned under (a) to (h) in the above-mentioned Clause 17.3 of the Conditions of Carriage nor any inherent defect or quality of the Checked-in Baggage or any negligence on part of Customers. On the other hand, it is categorically mentioned that, *“For damaged, delayed or lost Checked-in Baggage, IndiGo’s liability will be limited in accordance with the provisions of Carriage by Air Act, 1972 and the rules framed thereunder with certain exceptions, adaptations and modifications as notified by the Ministry of Civil Aviation, Government of India, and as amended from time to time.”*
- 6.4. It is also pertinent to mention that in the above mentioned Clause 17.3, it is categorically stated that, *“ IndiGo shall make reasonable endeavours to ensure safe custody of Customer’s Baggage while the same is in charge with IndiGo i.e., from checking-in at the departure airport until the placement of the same on the relevant conveyor belt of the arrival airport/ destination.”*
- 6.5. In the instant case, except for the bald statement by the Opposite Party in para-7(d) of their written version that on being informed by the complainant about non-delivery of his baggage No.0157188409 on arrival at Hyderabad Airport on 27/06/2023, their Central Baggage Tracing Unit (CBTU) Team has initiated tracing of the checked-in baggage of the complainant and forwarded the said issue to their staff at both Jeddah and Hyderabad Airports, there is no evidence on record substantiating the same. The fact that the Opposite Party acknowledged in their e-mail reply dt.13/07/2023 that they regret for the delay in delivering the complainant’s baggage and that it would be delivered on

14/07/2023 along with an offer of Rs.3,000/- (Rupees Three Thousand Only) travel voucher, goes to show that there was delay of 17 days in delivering the baggage of the complainant which ought to have been received on 27/06/2023 on his arrival at the Hyderabad Airport. There is no evidence on record to show the efforts/measures taken by the Opposite Party in tracking and expedite the return of the delayed baggage of the complainant nor informing with any real-time updates via email and SMS regarding its status. It is understandable that the passenger/complainant herein was left high and dry till 13/07/2023 when the Opposite Party informed about the tracing of his baggage and delivery of the same next day. Hence, there is deficiency of service on the part of the Opposite Party for not only providing timely information about the status of the complainant's baggage which was not received on arrival at the destination but also in delivering the baggage after a delay of 17 days from the date of arrival at the destination. Hence, this point is answered in favour of the complainant.

7. In view of the foregoing, the complainant is entitled for compensation along with the incidental expenses incurred during the 17 days delay of delivery of the baggage (from 27/06/2023 i.e the date of arrival in Hyderabad Airport till the checked -in baggage delivered by the Opposite Party on 14/07/2023 (Ex B-5) and the Opposite Party is liable to pay the same to the complainant. The complainant has filed certain bills under Ex A-7 showing various things purchased by him owing to the non-delivery of his checked-in luggage. He also claimed loss of business due to the absence of important documents which were in his checked-in baggage. The complainant also filed an International travel ticket Hyderabad/Delhi/Amsterdam dt.27/07/2023 (Ex A-8) which is not found to be incidental/relevant for the claim under the present complaint. Hence, without going into the veracity or otherwise of the incidental expenses incurred under Ex A-7, the complainant is entitled for reasonable compensation for the inconvenience and mental agony caused by 17 days delay in delivery of his checked in baggage No.0157188409 after his arrival at Hyderabad Airport on 27/06/2023 by the Flight No.6E 68, Seat No.4c, PNR No.MSP3QG

run by the Opposite Party Airlines and the Opposite Party is liable to pay the same to the complainant.

8. In the result, the complaint is allowed in part and the Opposite Party is directed

- i. To pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) towards the incidental expenses incurred by the complainant due to 17 days delay in delivery of the checked-in baggage by the Opposite Party;
- ii. To pay Rs.20,000/- (Rupees Twenty Thousand Only) towards compensation for the loss and inconvenience;
- iii. To pay Rs.10,000/-(Rupees Ten Thousand Only) towards costs of litigation.

This order be complied with by the Opposite Party within 45 days from the date of receipt of the Order, failing which the above-mentioned amount @ S.No. (i) shall carry interest @9% per annum from the date of this order till actual payment.

Dictated to steno, transcribed and typed by him, pronounced by us on this the 05th day of June, 2024.

MEMBER

MEMBER

PRESIDENT

APPENDIX OF EVIDENCE

WITNESS EXAMINED FOR THE COMPLAINANT:

(PW1) Krishnan Unni P.

WITNESS EXAMINED FOR THE OPPOSITE PARTY

(DW1) Raghav Mahajan

EXHIBITS FILED ON BEHALF OF THE COMPLAINANT:

- Ex.A1 Copy of Power of Attorney in favour of Krishnan Unni P. dated 06.07.2023.
- Ex.A2 Copy of Invoice value of the Air ticket dated 25.06.2023.
- Ex.A3 Copy of Boarding pass of Jed – Hyd-Sector-Indigo Airlines dated 27.06.2023.
- Ex.A4 Copy of Baggage Tag No.0157188409 of Jed-Hyd-Sector dated 27.06.2023.
- Ex.A5 Copy of property Irregularity Report of Indigo Airlines date

28.06.2023.

- Ex.A6 Copy of email sent to Indigo Airlines.
- Ex.A7 Copy of purchase bills of clothes, toiletries to the Accessories to the extent available with the complainant including the payments made.
- Ex.A8 Copy of KLM Royal Dutch Air Lines payment made for HYD/DELHI AMSTERDAM/WASHINGTON- Rs 2,20,157/-

EXHIBITS FILED ON BEHALF OF THE OPPOSITE PARTY

- Ex.B1 Copy of letter of authority dated 16.05.2023.
- Ex.B2 Copy of Certificate of Incorporation of InterGlobe Aviation Ltd
- Ex.B3 Copy of PNR screenshot evidencing the check in luggage of the complainant bearing baggage tag No. 0157188409.
- Ex.B4 Copy of acknowledgment slip dated 14.07.2023.
- Ex.B5 Copy of IndiGo CoC – International

MEMBER

MEMBER

PRESIDENT

PSK
READ BY:-
COMPARED BY :-