

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,  
BIHAR, PATNA  
FINAL ORDER**

**First Appeal No. A/126/2018  
( Date of Filing : 03 May 2018 )  
( Arisen out of Order Dated in Case No. of District )**

1. Jet Airways (India) Ltd.

Siroya Centre Shara Airport Road, Andheri (E), Mumbai-  
400099

.....Appellant(s)

Versus

1. Dhanpat Kumar Jain

Resident of Village- Mill Road, Near Mahabir Mandir, District-  
Khagaria

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. JUSTICE SANJAY KUMAR PRESIDENT  
RAM PRAWESH DAS MEMBER**

**PRESENT:**

**Dated : 27 Jul 2023**

**Final Order / Judgement  
STATE CONSUMER DISPUTE REDRESSAL COMMISSION  
BIHAR, PATNA  
Appeal No. 126 of 2018**

Jet Airways (India) Ltd. Siroya Centre Shara Airport Road, Andheri (E), Mumbai-400099

**Appellant**

...

**Versus**

Mr. Dhanpat Kumar Jain, R/o- Village- Mill Road, Near Mahabir Mandir, District- Khagaria

**Respondent**

....

**Counsel for the Appellant:** Adv. Pankaj Kumar Mahta

**Counsel for the Respondent:** Adv. Kaushal

**Before,**

**Hon'ble Mr. Justice Sanjay Kumar, President**

**Mr. Ram Prawesh Das, Member**

**Dated 27.07.2023**

**As per Sanjay Kumar, President.**

**Order**

1. Present appeal has been preferred by appellant/opposite party/Jet Airways (India) Ltd. for setting aside the order dated 31.03.2018 passed by Ld. District Consumer Forum, Khagaria in Consumer Complaint no. 37 of 2017 whereby and whereunder the Ld. District Consumer Forum, Khagaria has directed appellant to pay a sum of Rs. 2,80,000/- for loss suffered by complainant.
2. Briefly stated the facts of the case is that complainant Dhanpat Kumar Jain was traveling from Delhi to Patna by flight no. 9W727 on 07.06.2007 from Jet Airways and before check in he deposited luggage at the counter but when the flight arrived at Patna Airport his luggage (trolley bag) containing his house keys bunch, medicines, important documents, dress material, blank cheques and business documents etc were found missing.
3. Complainant contacted ground staff at Patna Airport in respect of missing luggage. He was asked for boarding pass. On verification he was informed that boarding pass was not stamped with the dispatch batch number as such he was advised to wait for next flight to come but his luggage could not be traced and thereafter he lodged a written complaint but even after 4 months complainant can not get his luggage.
4. Complainant send legal notice upon which his advocate received reply that there was no proof/evidence of check in luggage in absence of luggage tag or any check in baggage record in the system as such Jet Airways is not liable to pay any compensation with respect to alleged missing baggage.
5. Complainant thereafter filed consumer Complaint case in the District consumer Forum, Khagaria for compensation for loss suffered by him with interest and cost of litigation.
6. Upon notice opposite party appeared and filed its written statement
7. In written statement it was stated that complainant has not approached consumer Forum with clean hand and has presented a concocted story and fake claims. As per PIR (Property irregularity report) filed and signed by the complainant from which it is evident that the alleged bag of the complainant contained only clothes and medicines, cost of which was not disclosed in the value of goods column of the PIR.
8. As per check in history of the complainant it is evident that he was not carrying any bag at the time of boarding the flight from Delhi and he did not checked in any baggage at the counter of the opposite party on the flight 9W727 on 07.06.2017.
9. As per provisions of Rule 22 of the carriage Act 1972 dated 17.01.2014 as amended time to time and notification of Ministry of Civil Aviation, the liability of the air line is limited to Rs. 20,000/- for the loss in respect of the loss, destruction and delay of the passenger's

baggage. As per rule 22 of the said Act, in case of passenger did not declare the value and content of baggage at the time of the check in and not paid the supplementary sum based on the declared value of the content of check in baggage, then in case of the loss, destruction and delay of check in baggage the liability is limited to Rs. 20,000/- only

10. In present case complainant has not check in any baggage with opposite party nor declared the value of alleged baggage which he claimed to have submitted and lost at the time of boarding the flight 9W727 on 07.06.2017 from Delhi to Patna. Complainant did not deposit any baggage at the check in counter.
11. On arrival at Patna airport the complainant complained to the staff of the opposite party that he did not receive his bag. The staff verified the check in records and the boarding pass of the complainant which revealed that complainant did not check in any baggage at the time of check in of the flight on 07.06.2017 at Delhi Airport. Complainant has mentioned in the PIR (Property irregularity report) that he was carrying a diplomatic bag, now he is claiming that it was trolley bag which creates serious doubt about the bonafide of complain.
12. Check in history as well as boarding pass of the complainant shows that he was not carrying any luggage at the time of boarding the flight from Delhi. Subsequently, it has been alleged that bag was carrying house key bunch, important documents, dress materials, blank cheques and business documents. Upon receiving grievances of the complainant, the staff on the Patna airport has registered his complaint out of courtesy and as a good will gesture and property irregularity report (PIR) was accepted in which complainant had himself declared bag was having clothes and medicines only.
13. In support of his claim case parties have filed following documentary evidences.

Complainant (i). Written complaint dated 07<sup>th</sup> June, 2017 given to working staff at Patna Airport. (ii)....., (iii) flight ticket dated 07.06.2017 of Jet Airways.

Opposite party (i). Photo copy of PIR, (ii) photo copy of check history of complainant, (iii) photo copy of notification dated 17.01.2014 issued by Ministry of Civil Aviation.

14. The District Consumer Forum after considering and appreciating the materials available on record has held that complainant is a consumer.
15. The District Consumer Forum has held that since part of cause of action has arisen within territory of Khagaria as such District Consumer Forum, Khagaria has territorial jurisdiction over the subject matter.
16. The District Consumer Forum has held that on perusal of photocopy of PIR it transpires that complainant has mentioned bag to have clothes and medicines only. Complainant is contractor which appears from documents filed by him. Considering above facts and circumstances of the case the forum comes to conclusion that opposite party has committed deficiency in service accordingly opposite party is directed to pay a sum of Rs. 2,00,000/- for loss of business and Rs. 50,000/- towards cost of medicine and treatment, Rs. 20,000/- towards cost of clothes and Rs. 5,000/- for physical and mental harassment and Rs. 5,000/- towards cost of litigation.
17. Aggrieved by judgment and order dated 31.03.2018 passed by Ld. District Consumer Forum, Khagaria in Consumer complaint case no. 37 of 2017 appellant/opposite party has preferred this appeal.
18. It is submitted on behalf of counsel for the appellant that the District Consumer Forum has failed to consider that complainant was not carrying any luggage at the time of boarding flight from Delhi and never checked in any baggage at the counter of the opposite party on

flight 9W727. Complainant has not placed on record even a single document to substantiate his claim of having deposited any luggage with the opposite party.

19. The Ld. District Forum has also failed to consider the Rule 22 of the Carriage by Air Act, 1972 as amended by Carriage by Air (Amendment) Act, 2009 and notification issued by Ministry of Civil Aviation dated 17.01.2014 which clearly states that in case of loss, destruction and delay of passengers bag where passengers has not declared value of luggage at the time of check in and not paid the supplementary sum based on the declared value of the content of his or her check in baggage, liability of Airlines is limited to Rs. 20,000/- (Rupees Twenty thousand) only calculated on the basis of weight of the luggage. In the instant case, the respondent was not eligible for even a single rupee because he has neither checked in any baggage nor declared any value of baggage and paid any supplementary amount.

The Ld. District forum has not considered that as per the PIR (Property irregularity Report) filed by the Respondent alleged baggage only contained clothes and medicines, whose value was not disclosed whereas in complainant has demanded a huge amount of Rs. 9,00,000/- for losing bunch of house keys, important documents including documents related to business without any evidence in support like invoice etc.

20. On the other hand counsel for the respondent has supported the judgment and order passed by the District Consumer Forum, Khagaria and submits that there is no error or infirmity in the judgment and order requiring any interference in appeal. The judgment and order is well considered and passed after proper appreciation of evidence on record.
21. Heard the parties.
22. It is settled law that onus to prove allegation made in complaint petition lies on the complainant. A mere averment in complaint by no stretch of imagination can be said to be evidence. To indicate deficiency in service there should be material available on record or else appropriate evidence should be tendered.
23. It is a known practice that at the time of check in airline issues baggage identification tag to the passenger. The said tag is tied on the bag and one part of such tag i.e called stub stick is stuck on the boarding pass for the identification of the bag on arrival of the flight. In case of complainant same was missing which shows that either complainant was not carrying any bag or was not vigilant at the time of check in of his baggage. Complainant can not take advantage of his own negligence and latches. The boarding pass of the complainant was not marked with any check in luggage.
24. On complaint made by complaint opposite party conducted enquiry with respect to missing baggage. Opposite party have checked all possible areas to locate baggage but check in baggage records in the system did not reflect any check in bag. Effort made by opposite party to trace bag on complaint made by complainant does not mean that opposite party has accepted loss of baggage. There was no evidence of checked in baggage due to absence of baggage to tag or any check in baggage record in the system.
25. There is no evidence on record to establish that complainant had deposited his bag at the counter, however, on complaint made by complainant all possible steps were taken to trace the bag but even in check in baggage record it was found that complainant had not deposited any bag at the counter as such there was no marking made in boarding pass of complainant.
26. Complainant has miserably failed in establish that he was carrying any bag with him and had deposited his bag at the counter at the time of check in and no evidence was produced by complainant to prove such fact. Mere assertion made is not sufficient to prove any fact.

27. The District Consumer Forum without considering and appreciating any evidence and its relevancy or reliability has come to an abrupt conclusion that deficiency in service of opposite party stands proved.
28. The finding recorded by District Consumer Forum, Khagaria is erroneous and perverse and based upon assumption-presumption and *ipse-dixit* as such is neither sustainable in law nor on fact and is accordingly set aside.
29. **Appeal is allowed** and complaint case no. 37 of 2017 filed in District Consumer Forum, Khagaria is dismissed.

(Ram Prawesh Das)  
Kumar,J)

(Sanjay

Member  
President

Md. Fariduzzama

**[HON'BLE MR. JUSTICE SANJAY KUMAR]  
PRESIDENT**

**[ RAM PRAWESH DAS]  
MEMBER**