

Heading1
Heading2

Complaint Case No. CC/367/2014
(Date of Filing : 11 Nov 2014)

1. TARIQ AHMAD DAR
C-122, RAJU PARK, SANIK FARMS, KHANPUR, N D 62Complainant(s)
Versus
1. AKASH GANGA COURIER LTD.
784-785, D.B. GUPTA ROAD, N D 5Opp.Party(s)

BEFORE:

HON'BLE MR. INDER JEET SINGH PRESIDENT
HON'BLE MRS. SHAHINA MEMBER
HON'BLE MR. VYAS MUNI RAI MEMBER

PRESENT:

Dated : 02 May 2023

Final Order / Judgement

Before the District Consumer Dispute Redressal Commission [Central], 5th Floor
ISBT Building, Kashmere Gate, Delhi

Complaint Case No.367/11.11.2014

Tariq Ahmad Dar S/o Shri Ghulam Nabi Dar,
R/o: C-122, Raju Park, Sainik Farms, Khanpur,
New Delhi-110062Complainant
Versus

OP1. Akash Ganga Courier Limited,
Corporate Office: 784 - 785, D. B. G Road, New Delhi - 110005
Also at - Regd Office: Opp. Railway Station, Loonkarasar,
Bikaner, Rajasthan (through its Managing Director) ...Opposite Party no.1

OP2. Managing Director, Akash Ganga Courier Limited,

784 - 785, D. B. G Road, New Delhi - 110005

...Opposite Party no.2

[OP3 M/s R. D. Communications, E-231,

Lajpat Nagar - II, New Delhi - 110024

...Opposite Party no.3]

[OP4. Ravinder Kumar Mukhi, Proprietor

M/s R.D. Communications, E-231,

Lajpat Nagar - II, New Delhi - 110024

...Opposite Party no.4]

Order Reserved on: 01.02.2023

Date of Final Order: 02.05.2023

Coram: Shri Inder Jeet Singh, President

Shri Vyas Muni Rai, Member

Ms. Shahina, Member -Female

Inder Jeet Singh

ORDER

1.1. (Introduction to case of parties) : At the outset, it needs introduction about the status of parties inclusive of their latest position, their relationships as well as the consumer dispute, apart from the development taken place during the pending of the complaint.

1.2. The consumer dispute is that the complainant sent two parcels weighing 58.7kg by single courier to consignee Sh. Ayub of F-38, Lajpat Nagar,-1, New Delhi, through OP3/M/s RD Communications [its proprietor is OP4 Sh. Ravinder Kumar Mukhi], which is franchise of courier company incorporated OP1/ Akash Ganga Courier Ltd. [OP2 is its Managing Director], however, out of two parcels under one courier receipt, one parcel was delivered to the consignee but the second parcel weighing 30 kg containing three carpets worth of Rs. 6,80,000/- [vide cash memo. now Ex. CW-1/2] remained undelivered to the consignee and complaint was filed against all the OPs, for allegations of deficiency of service and unfair trade practices. Police report was also

lodged, initially FIR was not registered but later an FIR no. 438/2013 P.S. Lajpat Nagar, u/s 407 IPC was registered.

The complainant seeks directions to hand over the parcel worth Rs. 6,80,000/-, containing 3 (three) silk Kashmiri carpets of dimensions 8*8 feet, 8*8 feet and 4*4 feet which OPs have failed to deliver to the consignee/addressee, sent by the complainant through OPs; or in alternate to return the cost of the carpets of Rs. 6,80,000/- along with interest @18per annum apart from amount of Rs. 50,000/- towards the acute losses of finances, livelihood, reputation, and also towards the harassment, including physical and mental stress/agonny suffered by the complainant and cost of litigation to the complainant;

1.3. However, OP1 and OP2 opposed the complaint vehemently that neither there is any deficiency of service nor unfair trade practice and the OPs had also lodged police report about misplace of that parcel but the police had not registered the case. Otherwise, as per the terms of courier contract, the OP1 and OP2 were prepared to settle the dispute by offering 4 times of the courier postal charges paid, which was not agreed upon by the complainant. There are no merits in the complaint and the complaint has been filed on the basis of distorted facts and concealing the material facts.

1.4. OP3 and OP4 had not filed any reply.

1.5. On 01.02.2023, when matter was being heard, then a statement at Bar was given on behalf of complainant that in FIR no. 438/2013 P.S. Lajpat Nagar, Delhi that there was compounding of the offence u/s 407 IPC between the present complainant as well as Sh. Ravinder Kumar Mukhi [OP4 herein, who is proprietor of OP3] and statement was given to withdraw the consumer complaint against accused [while referring copy of proceedings dated 03.08.2019 of the Court of Metropolitan Magistrate, Delhi, which is part of record of this complaint case file]. The complaint against OP3 and OP4 was withdrawn on 01.02.2023, pursuant to that proceedings dated 03.08.2019. Consequently, the complaint remained continued against OP1 and OP2. It is under consideration in this order.

2.1 (Case of complainant) : Succinctly, the complainant operates a proprietorship firm under the name Pashmkaar Kashmir to earn his livelihood, he deals in handicraft carpets of various kinds and he gets prepared unique designs of carpets from artisans on credit, which takes roughly one or two years to get completed and after completing of a carpet, it is sent to the buyer along with invoice and on its approval new carpet of same design is manufactured and delivered to the buyer.

On 14.10.2013 the complainant contacted OP1 for sending courier parcel containing two packets of silk Kashmere carpets from Mumbai, Maharastra to Lajpat Nagar, New Delhi and OP1 received the parcel against airway bill no. 90238951 dated 14.10.2013 against courier charges of Rs. 3,540/-, weighing 58.7kg of two packets [consignment memo now Exh. CW-1/2] to be delivered to consignee Mr. Ayub, however, he was delivered only one parcel and the second parcel weighing 30 kg was not delivered to him, for which Mr. Ayub also contacted OP1 repeatedly and he was assured that it would be delivered within due course of time as there was some logistical problem of OP, however, it remained undelivered. Thus, on 16.10.2013 the complainant contacted OP1 on mobile phone, who repeated the false assurances. Whereas, the parcel was worth of Rs.

6,80,000/-, containing 3 (three) silk Kashmiri carpets of dimensions 8*8 feet, 8*8 feet and 4*4 feet against invoice/bill dated 14.10.2013 [now Exh. CW-1/2].

2.2: It was followed by correspondence/letter dated 21.10.2013 [now Exh. CW-1/3] while requesting and asking the OP1 and OP2 to trace and deliver the parcel to the consignee, however, there was no result. But OP4 mischievously written an information dated 21.10.2013 to police [now Exh. CW-1/4] that the parcel was missing on 17.10.2013 from the corporate office of OP1, however, there was no follow-up of that complaint by OP4 and it shows that the said complaint was just an eye-wash.

The complainant also wrote complaint dated 28.10.2013 [now Exh. CW-1/5] while expressing his grievances and requesting the police to do needful as the parcel remained redelivered and to take appropriate action. It is not only the complainant, who is victim of unfair trade practice and deficiency of services on the part of OP1. but there have been many similar cases against OP1. who is found indulging in similar activities [complainant refers case of Kanhiya Lal Pitti vs Naveen Jain R.P. no. 2737/2007 dated 29.08.2011 by Hon'ble National Commission]. It was surprising and shocking for the complainant when he received legal notice dated 26.11.2013 from OP1 and OP2 [its copy is now Exh. CW-1/6], while threatening the complainant to desist from initiating legal proceeding, however, there is clearly an admission in notice of airway bill as well as courier of consignment of two parcels out of which one remained undelivered to the consignee. The OPs were supposed to deliver both the parcels intact to the consignee in time.

2.3: The OP2 took the plea that second parcel could not be delivered because of non-availability of consignee at address, whereas both the parcel ought to have been delivered at the same time. The other plea taken is that the parcel was kept in the office of OP4 and he had left for airport and when he came back the parcel was missing. However, these pleas are absurd and the OPs cannot enrich themselves for goods worth of Rs. 6,80,000/- unlawfully and illegally. Otherwise, the OPs came before the police station after four days of theft as well as on complainant's complaint seeking delivery of articles. There is no substance in the stand taken by the OPs.

However, on 07.12.2013 the complainant brought all the circumstances to the knowledge of police by writing complaint [now Exh. CW-1/7] and police had then recorded formal FIR no. 438/2013 u/s 407 IPC P.S. Lajpat Nagar [now Exh. CW-1/8]. Now, the present complaint.

3.1 (Case of OP1 and OP2) : OPs filed their joint reply and they opposed the complaint vehemently that the complaint is to exert pressure upon the OPs to extort money, otherwise, it is a false complaint. The complainant has concealed true facts. The true facts that on 14.10.2013 a consignment having weight of 58.7kg was booked with OP1 against consignment memo to be delivered from Mumbai to Mr. Ayub Bhai in Lajpat Nagar, New Delhi. The two parcels were hand over to OP4, being proprietor of OP3. Mr. Harish Dayani was an employee of OP3 on daily basis. One parcel weighing 30 kg was not delivered as addressee's premises was found lock on visit twice, it could not be delivered by the delivery boy on 17.10.2013 and he came back and kept the consignment in office. OP4 left the office at about 12:15pm and returned back around 03:00pm, a telephone call was received at 06:00pm from the party that they are available in the office to receive the consignment. At that moment, as per OP3, the parcel was missing from the office and police was informed on 21.10.2013. The OP3 had also lodged police report on 12.11.2013 by registered post as well as through email to Commissioner of Police, Police Headquarter, SHO PS

DGB Road and Lajpat Nagar. But the complainant is giving some other colour to the situation. The police was very quick to register FIR u/s 407 IPC on 10.12.2013 against the Directors of OP1 and also against OP4.

Otherwise, the courier company will be liable to pay four times of the booking amount of the consignment to the consigner, which is as per the terms and conditions printed on the booking slip of company. The complainant had also sent copy of his complaint dated 21.10.2013 to OP1 and OP2, while threatening that he will lodge the FIR against OPs, whereas on the other side, the complainant's report is false and as per the terms and conditions of booking, the OPs were ready to abide the terms and conditions; OPs had also written letter dated 05.11.2013 to the complainant about their willingness. There is neither any fault and negligence nor deficiency of services on the parts of OPs and as a matter of fact, there was theft of parcel for which police was informed and no action was taken against Harish Dayani, who is absconding after committing the theft in the office of OP3. The complaint is liable to be dismissed.

3.2: (Regarding OP3 and OP4) : It is already explained in sub-paragraph no. 1.4, above, that after registration of FIR u/s 407 IPC, the police case was compounded between the complainant and Sh. Ravinder Kumar alias Ravi [i.e. OP4 herein, Proprietor of OP3]. The same Ravi Kumar had paid a sum of Rs. 2,00,000/- to complainant Tariq Ahmad Dar and the complainant had also given statement on 03.08.2019 before Ld. Metropolitan Magistrate that he has settled the case for a sum of Rs. 2,00,000/- as full and final settlement and undertaken to draw the consumer complaint against the accused/ Ravi Kumar. Accordingly, statement at Bar was given on 01.02.2023, the complainant against OP3 and OP4 was withdrawn.

4. (Replication of complainant) : The complainant filed rejoinder dated 20.11.2015 in detail, while opposing the explanations and plea of OP1 and OP2. The rejoinder is composite of reply to allegations of written statement as well as argumentative but simply the complainant reaffirms the complaint and relief claimed as correct.

5.1 (Evidence) : The complainant Tariq Ahmad Dar filed his detailed affidavit of evidence, it is on the lines of complaint with documents.

5.2: Sh. Ashok Kumar Goyal, one of the Directors of OP1, filed his affidavit of evidence for OP1 and OP2, it is also on the pattern of reply of OPs.

6.1. (Final hearing) : The complainant filed its detail written arguments, which reiterates the facts and evidence coupled with responses to the contentions raised by OP1 and OP2. Sh. Mushir Jaidi, Advocate, presented oral contentions on behalf of complainant.

6.2. OP1 and OP2 also filed their joint written arguments, while opposing the complaint on the grounds taken in the written statement as well as the complainant is not a consumer. No oral submissions were made on behalf of OPs.

7.1 (Findings) : The contentions of both the sides are considered as given in detail in the pleadings, documents filed and oral submissions by Sh. Mushir Jaidi, Advocate on behalf of complainant. One query was raised by this Commission whether compounding of offence by the complainant (with OP4) tantamount to be compromise with OP1 and OP2. It has also been responded on behalf of the complainant. However, the contentions of the parties and query replied are not repeated here as the same will be discussed appropriately.

7.2. The OP1 and OP2 has raised an issue that the complainant is not a consumer within the Consumer Protection Act, since the complainant has been carrying on commercial activities of manufacturing/ designing carpets from other workers. OPs have relied upon Birla Technologies Ltd. Vs National Glass and Allied Industry Ltd. 2011(1) CPC 580(SC), that when services are hired or availed for commercial purposes, the complaint under the Consumer Protection Act is not maintainable. However, the complainant has reservations that he earns his livelihood by sale of carpets. the carpets are got prepared on credit from artisans, they take time from one year to two years and artisans are paid from the sale proceeds of such carpets. Thus, the complainant is a consumer.

The answer to this quest and objection is in the pleading and evidence itself, it is paragraph no. 1 of the complaint and paragraphs no. 2 & 3 of the affidavit of the complainant r/w cash memo Exh. CW-1/2 that complainant earns his livelihood by operating a proprietorship concern Pashmkaar Kashmir and various kinds of handicraft carpets are got prepared from the artisans on credit basis. There is no other contrary evidence by the OP1 and OP2 to rebut this evidence of complainant. The circumstances of the present case are distinguishable from the case of Birla Technology Ltd. (supra) as well as in the present case, it is the complainant who availed services of OPs of sending the parcel through courier and the establishment of complainant is for earning his own livelihood. Therefore, the complainant is involved in this assignment/ job to earn his livelihood and the subject carpets were part of that job of complainant. Therefore, he is a consumer covered under the Consumer Protection Act.

7.3. Accordingly to case of OPs there is no deficiency of services as one of the parcel had reached to the consignee and another parcel was stolen, for which OPs had no control as theft took place in the office of OP3 and OP4. Despite so, the parties are bound by the terms and conditions of the consignment memo, at the most the OPs may be liable four times of the courier charges/ consideration paid. The OPs are referring clause 2 of consignment memo[of Exh. CW-1/1], as its plea. On the other side, the complainant has strong reservations, since there are two parcels, both of them ought to have been delivered together, however, one parcel was delivered to the consignee and other was not delivered, whereas, both the parcels were booked under a single consignment memo. There is no explanation by the OPs for delivering only single parcel at its first instance. The other plea of OPs that there was Harish Dayani in the office of OP3 and OP4, it was misplaced or OPs had approached the police but FIR was not registered, if there was actually theft of parcel there would have been FIR otherwise course u/s 156(3) CrPC could have been availed, since there was huge amount involved. It amounts to deficiency in services.

7.3A By comparing the submissions of both sides, the core question is whether there was deficiency of services? The complainant booked the parcel for its delivery to the consignee, which is undisputed fact. The services of courier are commenced the moment the parcel is booked and it remains continue till the parcel reaches intact to the consignee/addressee at its destination. It has

not happened in one parcel, out of two parcels sent by courier. In other words, since the second parcel had not reached to the addressee, there is deficiency of services. The OPs are taking intervening circumstances that prior to delivering the second parcel to the consignee, the second parcel was misplaced or stolen. However, this plea of intervening circumstances are not helping the OPs, for reasons, firstly - no circumstances are explained as to why both the parcels were not delivered together being under a single consignment memo number and secondly if the second parcel was misplaced from the office of OPs, it was lapsed or negligence on their part, for which complainant cannot be made to suffer. Last but not least, the OPs have filed no document mentioned with the reply or affidavit of evidence to fortify their own plea. Thus, there is deficiency of service as well as negligence on the part of OPs.

7.4. The complainant contends that he is entitled for invoice amount of cash memo (Exh.CW1/2) as a damages/compensation to reconstitute the claim. Although, the OPs defend themselves that four times of the booking amount is to be compensated, however, it is not plausible from any corner. The un-delivered parcel was containing three carpets worth of Rs. 6,80,000/- and courier charges were Rs. 3,540/-. The OPs have indulged in unfair trade practice and there is also deficiency of service apart from their negligence, the complainant should not suffer because of their faults. In Kanhiya Lal Pitti case (supra), it was same Akash Ganga Courier Limited (OP1 herein) found guilty, it was also held that the courier slip are unilateral in nature and it cannot be construed to be contract containing terms and conditions in the absence of signature of both parties; it was directed to pay equal amount of price of lost goods packed in the parcel, apart from other relief. Similarly, the OPs are liable to reimburse amount of Rs. 6,80,000/-, besides other relief of compensation on account of mental agony, harassment and costs.

Since, it was enquired about the impact of compounding of the offence with OP4 as well as received of amount of Rs. 2,00,000/- by complainant. It was responded that the complainant is fair, he does not want enrich at the costs of others, therefore, the amount of Rs. 2,00,000/- received from OP4 may be reduced from the amount of Rs. 6,80,000/-. Moreover, compounding of the offence with OP4 does not exonerate the OP1 and OP2 from their liabilities, since OP3 is franchise of OP1 and OP4 is proprietor of OP3 as well as compounding of offence was with OP4, that it why specific statement was given to withdraw the consumer complaint against OP4 herein.

Whereas, on the other side OP1 and OP2 have reservations in their plea, that consignment memo is a contract between the parties and the OPs cannot be fastened with any liability of any amount, particularly there was no deficiency of service or unfair trade practice. The maximum liability could be four time of the courier charges paid, otherwise the same is also not liable to be paid, when there is a theft or misplacement of articles.

7.4A: It is crystal clear that there is rival plea, however, the complainant is referring the case of Kanhiya Lal Pitti (supra), wherein similar circumstances of courier receipt of memo was taken and defended by the same party Akash Ganga Courier Ltd., the situation in the present case is also identical that consignment memo is a unilateral slip issued by OP1 at the time of booking the consignment from Maharashtra to Lajpat Nagar, New Delhi, it does not bear signature of both the parties to be construed a bilateral contract of terms and conditions between the parties, therefore, the plea of OPs are not plausible that four time of the courier charges will be payable. Since there is deficiency of services on the part of OPs, there was also FIR u/s 407 IPC against the employee of OPs and under these circumstances there is no reason for the complainant to suffer thereof.

Therefore, the complainant is held entitled for amount of Rs.6,80,000/- of consignment/parcel containing carpets, which the complainant had suffered on account of un-delivery of parcel to the consignee.

7.6. However, there for formal police FIR against OP4, who is proprietor of OP3, there was compounding of offence and complainant has received Rs.2,00,000/- from OP4, that amount of Rs.2,00,000/- required is to be reduced from the claim amount of Rs.6,80,000/-.

8.1. Thus, complainant is held entitled for balance amount of Rs.4,80,000/- (i.e. Rs.6,80,000/- less Rs.2,00,000/-) from OP1 & OP2. The complainant has sought interest @18% pa, however, considering facts & features of case as well as they were deprived of property, the interest @ 6%pa would be justified for both ends, interest will be from the date of complaint till realisation of amount against the OP1 and OP2.

8.2. The complainant has also sought damages of Rs.50,000/- towards harassment and mental agony; considering totality these circumstances including the breach of their confidence, damages are quantified as Rs 15,000/- apart from cost of litigation of Rs.5,000/-in their favour and against the OP1 & OP2.

8.3. Accordingly, the complaint is allowed in favour of complainant and against the OP1 & OP2, jointly and severally, to pay amount of Rs. 4,80,000/- along-with simple interest @ 6%pa from the date of complaint till realization of amount; apart from to pay damages of Rs.15,000/- & costs of Rs.5,000/- to complainant.

OP1 & OP2 are also directed to pay the amount within 30 days from the date of receipt of this order. In case amount is not paid within 30 days from the date of receipt of order, the interest rate will be increased to 9% per annum on amount of Rs.4,80,000/-.

9. In view of above conclusions, the complaint is disposed off. Copy of this Order be sent/provided forthwith to the parties free of cost as per rules for necessary compliance.

10: Announced on this 2nd May, 2023 [वैशाख 12 , साका 1945].

[Vyas Muni Rai]

Member

[Shahina]

Member (Female)

[Inder Jeet Singh]

President

**[HON'BLE MR. INDER JEET SINGH]
PRESIDENT**

**[HON'BLE MRS. SHAHINA]
MEMBER**

**[HON'BLE MR. VYAS MUNI RAI]
MEMBER**