

IN THE DELHI STATE CONSUMER DISPUTES
REDRESSAL COMMISSION

Date of Institution: 08.08.2014

Date of hearing: 04.01.2023

Date of Decision: 01.03.2023

FIRST APPEAL NO.-791/2014

IN THE MATTER OF

M/S. LUFTHANSA GERMAN AIRLINES,
12TH FLOOR BUILDING NO. 10,
TOWER B, DLF CYBER CITY,
PHASE II GURGAON.

(Through: Ms. Neelam Rathore, Advocates)

...Appellant

VERSUS

MR. RAJEEV VEDERAH,
47, PASCHIMI MARG,
VASANT VIHAR,
NEW DELHI-110057.

(Through: Mr. Kapil Kher, Advocate)

...Respondent

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)****HON'BLE MS. PINKI, MEMBER (JUDICIAL)****HON'BLE MR. J.P. AGRAWAL (GENERAL)**

Present: Mr. Shaantanu Devansh & Ms. Neelam Rathore, Counsel for the Appellant
Ms. Chakshu Thakral, proxy counsel for Mr. Kapil Kher, Counsel for the Respondent.

PER : HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT**JUDGMENT**

1. The facts of the case as per the District Commission record are as under:

“The complaint of deficiency is in respect of compensation for anxiety, harassment, mental agony and loss suffered by complainant by loss of 7 baggags in their journey with OP Airlines on 11th July, 2007, from Frankfurt to London, when he came to know that all the baggags were missing. Besides suffering anxiety, they incurred expenditure of USD 4,865/- to purchase the essentials. They did lot of running about e-mails, calls etc., and received 3 bags on 12th July, and returned 15th July, one more on 17th July, and returned to New Delhi, still with 2 bags missing on 07.07.2007. One bag was again delivered on 25.07.2007, and lastly on 24th August 2007, he received last bag in ransacked condition with all valuable stolen. He intimated the same to OP. The OP on 27th August 2007, also sent two cheques of Rs.67,875/- each, as

compensation towards full and final settlement. The complainant alleges all this compensation is inadequate being based on unlimited liability under the carriage by Air Act and sends compensation for suffering by the complainant. The valuable cost in the ransack bags were intimated to OP, valuing at USD 10,000/-.”

2. The District Forum after taking into consideration the material available on record passed the order dated **01.07.2014**, whereby it held as under:

“We have considered the reply, evidence, correspondence between the parties, evidence and submissions made, and other material on record. The Ld. Counsel for the complainant has filed case Law of Delhi State Commission in the case of Sh. R.K. Anand Vs. Lufthansa Airlines, in which the President Hon’ble Justice T.P. Kapoor, elaborated on the compensation for deficiency by loss of bags, imperfection in services, in addition to limited liability bound on weight of lost bags and many other judgments on some aspects placed on record. The shock of the passengers, anxiety and agony cannot but can only be imagined, when one is in foreign land and has to run here and there to arrange funds and to buy essentials, he suffers the purpose of journey and his time is spent in brooding and contact authorities rather than on his purpose of visit abroad. To come back to India with missing luggage is ruinous. All this is due to negligence of OP staff in rendering perfect services, and limited liability does not absolves it. In our considered view,

complainant is liable to be compensation for loss of goods ransacked as well as for harassment, litigation expenses to get adequate compensation, and mental and physical loss suffered. We direct OP to pay for loss goods by paying USD 5,000/- and pay Rs.1.5 lakh for harassment and litigation expenses etc.

3. Aggrieved by the aforesaid Judgment of the District Commission, the Appellant has preferred the present appeal, contending that, the District Commission failed to appreciate the fact that there was no evidence of any damage or alleged value of the articles in the present case. Moreover, the award USD 5000/- on account of alleged loss of goods is unfair on the part of the Appellant. Lastly, the Appellant contended that the Appellant Company has already sent two cheques, each of Rs.61,875, to the Respondent under the Montreal Convention 2006 as a goodwill gesture. Pressing the aforesaid contentions, the Appellant prayed for setting aside the impugned order of the District Commission.
4. The Respondent, on the other hand, has filed reply to the present appeal wherein, he denied all the allegations of the Appellant and submitted that there is no error in the impugned Judgment as the entire material available on record was properly scrutinized before passing the said Judgment.
5. We have perused the material available on record and heard the counsel for both the parties.
6. The *only question* before us is *whether the Appellant is liable to pay more than Rs.1,23,750/- (two cheques of Rs.61,875/-) to the Respondent as compensation.*

7. The Appellant contended that the District Commission has wrongly awarded the Respondent despite of the fact that there was no evidence of any damage or alleged value of the articles in the present case. On perusal of record, we find that when the Respondent/Complainant travelled from Frankfurt to London, all his 7 baggages were missing out of which 6 baggages were traced and delivered to the Respondent on different dates. The 7th baggage was retrieved and delivered to the Respondent on 24.08.2007 i.e. after a month from the date of arrival at London Airport i.e. on 11.07.2007. Therefore it is clear that the Appellant was negligent in handling the baggages of the Respondent.
8. Lastly, the Appellant contended that they already sent two cheques, each of Rs.61,875, to the Respondent under the Montreal Convention 2006 It is pertinent to mention here that the airline is entrusted with the safe custody and delivery of the passenger's luggage however, in the present case the Appellant failed to perform its duties and obligations towards Respondent. Moreover, paying two cheques of Rs.61,875 each to the Respondent does not absolve Appellant airlines of its responsibility of safe keeping of passenger's belongings during travel where passengers are not allowed to keep their belongings in their own custody. The negligence, insensitivity and passivity displayed by airlines staff towards unfortunate passengers cannot be condoned in any manner whatsoever. A custodian of goods cannot be allowed to exempt/from accountability towards the goods.
9. Due to the mishandling of the baggages of the Respondent, the Respondent had to suffer from mental harassment. Therefore, the Appellant has

committed serious deficiency in service while mishandling the baggages of the Respondent.

10. Therefore, we do not find any reasons to reverse the findings of the District Commission. Consequently, *we uphold the order dated 02.07.2014 passed by the District Consumer Dispute Redressal Forum-VI, Vikas Bhawan, New Delhi- 110001. Consequently the present appeal stand dismissed.*
11. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment. FDR, if any, be released in favour of the Respondent namely Mr.Rajeev Vadhera.
12. A copy of this Judgment be provided to all the parties free of cost as mandated by the Consumer Protection Regulations, 2005. The Judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
13. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

(J.P.AGRAWAL)
MEMBER (GENERAL)

Pronounced On:

01.03.2023