

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

"An aware consumer is an asset to the nation"

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ADVANTAGE - IX

Queries & Answers through the Web

(www.advantageconsumer.com) is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

Continued to previous issue (i.e. August 2023)

British Airways and Lufthansa German Airlines penalised for their lack of diligence, which resulted in the physical and mental ordeal of its passenger.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 366 OF 2020

(Against the Order dated 29/01/2020 in Complaint No. 95/2019 of the State Commission Chandigarh)

BRITISH AIRWAYS

DLF PLAZA TOWER, PHASE-I, DLF CITY, BLOCK-B, SECTOR-26-A, SIKANDERPUR GHOSH, GURGAON-122002. HARYANA

.....Appellant(s)

Versus

HARSHARN KAUR DHALIWAL & 3 ORS.

W/O. PARAMJEET SINGH DHALIWAL, R/O. HOUSE NO. 2254, SECTOR-35-C,

CHANDIGARH-160022

.....Respondent(s)

BEFORE:

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

HON'BLE MR. JUSTICE KARUNA NAND BAJPAYEE, MEMBER

Dated : 16 Jan 2023

ORDER

16. The Registry is directed to ensure that the notice is issued and despatched to all the Respondents, No. 1 to No. 4, within ten days from today.
17. Let the notice also be 'dasti', in addition.
18. The Appellant is directed to ensure the due 'dasti' service of the notice on the Respondent No. 1 / Complainant and on the Respondents No. 2 and No. 3 (against whom the State Commission has *inter alia* made its Award), within six weeks from today, without fail.
19. List on 18.08.2020.

20. Let the Order also be 'dasti', in addition, to facilitate timely compliance.

As such we note that British Airways submitted on 16.03.2020 before this Commission that at San Francisco the deficiency occurred in re-routing the Complainant from San Francisco via Copenhagen without checking or ensuring that she had a valid visa to travel through Copenhagen and further that Lufthansa German Airlines was solely responsible for this. It admitted that it committed a "mistake" at London while putting the Complainant on its subsequent flight BA-822 without checking or ensuring that she had a valid visa to travel through Copenhagen. For this "limited mistake" "at its end" it was ready and willing to unconditionally pay a sum of Rs. 10 lakhs to the Complainant. It also submitted that the said sum of Rs. 10 lakhs will be paid by the British Airways with the due courtesy required towards a lady Complainant who is a senior citizen. Submission was made that in its appeal it will agitate its issues and contentions and the question of compensation over and above Rs. 10 lakhs awarded against it by the State Commission.

10. In reference to the above learned counsel for British Airways submits that a sum of Rs. 10 lakhs has since been paid to the Complainant. She also informs that the Order dated 16.03.2020 of this Commission has not been put to challenge or review.

11. At the time of admission of appeal no. 396 of 2020 preferred by Lufthansa German Airlines the following Order was passed by this Commission on 30.06.2020:

Taken up through video conferencing.

1. In furtherance to the previous Order dated 22.06.2020, learned Counsel for the Appellant, Lufthansa German Airlines, submits, on instructions, that, without prejudice to its right to raise all its issues and contentions in the Appeal, Lufthansa German Airlines is ready and willing to unconditionally pay a sum of Rs. 10 lakhs to the Complainant within six weeks from today. Learned Counsel further submits that, in its Appeal, it will agitate all its issues and contentions and the question of compensation over and above Rs. 10 lakhs awarded against it by the State Commission.

2. The afore submissions, made on instructions, are recorded.

3. The Appellant, Lufthansa German Airlines, is directed to unconditionally pay a sum of Rs. 10 lakhs to the Complainant by way of 'payee's a/c only' demand draft or by electronic transfer directly to the Complainant within six weeks from today.

4. Learned Counsel submits that the said sum of Rs. 10 lakhs will be paid by Lufthansa German Airlines with the due courtesy required towards a lady complainant who is a senior citizen.

5. The afore submission is recorded.

6. Learned Counsel furthermore submits that the short delay of 07 days in filing the Appeal may be condoned.

7. Considering the reasons stated in the application for condonation of delay and having regard to the obtaining environment caused by COVID-19, sufficient cause to condone the delay is well evident. Also, the matter, *per se*, is such that it requires to be decided on merit.

8. The delay in filing the Appeal is condoned.

9. Issue notice to the Respondents, subject to payment of Rs. 20,000/- to the Respondent No. 1 / Complainant within six weeks from today to defray travel and allied expenses.

10. Learned Counsel furthermore submits that, taking into account its assurance of unconditional payment of Rs. 10 lakh to the Complainant within six weeks from today, the operation of the impugned Order of the State Commission, in so far as it relates to compensation over and above Rs. 10 lakh awarded against it, Lufthansa German Airlines, by the State Commission, may be stayed.

11. Contingent to the Appellant, Lufthansa German Airlines, unconditionally paying a sum of Rs. 10 lakh to the Complainant within six weeks from today, the operation of the impugned Order of the State Commission, in so far as it relates to compensation over and above Rs. 10 lakhs awarded against it, shall remain stayed.

12. It is made clear that the (conditional and limited) stay on the operation of the impugned Order qua the Appellant, Lufthansa German Airlines, shall *ipso facto* stand vacated if the condition attached therewith, i.e. payment of Rs. 10 lakh unconditionally to the Complainant within six weeks from today, is not complied with within the stipulated period. In such contingency, the State Commission shall undertake execution of its Order in its entirety as per the law.

13. It is further made clear that there is no stay on the operation of the Order dated 29.01.2020 of the State Commission in so far as it relates to the Respondent No. 3, Surya Travels & Associates.

14. The Registry is directed to ensure that the notice is issued and despatched to all the Respondents, No. 1 to No. 3, within ten days from today.

15. Let the notice also be 'dasti', in addition.

16. The Appellant is directed to ensure the due 'dasti' service of the notice on the Respondent No. 1 / Complainant and on the Respondents No. 2 and No. 3 (against whom the State Commission has *inter alia* made its Award), within six weeks from today, without fail.

17. List on 18.08.2020, along with the connected F.A. No. 366 of 2020.

18. Let the Order also be 'dasti', in addition, to facilitate timely compliance.

As such we note that Lufthansa German Airlines submitted on 30.06.2020 before this Commission that without prejudice to its right to raise all its issues and contentions in the appeal it was ready and willing to unconditionally pay a sum of Rs. 10 lakhs to the Complainant. It also submitted that the said sum of Rs. 10 lakhs will be paid by the Lufthansa German Airlines with the due courtesy required towards a lady Complainant who is a senior citizen. Submission was made that it will agitate all its issues and contentions and the question of compensation over and above Rs. 10 lakhs awarded against it by the State Commission.

12. In reference to the above learned counsel for Lufthansa German Airlines submits that a sum of Rs. 10 lakhs has since been paid by it to the Complainant. He also informs that the Order dated 30.06.2020 of this Commission has not been put to challenge or review.

13. At the time of admission of appeal no. 320 of 2020 filed by Surya Travels & Associates the following Order was passed by this Commission on 03.12.2020:

Taken up through video conferencing.

Heard learned counsel for the appellant. Perused the material on record.

Mr. Shubham Bhalla, advocate, learned counsel for the appellant, submits that in reference to the Order dated 16.03.2020 in connected first appeal no. 366 of 2020 and Order dated 30.06.2020 in connected first appeal no. 396 of 2020 and Order dated 23.11.2020 in the instant first appeal no. 320 of 2020, an affidavit dated 24.11.2020 has been filed by the appellant by way of I.A. No. 6985 of 2020.

Learned counsel further submits that the appellant is not ready and willing to unconditionally pay any sum to the complainant. He furthermore submits that according to the appellant “this is the first time such an incident has taken place, for no fault of his own but entirely attributable to the respondent airlines.”.

Notice has earlier been issued in connected first appeals no. 366 of 2020 and no. 396 of 2020.

Notice be issued in this instant first appeal no. 320 of 2020, subject to payment of Rs. 20,000/- to the respondent no. 1 – complainant within one week from today to defray travel and allied expenses.

The Registry may ensure that the notice is issued and despatched within three days from today.

Let the notice also be ‘dasti’ in addition.

The appellant is directed to ensure the due ‘dasti’ service of the notice on the respondents within seven days from today and to file proof of having effected ‘dasti’ service with the Registry before the next date of hearing.

Contingent to the appellant, Surya Travels & Associates, depositing the entire decretal amount (with clear and cogent calculation sheet) with the State Commission, the operation of the impugned Order of the State Commission in so far as it relates to the appellant, Surya Travels & Associates, shall remain stayed.

List the instant first appeal no. 320 of 2020 along with connected first appeals no. 366 of 2020 and no. 396 of 2020 on 17.12.2020.

The Registrar to kindly ensure timely intimation of the next date i.e. 17.12.2020 to all parties and to their learned counsel.

As such Surya Travels & Associates submitted on 03.12.2020 before this Commission that it was not ready or willing to pay any sum to the Complainant. Submission was made that this was the first time such an incident had taken place for no fault of its own but entirely attributable to the respondent airlines.

14. Advancing arguments on behalf of British Airways, learned counsel contends that Lufthansa German Airlines did the re-routing at San Francisco under a mutual working arrangement between the two airlines. The onus to check and to ensure that the Complainant was compliant with the visa requirements to transit through Copenhagen in change-over was on Lufthansa German Airlines who did the re-routing. As such Lufthansa German Airlines was solely responsible for this lapse.

On a query from the bench learned counsel submits that no correspondence was ever made by British Airways with Lufthansa German Airlines in this regard.

Learned counsel further submits that as earlier conceded on 16.03.2020 a “mistake” was made by British Airlines at London in not checking and ensuring that the Complainant was compliant with the visa requirements to transit via Copenhagen while putting her on its later flight BA-822 from London to Copenhagen after its flight BA-820 on which she had been initially booked in re-routing had departed by the time she arrived at London.

Another limb of her argument is that the duty of an airlines regarding the passengers fulfilling visa requirements is owed to the country to which its flight is departing to and is not owed to the passengers *per se*.

Submission is that the passengers are themselves responsible to ensure that they are compliant with the visa requirements of the concerned country of transit / change-over or destination.

Regarding the quantum of compensation, learned counsel submits that the British Airways has already paid a sum of Rs. 10 lakhs unconditionally for its “mistake” at London while putting the Complainant on its later flight to Copenhagen. The State Commission has grossly erred on the higher side while awarding total compensation of Rs. 70 lakhs of which Rs. 27.50 lakh has been saddled on British Airways. Submission is that even the unconditionally paid sum of Rs. 10 lakh is enough and any more compensation over and above Rs. 10 lakhs will be entirely unjust and inequitable.

15. Learned counsel for Lufthansa German Airlines submits that it re-routed the Complainant on British Airways flight at San Francisco under a mutual working arrangement between the two airlines. He also submits that it did not check whether the passenger was compliant with the visa requirements of the countries of transit in change-over, but further submits that this is not very material since the detention at Copenhagen was not because of non-fulfilment of visa requirements in transit but because by the time British Airways flight BA-822 from London to Copenhagen had arrived the next connecting flight of Air India AI-158 from Copenhagen to New Delhi had already departed and the Complainant could not justify her presence or show the means of exiting the country to the local authorities. Submission is that the troubles and trauma of the Complainant were caused due to the uncalled-for delay on the part of British Airways which caused the Complainant to arrive at Copenhagen after her next connecting Air India flight had already departed.

On a query from the bench learned counsel submits that no fact-finding inquiry was conducted and further that no correspondence was ever made by Lufthansa German Airlines with the concerned authorities at Copenhagen.

Learned counsel admits that no official of Lufthansa German Airlines was present at the relevant time at Copenhagen to provide assistance to the Complainant but adds that no official was required to be available because no passenger of Lufthansa German Airlines *per se* was travelling through Copenhagen.

Another limb of his argument is that visa requirements ought to have been checked by British Airways at London when it put the Complainant on its later flight to Copenhagen and as such the blame lies with British Airways alone.

He also makes a submission that since the Complainant willingly accepted the re-routing, she was herself responsible for her troubles and travails.

Regarding the quantum of compensation, learned counsel submits that any compensation above Rs. 10 lakh which has already been unconditionally paid will be unreasonable and unjust.

16. Learned counsel for the Surya Travels & Associates submits that both Lufthansa German Airlines, whose ticket the Complainant originally held and who did the re-routing at San Francisco, and British Airways, on whose flight the Complainant was put at San Francisco and who put the Complainant on its later flight from London to Copenhagen, are responsible for not checking and ensuring that the Complainant was compliant with the visa requirements of the countries of transit in change-over. Submission is that both the concerned airlines, British Airways and Lufthansa German Airlines, are squarely liable for the troubles and travails of the Complainant.

Learned counsel further submits that as a travel agent it had discharged its principal duty of giving the Complainant valid tickets and even afterwards when the problem occurred at Copenhagen it had telephonically liaised with both the airlines as well as with the husband of the Complainant as is evident

To be concluded in the next issue....

Watch - Consumer Awareness Videos!

- *B.Vaidyanathan*

Department of Consumer Affairs, Govt. of India, in the interest of spreading consumer awareness has embarked on a project to produce and circulate consumer awareness videos, every week, commencing from 11/08/2023, through Google Drive. The link for first fourlots of five consumer awareness videos each, are given below: (**Watch the videos and share it, in larger interests.**)

- 1) <https://drive.google.com/drive/folders/1Oh17I7egvdUI7B7Cs0uI-Q9v64PT3gPN?usp=sharing>
- 2) <https://drive.google.com/drive/folders/1PNR1Hfah6X0aco8tvnyQmgBr1-vdLVjn?usp=sharing>
- 3) <https://drive.google.com/drive/folders/16KLHevrGTWnL7neiQQyMMdRCQvLe1jWo?usp=sharing>
- 4) <https://drive.google.com/drive/folders/1cyRr0kuXefVdJwBJ3bC0qb2UftlkVC2s?usp=sharing>

To facilitate access to these consumer awareness videos, the above links have also been provided in the home page of Council's website <https://www.advantageconsumer.com>. Watch these interesting and educative videos and safeguard your interests. ★

Support Your Cause

Consumer Protection Council, Rourkela is a registered voluntary organization, espousing the cause of the consumer. To a great extent, for its sustenance it depends on the good will of its donors like you. We solicit your support for sustaining the multifarious activities of the council. Donation to the council is eligible for tax exemption under Section : 80-G(5) (iv) of the IT Act. Donation may please be contributed through cash or crossed cheque / DD, drawn in favour of "**Consumer Protection Council, Rourkela**".

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