

BEFORE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION

MUMBAI- SUBURBAN.

**New Administrative Building, Third Floor,
Opp. Dr. Babasaheb Ambedkar Garden, Bandra (East),
District- Mumbai Suburban - 400051.**

Complaint No.	DCDRC/MS/ CC/329/2019
Date of Admission	11/02/2019
Judgment Date	21/03/2024
Duration	05 Years 01 Month 10 Days

Shri. Mohit Nigam
Age – 33 Years, Occupation - Service
Flat No. 102, Oliva Apartments,
Bhakta Kavi Shivaji Deshbai Marg, : Complainant
Govandi East, Mumbai- 400088.

V/s.

1. Air India Ltd,
Through, The Regional Director (WR),
Air India Ltd, Transport Complex Building,
Opposite Terminal 1B, CIS Airport,
Vile Parle (E), Mumbai- 400099.

2. The Chairman, Air India,
Air India Ltd (Head Office), 113, Airline House,
Gurudwara Rakabganj Road, Parliament Street, : Opponents
New Delhi – 110001

3. The Officer-in-charge,
Air India Mumbai Office
Air India Building, 235, Vidhan Bhavan Marg,
Nariman Point, Mumbai, Maharashtra 400021

Before: Hon'ble Smt. Samindara R. Surve, President
Hon'ble Shri. Sanjay S. Jagdale, Member
Hon'ble Shri. Sameer Kamble, Member

Complainant : In Person
Advocate for Opponents : Adv. Hussian, Adv. Ghanshyam Patil

JUDGMENT

(Declared on: 21-03-2024)

PER: Hon'ble Mr. Sanjay Sarjerao Jagdale

This is a complaint under the provisions of Section 35 of the Consumer Protection Act, 2019 (for short the "said Act"), against the opponent.

2. In brief, the complainant's case is as-

The complainant had booked return ticket of Indian Airlines from Bangkok to Mumbai. The complainant reached Suvarnabhumi Airport Bangkok at three hours prior to scheduled departure, collected his boarding pass and kept waiting at the boarding gate for departure of flight but it was delayed further. The complainant and passengers were informed that flight will depart at 3:00 a.m. So, all the passengers boarded the plane and anxiously waited for departure of the plane. Later on, an announcement was done that flight has been cancelled. This confusion continued till 5:00 am and afterwards temporary accommodation of the complainant and other passengers was done in a hotel at remote place. Cancellation of flight was due to pure negligence and callous conduct of the opposite party in not following the routine operational procedure. There was gross negligence and deficiency in service of the opponents. The complainant suffered mental agony, harassment, he suffered starvation and inconvenience for more than 24 hours. Hence, this complaint for compensation towards inconvenience, physical and

mental agony, sleep deprivation and loss of work.

3. Upon receiving notice of the present proceeding, the opponents appeared through advocate. The opponent filed written statement and highly resisted all the allegations. Opposite party denied allegations of negligence, reckless behavior or any other form of deficiency in services. They have acted fairly and reasonably; delay was caused due to operational reason beyond their control. All the information regarding cancelation/delay of flight was communicated to all the passengers including the complainant. All the passengers and the complainant were accommodated in nearby hotels and were provided with refreshment meal.

4. Both the parties have filed their respective evidence affidavits and supporting documents. Read written argument of the complainant. Perused documentary evidence placed on record by both the parties.

5. Having regard to pleadings, documents, following points arose for our determination, along with reasons and findings thereon are as: -

SR.No.	POINTS	FINDINGS
1	Whether the complainant is consumer of the opponent?	Yes
2	Whether there is any deficiency in service or unfair trade practice by the opponent?	Yes
3	Whether the complainant is entitled to get compensation and costs?	Yes
4	Whether the complainant is entitled to get refund of tickets?	No
5	What order?	The complaint is allowed.

REASONS

AS TO POINT NO.1: -

6. It is not disputed that the complainant purchased air ticket of the opponent's flight from Bangkok to Mumbai, said scheduled flight was delayed, then rescheduled and cancelled. It is also not disputed that the opponent provided alternate halt arrangement in a hotel to all the passengers till availability of crew to fly the plane.

7. The Opponent has raised objection that this Commission has no territorial jurisdiction to decide present complaint and separate application was filed by Opponents. It has been decided holding that services are carried out within the jurisdiction of the Commission. The complainant has placed on record copy of air ticket from Bangkok to Mumbai. Thus, the complainant has established that he availed services from the opponent by purchasing air ticket. It goes to show consumer-service provider relation between the complainant and the opponent. The opponent has not denied these facts. Thus, it is clear that there is consumer-service provider relation exists between the complainant and the opponent. Hence, we answer point no.1 in the affirmative.

AS TO POINT NO.2 AND 3: -

8. Main grievance of the complainant is that the flight was delayed due to pure negligence and callous conduct of the opposite party. The opposite party did not follow the routine operational procedures, which are mandatory to be carried out prior to departure of the flight. As a result, flight was delayed almost for 24 hours, during this time gap, the complainant was suffered starvation, lack of sleep, discomfort and agony. The complainant made repeated correspondence and requests with the opponent to compensate him but there was no response. To support the claim, the complainant has produced following documents:

Annexure - 1	-	A Copy of Flight Ticket.
Annexure - 2	-	New Departure time as 2330 LT.
Annexure - 3	-	Display screen at the boarding gate.
Annexure- 4, 5, 7 to 10, 13, 14	-	Twitter Messages.
Annexure - 6	-	Flight-1331 Cancellation Announcement by Captain & Crew at 0300 LT.
Annexure- 11, 12, 15 to 17	-	News Article.

9. The complainant has submitted above documents as evidence to show that flight was delayed and cancelled. Contention of complainant is that flight from Bangkok to Mumbai was cancelled due to sheer negligence, reckless behavior of opponent and not following mandatory operational guidelines. The information regarding the cancelation/delay of flight was not communicated in time, so they had to face hardships.

10. The opponent has denied all these facts and came with specific defence that during delayed period complainant and all passengers were informed about time-to-time status of concern flight and finally at 03.00 LT they have cancel the flight and accordingly announced so. It was informed to the complainant and passengers that they will be accommodated in next flight which was to depart at 19.00 LT. In between, accommodation of passengers and the complainant was done in a hotel with full facilities, meals, refreshment and were informed time to time about status of flight to depart from Bangkok to Mumbai.

11. The opponent has narrated chain of events, which happened at Bangkok Air Station, as per report of 'passenger duty manager' from Bangkok. Same is reproduced as under-

At 17.30 LT		Check-in Counter open / No information regarding delay of incoming flight at Bangkok.
At 19.30 LT		Check-in Counter was closed / No information regarding delay of incoming flight at Bangkok.
At 19.50 LT		Information Received: Incoming flight was delayed as aircraft return bay at Delhi Airport due to operational reason.
At 22.00 LT		Incoming flight AI-332 will arrive at 01.30 LT then new departure of AI-331 was set at 02.30 LT. Announcement done in front of Gate-5.
At 02.30 LT		After incoming flight AI-332 landed, the third information was announced for new departure time at 02.50 LT. Gate controller made an announcement inside the boarding gate.
At 03.00 LT		Captain and crew made an announcement that flight is cancelled.

12. The opponent stated that flight got delayed due to operational reasons beyond their control. The flight originated from New Delhi to Bangkok and from Bangkok to Mumbai. The flight was delayed at origin station i.e. New Delhi to reach destination at Bangkok and also after arrival at Bangkok. The opponent tried to send another plane within stipulated time but it was required to be cancelled due to Flight duty time and Flight time limitations as per DGCA guidelines. Accordingly, all passengers were informed that flight will operate on next date after crew fulfill time limitations as per DGCA guidelines.

13. At Bangkok Airport, the opponent followed all the rules of Civil Aviation Requirement. The opponent has offered all the facilities to passengers, when the flight was required to be cancelled. Even if, any inconvenience caused to the complainant due to cancelation of the flight, it cannot be said that it was done due to malafide intention or reckless behavior. The opponent had informed the complainant about delay/cancelation of flight and at their end they provided accommodation, refreshment, meal to all passengers and the complainant. This shows bonafide intention of the opponent.

14. Delay of almost 24 hours in departure of flight seems to have caused because the opponent at New Delhi Airport did not follow the scheduled mandatory requirements, which should have been done before departure of the flight. It was duty of the opponent to follow mandatory checkups before departure of flight, in which they failed. The RTI document submitted by the complainant clearly establishes the mistake on the part of the opponent. In fact, it seems that the opponent took necessary precaution to rectify missed out mandatory operational procedure. It was much needed to avoid possible unhappy event/incident, which might have resulted into threat to safety of passengers. Thus, act of the opponent was apparently out of extra precaution even though it was result of negligence. It cannot be overlooked that this has caused inconvenience and mental agony to the complainant, for which he is entitled to be compensated. So, the opponent has to take responsibility for deficiency in service. It cannot pass on his responsibility to agent or employee. Thus, the complainant has shown deficiency in service at the hands of the opponent. Therefore, the complainant is entitled to get compensation. For these reasons, complaint will have to be allowed. So, we record finding to point no.2 and 3 in the positive.

AS TO POINT NO.4: -

15. The complainant has claimed for refund of ticket fare for both sides. The complainant travelled hassle free from Mumbai to Bangkok, there was no complaint regarding service of the opponent about this part of journey, still he requested for refund of fare of both sides. The complainant's claim for refund of ticket is not justified because he has availed service and did travel. Even though flight was cancelled, the complainant utilized the services of alternate flight. It is not the case that the complainant had to bear additional expenses to purchase another air-ticket. Therefore, this prayer is not justified. So, we answer point no.4 in the negative.

AS TO POINT NO.5: -

16. Considering finding recorded on above points, we have arrived at conclusion that there is deficiency in service on the part of the opponent but at the same time the opponent had taken all care, which was required to be taken when there was delay/cancelation of flight. As the complainant has pointed out deficiency in service of the opponent, he is entitled to get compensation for physical and mental agony, loss of work but not fully what he has prayed i.e. refund of ticket at both ends. It will be proper to impose costs of litigation upon the opponent. Considering nature of relief claimed it will be proper to award ₹10,000/- as litigation costs to the complainant. With this, we conclude that the complaint is liable to be partly allowed. Accordingly, in answer to point no.5 we pass following order-

ORDER

1. The complaint is partly allowed with costs.
2. The opponent is directed to pay compensation of ₹75,000/- to the complainant towards physical and mental agony, loss of work, within a period of 60 days from the receipt of this order.
3. The opponent shall pay ₹10,000/- towards cost of present complaint, within 60 days from receipt of this order.
4. Copy be given to both parties, free of costs.

Date : 21/03/2024.

Place: Bandra – Mumbai

Sd/-

Sameer S. Kamble
Member

Sd/-

Sanjay S. Jagdale
Member

Sd/-

Samindara R. Surve
President