

Ravneet Singh Bagga

Vs

KLM Royal Dutch Airlines and Another

Civil Appeal No. 8701 of 1997

(S. Saghir Ahmad, R. P. Sethi JJ)

02.11.1999

JUDGMENT

SETHI, J.: -

1. To attend to his business commitments at New York on 18-10-1991 the appellant booked his passage through Respondent 1 Airlines and as he could not reach in time allegedly on account of negligence and deficiency in service of the said respondent, he filed a complaint before the National Consumer Disputes Redressal Commission (hereinafter referred to as "the National Commission") praying therein for payment of US \$ 76,000 or the equivalent thereof in INR with interest @ 24% per annum from 18-10-1991 to the date of the filing of the petition as also pendente lite and future interest at the same rate till realisation. He also claimed Rs 5 lakhs with interest, both pendente lite and future @ 24 % per annum towards damages for emotional distress, nervous shock, pain and suffering and US \$ 450 or equivalent thereof in INR together with interest both pendente lite and future @ 24 % annum till realisation towards medical and transportation expenses. The claim was made not only against KLM Airlines but also against Trans World Airlines which was impleaded as Respondent 2. The complaint was dismissed by the National Commission vide the order impugned in this appeal. The provisions of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act") and the prevalent practice of carrying the passengers in the Airlines.

2. The facts, as alleged by the appellant, in his complaint are that he is a partner of M/s B. R. Exports, a firm based in Jaipur which is engaged in the import of rough emeralds and export of cut and polished emerald jewellery. On 4-10-1991 M/s Mian Teck Jewellery, Bangkok is stated to have placed an order upon the complainant for the supply of 16,000 carats of cut and polished emeralds which was to be exhibited at a jewellery exposition fair. It was stipulated that any orders placed during exhibition for the emerald jewellery would be executed by the complainant's firm. M/s Real Gems, New York vide a letter dated 2-10-1991 informed the complainant that the samples were available which could be inspected at their office at New York till closing on 18-10-1991. The complainant, upon checking for the first available flight to New York, was informed by his travel agent that the earliest available flight was KLM Flight No KL-872 departing New Delhi at 0525 hours on 18-10-1991 with stopover at Amsterdam. The complainant was, however, told that he could catch the connecting flight KL-640 departing Amsterdam for New York at 1515 hours at JFK Airport. He was issued tickets for Delhi-Amsterdam-New York-Amsterdam-Delhi sectors for which he paid a total fare of Rs25,719. He had applied for a US visa through M/s Delhi Express Travels, Travel Agents which was granted on 17-5-1991 being valid for five years with multiple entries. On 18-10-1991 the complainant reported at the KLM counter at Indira Gandhi International Airport at New Delhi where his travel documents were checked. Finding no fault with any documents, the complainant was permitted to board KLM Flight No KL-872 to Amsterdam. While checking in at

Delhi, the complainant enquired from the KLM staff at the counter about the possibility of booking him in an earlier flight from Amsterdam to New York as he had an urgent business appointment there and wanted to reach before 1630 hours. Appreciating his problem, the complainant was booked on TWA-815 departing Schiphol Airport at 1105 hours Amsterdam time and arriving at JFK Airport at 1310 hours. He claims to have continued to be booked at KL-641 also to New York from Amsterdam. On reaching Amsterdam on 18-10-1991 at 1015 hours local time, he approached the KLM counter to know the location of the TWA counter because he had been booked on the TWA Flight No. TWA-815 as was confirmed at Delhi and for which appropriate sticker had been placed on his KLM ticket. At the KLM counter the complainant was asked about his US visa. When shown, the lady attending the KLM counter is requiring verification. The complainant submitted that there was no reason, justification or occasion for being subjected to verification procedure by KLM for the second time at Amsterdam because he had been cleared for travel at Delhi. The ground staff at Amsterdam was requested to institute proceedings for verification as expeditiously as possible but the said staff was willfully and consciously negligent which, according to the complainant, constituted "deficiency in service" within the meaning of about three hours in the institution of verification procedure. He was booked on a return flight to Delhi leaving Amsterdam on Sunday 20-10-1991. He was virtually confined at have contacted directly a senior official of KLM at about 1300 hours and expressed, he would follow the standard procedure of sending the passport of the appellant to the US embassy at Amsterdam for verification which would take about three hours. He advised the complainant to return to the counter at 1600 hours. When he returned back at the counter the complainant was informed that his visa had been found valid and authentic. The complainant then sought and was placed on the first available KLM flight to New York Being KL-643 which departed from Amsterdam at 1800 hours and reached New York at 2000 hours American time on the same date. On account of the exhaustion, both mental and physical, the complainant alleged that he developed 103 degree temperature during the flight and was subjected to extreme depression. On reaching New York, the complainant could not locate his baggage which had arrived before him. While waiting for his baggage, the complainant phoned up one of the partners of M/s Real Gems at his residence and was informed that as the cost of retaining of consignment of 1,00,000 carats of Brazilian emerald roughs was prohibitively high they could not retain the parcel beyond that day and that it had been sold to another buyer. On account of the acts of commission and omission of the respondents, the appellant had to suffer the business loss besides being subjected to mental tension and torture. On his return the complainant addressed a letter dated 10-1-1992 to Respondent 1 stating all the relevant facts seeking an apology and compensation for the loss of business profits. He was informed vide letter dated 3-2-1992 that the respondent Airlines regretted the unfortunate experience undergone by the complainant and that the necessary investigation was informed about the results of the investigation with apology and a cheque of Rs 2500 as a goodwill gesture. The said cheque is claimed to have been received and deposited in his account in his absence. The appellant informed Respondent 1 that the cheque had been deposited in his absence and that the same was being adjusted under protest and without prejudice to his rights to institute appropriate legal proceedings.

3. In reply filed on behalf of Respondent 1 it was submitted that the complaint filed by the complainant was totally misconceived which was liable to be dismissed. The allegations made in the complaint did not constitute any deficiency in service within the meaning of Section 2 (I)(g) of the Act. It was contended that the staff of the first respondent at Schiphol Airport at Amsterdam acted in accordance with the requirements to ensure the proper verification for security reasons for the benefit of the passengers and the aircraft. There was no mala fide intention or deliberate act on the part of Respondent 1 or its staff in undertaking the verification before allowing the complainant to

board the aircraft at Amsterdam. The ground staff is stated to have not made any allegations that the complainant's visa being forged and merely wanted to verify the visa as they had some doubts regarding the validity of the visa contained in the passport. The verification also became necessary because there were no confirmed tickets in the name of the respondent- one by TWA flight and the other by KLM flight. Immediately upon verification that the visa had been issued by the US embassy validly which was authenticate, the complainant was allowed to travel by the next available flight to New York. There was a bona fide belief on the part of the KLM staff at Amsterdam that the verification of the complainant's visa was necessary and the staff acted on the basis of the said bona fide belief. One of the reasons for apprehension in the minds of the KLM staff at Amsterdam was that the photograph on the visa issued to the complainant was a photograph and further that the TWA staff had refused to allow the appellant to board their flight on account of the suspicion about the visa. The suspicion was further strengthened because the complainant that two confirmed tickets by two airlines as noted hereinabove. There was no breach on the part of the respondent and its staff in regard to verification of the visa either at the first instance at Delhi or at Amsterdam Airport. The complainant was stated to have not suffered an loss on account of his alleged inability to reach New York within the time.

4. The National commission found that in facts and circumstances of the case, on account of the case, on account of the earlier-noted two factors the staff of KLM had bona fide suspicion or doubt and so verification procedure was initiated which was completed expeditiously. It concluded thus:

"In our view, there were adequate reasons and justification for KLM staff at Schiphol Airport to decide on the need to verify the visa of the complainant for USA. It has not been brought out in the cross-examination of Mr. Knoop of any mala fide acts on the part of the KLM staff. Mr. Knoop in his affidavit has affirmed that Schiphol Airport in Amsterdam is equipped to handle thousands of incoming and outgoing intentional passengers including Indians details of which have been reproduced above. The allegation of maltreatment or racial prejudice is denied by Mr. Knoop. It is highly improbable that the complainant was picked up for screening only because he was Indian. The checking and screening for the validity of the travel documents is done as a measure of safety and security of the passengers as well as the legal obligation of the Airlines and we do not find any oblique motives of doing so in the case of the complainant."

It further held that case set up against TWA was an afterthought which was not borne out from the earlier version given by the complainant in his letter on 10-1-1992. In the aforesaid letter the complainant had not made any allegations of negligence or deficiency of service attributable to TWA. The complaint is stated to have admitted in his affidavit that the TWA flight was scheduled to depart after 50 minutes of his arrival at Schiphol Airport and that the entire episode was at the KLM counter and not on the TWA counter. There was no evidence on record even to suggest that the complainant had contacted the TWA staff at its counter.

5. Section 2(I)(o) defines "service" to mean service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service. Section 2(I)(g) defines "deficiency" to mean any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the

time being in force r has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

6. 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, on facts, been found to have no established any wilful imperfection, shortcoming or inadequacy in the service has to be distinguished from the tortious acts of the respondent. The deficiency in service has to be distinguished from the tortious acts of the respondent. In the absence of deficiency in service the aggrieved person may have a remedy under the common law to file a suit for damages but cannot insist for grant of relief under the Act for the alleged acts of commission and omission attributable to the respondent which otherwise do not amount to deficiency in service. In case of bona fide disputes no wilful fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in the service can be informed (sic). If on facts it is found that the person or authority rendering service had taken all precaution and considered all relevant facts and circumstances in the course of the transaction and that their action or the final decision was in good faith, it cannot be said that there had been any deficiency in service. If the action of service entitling the aggrieved person to claim relief under the Act. The rendering of deficient service has to be considered and decided in each case according to the facts of that case for which no hard and fast rule can be laid down. Inefficiency, lack of due care, absence of bona fides, rashness, haste or omission and the like may be the factors to ascertain the deficiency in rendering the service.

7. In the instant case Respondent 1 cannot be held to be guilty of rendering inefficient service because its staff at Amsterdam is proved to have acted fairly and in a bona fide manner keeping in mind the security and safety of passengers and the aircraft. It is not denied that the staff had found that the appellant was having two confirmed tickets from Amsterdam to New York – one in the KLM flight and the other in the TWA flight and that his photograph on the visa documents was a photocopy and not original which ordinarily unusual. In view of two bookings and the visa papers being doubtful, the staff of the respondent Airlines took some time to ascertain the truth and made all efforts to ensure that her complainant reached New York on the same day. The bona fide action taken by the staff of the respondent Airlines cannot be held to be a deficiency in service. Looking from another point, the complainant was not justified in preferring any claim against the said Airlines because he, admittedly, had there was no question of deficiency in it. So far as TWA is concerned, no claim can be preferred against it as, admittedly, the complainant never approached their counter for the purposes of rendering their service in his air passage from Amsterdam to New York. It is true that Respondent 1 KLM failed to cancel the complainant's ticket on their flight from Amsterdam to New York but that failure, in any way, did not affect the onward journey of the complainant. The verification was necessitated on account of the unusual photocopy of his photograph on the visa documents. The National Commission also examined his earlier letters and the affidavit filed before it and found on facts that there existed some discrepancies. It was found that the complainant had been taking contradictory stands. On a perusal of the whole record we are of the opinion that the respondents could not be held to have been subjected to great harassment and mental torture guilty. Despite holding a belief that they were not responsible for any deficiency in service the respondent had already tendered an unconditional apology to the complainant and paid him token compensation. The case of the appellant for the grant of relief under the Act was not established.

8. There is no illegality or error of jurisdiction in the order of the National commission requiring our interference.
9. Accordingly, the appeal is dismissed but without any order as to costs.