

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL
COMMISSION**

Date of Institution: 23.01.2024

Date of Hearing: 06.03.2025

Date of Decision: 27.05.2025

FIRST APPEAL NO.- 59/2024

IN THE MATTER OF

SPICEJET LTD.

319, UDYOG VIHAR, PHASE-IV,
GURUGRAM, HARAYANA

(Through Mr. Amit Punj, Advocate)

...Appellant

VERSUS

KAPIL SINGH PAL

APARTMENT NO. 801,
RAMSES TOWER, OMAXE NILE,
SECTOR 49, GURUGRAM,
HARYANA- 122018

(Through: Mr. Shekhar Shri Prakash, Advocate)

...Respondent

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)****HON'BLE MS. PINKI, MEMBER (JUDICIAL)**

Present: Mr. Rohit Kumar, Counsel for Appellant (M-8383897972,
E-mail: kumarrohit198124@gmail.com)
Mr. Shekhar Shri Prakash, counsel for Respondent (M-
9312986697, E-mail: email@questip.com)

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,
PRESIDENT

JUDGMENT

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

1. *"The complainant has filed the complaint under Section 11 & 12 of Consumer Protection Act (hereinafter referred to as Act) with the allegations that he along with his family (including one year old infant) had gone to Kathmandu, Nepal. On 02.05.2013, he had booked an international flight No. SG-46 of OP from Kathmandu to Delhi. They were carrying two suitcases of 23kg each. The suitcases were duly accepted and acknowledged by the staff of the OP and issued baggage receipts no. SG-0775590633 & 34. His son was suffering from allergy whose condition deteriorated during the flight. There was scheduled departure from Kathmandu and arrival at Delhi. He was in a hurry to collect the baggage but he was stunned to know that baggage against receipt no. SG-0775590634 is missing. He contacted the customer care representative of the OP. He narrated the facts to him who told him to wait. He kept on waiting for 45 minutes and again requested the representative as his son was not feeling well but in vain. The representative at 10:00PM asked him to fill a*

baggage irregularity report. The baggage contained jewellery set, sarees, suits etc. He was listing out these items to the representative who dissuaded him from doing so and told to restrict the items up to Rs.25,000/- otherwise matter will be reported to customs. The irregularity report no.9674 was given to him. It was told to him that relevant representative will contact him within 24 hours with the status report. He did not hear any word from OP three day. On 05.05.2013 and 06.05.2013, he contacted the OP by email about the missing bag and got the reply that investigation is on. He was verbal assured that bag will be recovered soon. He waited tilf days. On 11.05.2013, he sent an email to Sh. Ankur Arora- Nodal officen of the OP to seek the update. He got the reply that suitcase has been declared lost so he is entitled for a compensation of Rs.200/- per kg with the maximum cap of Rs.300/- as compensation. He wrote to Appellate Authority of OP on 19.05.2013 but without any result. A legal notice was sent to OP on 05.06.2013 but in vain. The OP has been wilfully negligent in its duty of care towards his baggage. The OP is guilty of restricted and unfair trade practices as it actively exploits its market supremacy and force customers to accept unjustified conditions in circumvention of law. The limit of Rs.3000/- is well below the statutory limit as provided by the Carriage by Air Act, 1972 that covers international flights. He was made to run pillar to post to claim the baggage. The flight was an international flight so OP is governed by schedule 1 & 2 of the Carriage by Air Act, 1972. Hence, this complaint.

2. *The OP has filed the written statement to the effect that complaint is not maintainable as complainant was well aware about the terms and conditions shown in e-ticket. The valuables and medication be removed from the check in baggage and in case passengers decide to carry the same in the baggage then they will do this at their own risk. The carrier's liability is only restricted to Rs.3000/- at the rate of Rs.200/- per kg. The complainant has violated the said conditions and cannot take advantage of his own wrong. The OP is still ready to pay Rs.3000/-. No proof has been furnished by the complainant to substantiate the goods being carried by him in the check in baggage. They have tried their best to locate the baggage. The relevant provision or Carriage by Air Act makes it absolutely clear that liability of airline is limited as provided there. The rights habilities passengers and air carrier are governed by the said Act and schedule 1 and 2 of the said Act coupled with the various international conventions. The untraceable baggage receipt was issued to the complainant on reporting the matter to the representative and best efforts were made to trace out the check in baggage. The allegations levelled by the complainant are totally denied. The emails and other correspondence during the parties is a matter of record. The exorbitant claim was denied to the complainant. There is no merit in the complaint.*
3. *The complainant has filed the replication wherein he has denied the averments of the written statement and reiterated the stand taken in the complaint.*
4. *The OP did not put the appearance. On 29.10.2015 OP was proceeded ex-parte.*

5. *The complainant has filed his own affidavit in ex-parte evidence wherein he has corroborated the version of the complaint and placed reliance on the documents Ex.C1 to C15.*
2. The District Commission after taking into consideration the material available on record passed the following order dated 07.12.2023 :
 6. *“Heard and perused the entire material on record including written submissions.*
 7. *It is an admitted fact that on 02.05.2013 the complainant has booked flight no. SG-46 of OP from Kathmandu to New Delhi which departed at 6.40 PM from Kathmandu and landed at 8.10 PM at New Delhi Airport. Ex.C1 & C2 are the e-ticket and boarding pass to this effect. The complainant has deposited check in baggage, with OP upon which baggage receipt no. SG0775590634 was issued by OP. The said check in baggage was not found at conveyor belt as a result the matter was reported to the customer care representative available at airport. The baggage irregularity report 9674 Ex.C3 was issued. The OP has failed to trace out the baggage despite the fact that complainant has waited for number of days and even emails have exchanged. Ex.C4 to C10 are the emails exchanged between them. The OP has offered to compensate the complainant for a sum of Rs.3000/- at the rate of Rs.200/- per kg as apparent from Ex: C10. The legal notice Ex. C11 was issued to the OP by post and Ex. C12 & 13 are the postal receipts.*
 8. *The OP has taken the plea that terms and conditions are printed on the e-ticket to the effect that passenger shall not*

carry valuables in the check in baggage and acting contrary will be at their risk. Ex. C1 is the e-ticket no such condition finds reflection on the e-ticket. It was not brought to notice of the complainant by any means that is even by sending email or SMS message. Such a condition should have been printed prominently on the e-ticket. The OP has not annexed any document with the reply that any such condition has been prominently printed on the e-ticket or displayed at the counter where check in baggage was deposited.

- 9. Nothing is brought on record by OP that declaration form has to be filed in case valuable item is kept in the check in baggage. The specific terms and conditions are not brought to the notice of complainant when OP cannot take benefit of those terms and condition even if they exist.*
- 10. Sections 151 and 152 of Indian Contract say, that pailee are bound to take as much care of the goods as a ran of ordinary prudence. In ILR 1957 Madras 840 at 844, it was held by the lordship that bailee has to prove that he had taken proper care of the goods as provided under section 151 of Indian Contract Act.*
- 11. Section 106 of Indian Evidence Act says that when any fact is within the knowledge of any person, the burden of proving that fact is upon that person. In view of this, the OP should explain how the goods were dealt when it was in its custody.*
- 12. The OP has failed to explain that due care and precaution was taken while handling the check in baggage of the complainant. The non-explanation shows that OP was indifferent and negligent while handling the check in*

baggage of the complainant which tantamount to deficiency in service.

- 13. The complainant has disclosed in the complaint that baggage contained jewellery set, sarees and suits. He was supposed to disclose the approximate weight of the jewellery coupled with the number of sarees and suits. As this fact has been explained in detail by him in the email Ex.C5. There is no explanation why the exact details of the items as shown in Ex.C5 was not given in the irregularity report Ex.C3 that is at the earliest point of time when the facts were fresh in the mind of complainant. This creates a doubt over the items kept in the bag as shown in the email Ex.C5.*
- 14. The complainant had gone to Kathmandu with his family so he must be carry goods and clothes. The check in bag must be having some articles of value in any form and this possibility cannot be ruled out.*
- 15. The OP has sought to settle the claim purely on the basis of notional monetary loss suffered by the complainant in terms of the internal guidelines Ex. C15 issued by OP. The OP cannot go scot free merely by offering statutory liability. The OP was entrusted with the safe custody of check in baggage to be delivered at the time of the termination of the flight. There is deficiency of service on the part of the OP in handling the check in baggage which has caused lot of mental harassment agony intention to the complainant. The Act has been enacted to provide relief to the customers for deficiency of service and unfair trade practice on the part of manufactures/service providers and others as held by Hon'ble Apex Court in Consumer and Citizen Forum vs*

Karnataka Power Corporation (1994 (1) CPR 130). This act gives additional remedy along with other remedies available to the consumers. Reliance is also placed on Manu/CF/0238/2013 as well as on Manu/CF/0930/2015.

16. *In view of our aforesaid discussion, the complaint of the complainant is allowed to the effect that complainant is entitled for with compensation of Rs. 1,50,000/- for mental harassment and agony and Rs. 50,000/- for litigation expenses. The OP is directed to comply with the order within 30 days from the receipt of the order failing which complainant will be entitled for interest @7% p.a. on the amount of mental harassment, agony and litigation charges i.e. from the date of order till its realization.”*
3. Aggrieved by the aforesaid impugned order of the District Commission, the Appellant has preferred the present appeal, contending that the Respondent acted contrary to the terms and conditions reflected on the E-ticket and liability arising out of the Respondent’s negligent conduct cannot be fastened upon the Appellant. It is further submitted that Respondent neither substantiated the contents of baggage with any evidence nor was there any prior declaration with regards to contents of the baggage. **Secondly**, it is submitted that terms and conditions of carriage reflected on the E-ticket form a valid contract and the District Commission erred in overlooking the same. The Appellant has further relied on *clause 18.4, 18.5, 18.6* of the terms and conditions on E-ticket wherein the passengers are advised not to carry jewellery and valuable things in checked bag. Lastly, the Appellant has submitted that the District Commission did not have the territorial jurisdiction to adjudicate upon the Consumer Complaint. In support of the aforementioned contentions, the Appellant has placed reliance on the following decisions of the Hon’ble National Commission:

a) *Indigo Airlines & Anr. vs Aastha Pansari R.P 1004 of 2018*

b) *Spicejet ltd. V. Rajender Kaur R.P 3215 of 2014*

4. The Respondent has filed the reply to the present appeal and has denied the submission of the Appellant therein. It is submitted that no terms and conditions were ever provided to the Respondent. The Respondent has further contended that the Appellant has merely sought to discharge its liability on a notional basis by offering a paltry sum of Rs. 3,000/-, which is not enough to absolve the Appellant of its liability under The Consumer Protection Act, 1986. Pressing the aforesaid submissions, the Respondent has prayed that the present appeal be dismissed with heavy costs.
5. The Parties have filed their brief written arguments further emphasizing their contentions.
6. We have perused the material available on record and heard the counsel for the Appellant.
7. The ***preliminary issue*** that falls for our consideration is ***whether the District Commission was empowered to adjudicate the Consumer Complaint.***
8. The contention as raised by the Respondent pertaining to the lack of territorial jurisdiction is dealt with in light of section 11 of the Consumer Protection Act, 1986, reproduced hereunder as:

11. Jurisdiction of the District Forum

“(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed 1[does not exceed rupees five lakhs].

(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction-

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the

complaint, actually and voluntarily resides or I[carries on business, or has a branch office or] personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or I[carries on business or has a branch office, or personally works for gain:

PROVIDED that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or I[carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.”

9. It is not disputed that the Appellant lost baggage of Respondent which was to be handed over at the Indira Gandhi international Airport, Delhi. Thus, it is clear that the cause of action arose at the Indira Gandhi International Airport when the Appellant failed to deliver the baggage of the Respondent; the same being within the local limits of District Commission, Dwarka. Therefore, it is clear that the District Commission, Dwarka had jurisdiction to adjudicate the Complaint in light of section 11(2)(c) of the Consumer Protection Act, 1986.
10. The ***main question*** that falls for our consideration is ***whether the District Commission erred in establishing deficiency of service on the part of the Appellant.***
11. It is the primary contention of the Appellant that the terms and conditions explicitly advised passengers not to carry valuable items in their checked-in baggage, and that in doing so, the risk and responsibility for any such loss would lie solely with the passenger. It has been averred that these stipulations formed part of the contractual understanding between the parties. Furthermore, the Appellant has contended that the terms and conditions

impose a capping of the compensation at a sum of ₹3,000/- in the event of loss or damage to checked-in baggage.

12. In this regard, it is pertinent to note the observations as recorded by the District Commission in the Impugned Order, reproduced hereunder as :

“8. The OP has taken the plea that terms and conditions are printed on the e-ticket to the effect that passenger shall not carry valuables in the check in baggage and acting contrary will be at their risk. Ex.C1 is the e-ticket no such condition finds reflection on the e-ticket. It was not brought to notice of the complainant by any means that is even by sending email or SMS message. Such a condition should have been printed prominently on the e-ticket. The OP has not annexed any document with the reply that any such condition has been prominently printed on the e-ticket or displayed at the counter where check in baggage was deposited.

9. Nothing is brought on record by OP that declaration form has to be filed in case valuable item is kept in the check in baggage. The specific terms and conditions are not brought to the notice of complainant when OP cannot take benefit of those terms and condition even if they exist.”

13. A perusal of the aforesaid observation makes it clear that the Appellant failed to place on record any cogent material to show any policy printed on the E-ticket or displayed at the counter where check in baggage was deposited to the effect that passenger shall not carry valuables in the check in baggage and acting contrary will be at their risk.
14. Furthermore, the Appellant has again failed to produce the aforesaid E-ticket before this Commission and therefore, in absence of any documentary proof to the contrary, we are constrained to not interfere with the observations of the District Commission.

15. At this juncture, it is further pertinent to remark that though the Appellant has placed reliance upon a number of judicial precedents in support of its submissions, however, the distinguishing factor in the present matter lies in the absence of any material on record to reflect that the terms and conditions purportedly governing the contractual relationship were ever furnished to, or made known to, the Respondent. The failure to place the terms and conditions on the e-ticket effectively negates the argument that there existed a binding contractual clause limiting liability. In the absence of knowledge or communication of such conditions to the Respondent, it cannot be said that a valid contract incorporating these terms came into existence. This factor significantly distinguishes the present case from the facts in the precedents cited by the Appellant, thereby rendering reliance on the precedents cited inapplicable.
16. It remains an undisputed fact that the Appellant failed in its fundamental obligation to safely deliver the checked-in baggage of the Respondent. The District Commission rightly observed that the Appellant failed to exercise the reasonable degree of care and caution in handling the baggage. Even otherwise, the Appellant has not produced any cogent material to controvert the factual findings of the District Commission, at the appellate stage. Given that the Appellant was entrusted with the custody of the baggage as a bailee under the law, the Appellant had a legal duty to ensure its safe and timely return. The failure to fulfil this obligation constitutes a clear deficiency in service under the Consumer Protection Act, 2019, and accordingly, the Appellant is liable to compensate the Respondent for the resultant loss and inconvenience.
17. In view of the foregoing discussion, this Commission finds no merit in the present Appeal. The findings recorded by the District Commission are well-reasoned, supported by evidence on record, and do not warrant any

interference. *Accordingly, the present Appeal stands dismissed with no order as to costs.*

18. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
19. The Judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
20. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On:
27.05.2025

L.R.-G.P.K