

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1004 OF 2018

(Against the Order dated 12/12/2017 in Appeal No. 1481/2016 of the State Commission
Rajasthan)

1. INDIGO AIRLINES & ANR.

THROUGH MANAGER/TERMINAL MANAGER,
JAIPUR INTERNATIONAL AIRPORT, TERMINAL 2,
NEAR JAWAHAR CIRCLE,
JAIPUR

RAJASTHAN

2. INDIGO AIRLINES

THROUGH MANAGER, TOWER C, 3RD FLOOR,
GLOBAL BUSINESS PARK, MEHRAULI,
GURUGRAM

HARYANA

.....Petitioner(s)

Versus

1. AASTHA PANSARI

16/3/4, ROUND TANK LANE, MALIK FATAK
HOWRAH,
KOLKATA

WEST BENGAL

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT

HON'BLE MRS. M. SHREESHA, MEMBER

For the Petitioner : Mr. Ajit Warrier &
Mr. Tanishq Panwar, Advocates.

For the Respondent : Mr. Umesh Nagpal, Advocate.

Dated : 17 Jan 2020

ORDER

MRS. M. SHREESHA, MEMBER

Aggrieved by the order dated 12.12.2017, in Appeal No. 1481 of 2016 passed by Rajasthan State Consumer Disputes Redressal Commission (for short "the State Commission"), Indigo Airlines (hereinafter referred to as "the Airlines") has preferred this Revision Petition under Section 21(b) of the Consumer Protection Act, 1986 (for short "the Act"). By the

impugned order, the State Commission has allowed the Appeal preferred by the Complainant and set aside the order dated 24.10.2016 of District Consumer Disputes Redressal Forum, Jaipur-III (for short “the District Forum”) vide which the District Forum had dismissed the Complaint.

2. Briefly stated, the facts in the instant case are that the Complainant’s marriage was fixed for 06.12.2009, but she had got the marriage date extended to 16.02.2010, enable her to make purchases of her choice with respect to ornaments, sarees, garments etc. and got married, at Hotel Clark Aamer, Jaipur. It is averred that three days subsequent to the marriage on 19.02.2010, the Complainant with her husband and other relatives boarded Indigo flight No. 6E 207 at 08: 15 a.m. from Jaipur to Kolkata. It is averred that they were carrying five bags with them, which were all booked in vide tag Nos. 6E 0000397510, 6E 0000397511, 6E 0000397512, 6E 0000397513 and 6E 0000397514. It is stated that on arrival at Kolkata only four bags were received by the Complainant and that the fifth bag was missing, which was immediately reported to the competent authority. The said bag with tag No. 6E 0000397513 contained the following precious items:

Name of the shop.	Bill Number	Date	Item	Cost
J K MOSUN & SONS JEWELLERS PVT. Ltd.	572	05.10.2009	Diamond Ring	19,000/-
Madhu Saree	1197	05.10.2009	Base	21,000/-
Sinduri Saree	1353	28.11.2009	Saree	6270/-
Sinduri Saree	1534	28.11.2009	Saree	13,300/-
Pratap Sons	4421	07.12.2009	Saree	3,300/-
Pratap Sons	4484	09.12.2009	Saree	13,300/-
Madhu Saree	1519	10.12.2009	Saree	16,500/-
Sinduri Saree	1533	17.12.2009	Saree	12,400/-
Sinduri Saree	1537	30.12.2009	Saree	4,308/-

Sinduri Saree	1755	30.01.2010	Saree	7,600/-
Sinduri Saree	518	03.02.2010	Base	36,000/-
Sinduri Saree	519	05.02.2010	Base	27,400/-
			Total:-	1,80,378/-

3. It is averred that all these aforementioned items have a special emotional connection, as they were all purchased for her wedding and for using the same in her marital home. It is also stated that the Complainant suffered severe mental agony as her marriage was solemnized only three days ago and she had lost the garments, which she had selected by choice. On 21.02.2010, an email was sent to the Airlines, who did not reply. Another email was sent on 23.02.2010, for which the Airlines replied that baggage was untraceable despite repeated searches have been done by them. It is averred that said bag also contained the marriage certificate of the Complainant on account of the non-availability of which the Complainant could not even go to the honeymoon with her Husband.

4. It is also pleaded that as the baggage containing the costly items and her garments had been misplaced, she had to hurriedly purchase some more garments at Kolkata for which one Bill No. 6196 dated 19.02.2010 is also being enclosed.

5. It is also averred that it is the responsibility of the Airlines to take care that the luggage reaches the place of destination and when it is misplaced, it is only because of the deficiency of service on behalf of the Airlines. Hence the Complaint seeking the following reliefs:

1. *Airlines be directed: To pay 5,00,000/- towards the loss of bag and its contents;*

2. *To pay 14,00,000/- towards mental agony;*

3. *To pay 11,000/- towards to and fro expenses to the office of the Airlines, expenses towards e-mail and correspondence and*

4. *To pay 51,000/- towards compensation.*

6. The Airlines filed their Written Statement stating that as per the terms and conditions of the Airlines Rules of Carriage, which constitute a valid and binding contract between the Complainant and the Airlines, the Complainant is entitled only to a compensation of 3,000/-. In accordance with the said Terms and Conditions, the Complainant was paid the required compensation of 3,000/- vide Cheque No. 344660 dated 09.03.2010, drawn of HDFC Bank in the

name of her husband, Mr. Rohit Agarwal, which was accepted without any demur. It is stated that the Complainant has not put forth any evidence to prove that the missing bag contained all the items as described in the Complaint; it was impossible for the Airlines to ascertain the true value of the missing goods; the Complainant has not produced any documents to prove the contents of the lost bag; the Airlines cannot be held liable for the mental agony suffered by the Complainant due to loss of the subject bag as it had made all efforts to trace it out and also paid the contractual compensation to the Complainant; communication of the Complainant's father was duly responded to and concerted efforts were made to trace the missing bag but the same could not be traced and Complainant has deliberately suppressed the material fact that she had accepted the compensation amount offered by the Airlines.

7. It is averred by the Airlines that loss of baggage is covered by the Rules of Carriage and the relevant sections of IndiGo Rules of Carriage has been reproduced in the Written Version as follows:

“Checked and Cabin Baggage Rules

IndiGo allows Customers to Check-in-free of charge up to 20 kg of checked baggage (“Checked Baggage”) per paying Customer. Checked Baggage in excess of 20 kg is subject to a fee of Rs.100 per kg per sector, to be paid to IndiGo. IndiGo reserves the right to refuse carriage of any item that does not comply with the Regulations. Infants do not receive any luggage allowance.

Hand Baggage is accepted in the cabin (“Cabin Baggage”) subject to the availability of space in the overhead bin. IndiGo provides Customers the ability to leave Cabin Baggage at the side of the airplane prior to departure, and to reclaim it at the side of the aircraft after arrival. In the event space in the cabin is limited, IndiGo may require transfer of Cabin Baggage to the baggage compartment of the aircraft prior to take-off. In such cases, a Customer's Cabin Baggage will be specially tagged and returned upon arrival, either at the side of the aircraft or from the conveyor belts where Checked Baggage is normally received.

The contents of Cabin Baggage and Checked Baggage (collectively, “Baggage”) must comply with IndiGo's security guidelines about permissible objects. Customers are requested to log on to IndiGo's website, www.goindigo.in for further details.

IndiGo recommends that all medication, valuables and precious items (cameras, jewelry, money, electronics, etc.) and items which are fragile or perishable should be carried in Cabin Baggage and not in Checked Baggage. IndiGo shall not accept any responsibility for these items.

IndiGo assumes no liability for wear and tear to luggage (scratches, torn zippers, straps, wheels, handles, scuffs, dents spoiling or manufacturer defects). Or for unsuitably packed, perishable, damaged or fragile Baggage, or for water damage to non-waterproof Baggage.

Receipt without complaint of Baggage on the termination of the journey shall be prima facie evidence that the Baggage has been delivered correctly and in good condition. A customer who leaves the baggage delivery area without reporting a bag

as missing or damaged to an IndiGo representatives will be deemed to have received his/ her bag correctly and in good condition.

IndiGo will make every effort to ensure that each Customer's checked Baggage arrives with Customer.

IndiGo is not liable for any loss or damage occasioned by delay in the carriage by air of Customer or Baggage.

IndiGo's liability for loss, delay or damage to Baggage is limited to Rs.200 per kg with a maximum of Rs.3,000/- only; however, IndiGo assumes no liability for fragile or perishable articles.Hahfhfhfh”

8. It is pleaded that though the luggage bearing tag No. 6E 0000397513 weighing 15 kg was not traceable at arrival in Kolkata, since there is no evidence, which proves that the said luggage contained all the items referred to in the Complaint, the conditions of carriage clearly applies. Further the passenger at the time of booking did not make any such declaration and therefore no deficiency of service can be attributed to them.

9. The District Forum based on the evidenced adduced, dismissed the Complaint on the ground that if the contents were so precious the Complainant ought to have carried it in the Cabin Baggage.

10. Aggrieved by the said order, on an Appeal preferred by the Complainant, the State Commission has allowed the same and set aside the order of the District Forum and directed the Airlines to pay a sum of 1,62,000/- towards cost of the contents of the bag along with 50,000/- towards compensation for mental agony and 15,000/- towards costs. Time for compliance within one month otherwise, it would carry interest @ 9%.

11. Learned Counsel appearing for the Airlines submitted that the State Commission has erred in not taking into consideration the rules contained in the Second Schedule of Carriage by Air Act, 1972 and that the liability of the Airlines for baggage in the event of any damage suffered by the passenger during the course of Carriage by Air will be governed by the provisions of Section 4, 5, 6 and the Rules contained in the Act. It is clearly stated that the passengers travelling with Indigo, who agree to the conditions of carriage that are available on their website or on request at the Airport.

12. Learned Counsel appearing for the Complainant submitted that even in their subject rules and charges for customers, it is clearly stated that the Airlines will make every effort to ensure that each passenger's checked in baggage arrives with the passenger and therefore, since admittedly the baggage was not available, the Airlines are liable. He further contended that the bills with respect to garments which were lost in the luggage were filed before the fora below and marked as exhibits of evidence and that there is no rule with respect to the declaring contents prior to the travel and therefore the Airlines cannot said that the liability is limited to 200/- per kg to a maximum of 3,000/- only when the entire baggage weighing 15 kg and worth much more has been admittedly lost.

13. A perusal of the Checked and Cabin Baggage Rules shows that Indigo customers can check in free of charge up to 20 kg of check in baggage and hand baggage is accepted in the cabin subject to the availability of the space. The articles prohibited from carriage in the baggage due to safety reasons are also clearly enumerated.

14. It is significant to mention that the Airlines specified in its rules that it assumes no liability for wear and tear to luggage or for unsuitably packed, perishable, damaged or fragile baggage; receipt without complaint of baggage on the termination of journey shall be prima facie evidence that the baggage has been delivered correctly and in good condition; the Airlines would make every effort to ensure that each customer's checked in baggage arrives with the customers; the Airlines will not be responsible for any loss or damage occasioned by delay in the carriage by air of customer or baggage and the Airlines is liable for loss, delay or damage to baggage to 200/- per kg with maximum to 3,000/-.

15. The Hon'ble High Court of Delhi in *Air India Ltd. Vs. Tej Shoe Exports P. Ltd. & Anr.*, **ILR (2014) I Delhi 484, dated 19.09.2013**, has observed that damages cannot be recovered in excess of the limit prescribed by the convention. In that case Tej Shoe Exports P. Ltd. had sued Air India for value of loss of its goods, wrongfully released to the consignee, which was transported through Air India. In that case though a Learned Single Judge decreed a sum of 20,78,372/- in favour of Air India with interest @ 10% future interest, the Division Bench of the Hon'ble High Court held that under Rule 22 of the First and Second Schedule of the Act incorporating the Hague Protocol and Warsaw convention restricted the liability of the carrier to a maximum of US\$20 per kg and these limits of liability which were prescribed in the convention have been referred to be absolute, observing thus:

"21. There is authority for the proposition that the task of the courts wherever the law uses a term in clear and unambiguous terms is to give such expressions their plain and ordinary meaning. Unless the context is otherwise, the amplitude of the expression cannot be cut down or curtailed by the interpretive process (ref [Sri Ram Ramnarain v. State of Bombay AIR 1959 SC 459](#); [Jumma Masjid v Kodimaniandra AIR 1962 SC 847](#)). The rule was explained crisply in [Suthendran v. Immigration Appeal Tribunal, \(1976\) 3 All ER 611 \(HL\)](#) as follows:-

"PARLIAMENT is prima facie to be credited with meaning what is said in an Act of Parliament. The drafting of statutes, so important to a people who hope to live under the rule of law, will never be satisfactory unless courts seek whenever possible to apply 'the golden rule' of construction, that is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition..."

In the present case, there is nothing in the 1972 warranting a restrictive construction as to limit "loss" only to destruction of or loss RFA (OS) 18/2007 Page 18 to the goods, when the plain words clearly are "loss of" (emphasis supplied). Therefore, to hold that loss of goods as a result of their non- delivery falls outside of the enactment to justify an action for damages larger than what is provided by the Act would be unwarranted.

22. The public policy underlying uniform rules in the case of loss caused to passenger baggage, personal injury to a passenger, and damage on account of loss of goods, or

destruction or damage to goods and the presumptions which the Convention (as well as the Protocol) seek to raise - which are enacted as law - have been described by the Supreme Court in its recent decision in [Trans Mediterranean Airways vs M/S. Universal Exports & Anr.](#) (2011)10 SCC 316 as "balanc(ing) the imposition of a presumption of liability on the carrier by limiting his liability ..." The (former) House of Lords had, in [Abnett v. British Airways Plc.](#) 1997 (1) All.ER 193, similarly characterized identical terms of UK Law, which had given effect to the Warsaw Convention as amended by the Hague Protocol, as follows:

" [Article 22](#) however is important, because it limits the liability of the carrier. It does so in terms which enable the limitation of liability to be applied generally to all cases where the carrier is liable in the carriage of persons and of registered baggage and cargo. [Article 22\(1\)](#) begins simply with the words "In the carriage of persons." [Article 22\(2\)\(a\)](#) begins with the words "In the carriage of registered baggage and of cargo." The intention which emerges from these words is that, unless he agrees otherwise by special contract - for which provision is made elsewhere in the [article - the](#) carrier can be assured that his liability to each passenger and for each package will not exceed the sums stated in the article. This has obvious implications for insurance by the carrier and for the cost of his undertaking as a RFA (OS) 18/2007 Page 19 whole. [Article 22\(4\)](#) makes provision for the award, in addition, of the whole or part of the costs of the litigation. But this is subject to the ability of the carrier to limit his liability for costs by an offer in writing to the plaintiff. The effect of these rules would, I think, be severely distorted if they could not be applied generally to all cases in which a claim is made against the carrier.

The counterpart of what was plainly a compromise is to be found in the following article, [article 24](#). This Article provides that in the cases covered by articles 18 and 19 and by [article 17](#) respectively - these cases are dealt with separately in two different paragraphs - "any action of damages, however founded, can only be brought subject to the conditions and limits set" by the Convention. It should be noted in passing that paragraph (2) of the article states that this rule is to apply to the cases covered by [article 17](#)" without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights." As Professor Rene H Mankiewicz has pointed out in his article, "The Judicial Diversification of Uniform Private Law Conventions - The Warsaw Convention's Days in Court" (1972) 21 I.C.L.Q. 718, 741 no one could expect states to be prepared to amend their laws relating to these questions, which are basic to the laws of tort and contract and therefore of a wide reaching significance, for the sole purpose of unifying and accommodating all matters relating to the law of the air carrier's liability. The structure of these two provisions seems to me therefore to be this. On the one hand the carrier surrenders his freedom to exclude or to limit his liability. On the other hand the passenger or other party to the contract is restricted in the claims which he can bring in an action of damages by the conditions and limits set out in the Convention. The idea that an action of damages may be brought by a passenger against the carrier outside the Convention in the cases covered by [article 17](#) - which is the issue in the present case - seems to be entirely contrary to the system which these two articles were designed to create..."

16. Though, the aforementioned facts are with respect to cargo which was booked internationally and the terms under Warsaw convention have been made applicable, the ratio with respect to limited liability is very clear. When the Airlines Rules of Carriage limits the liability to 3,000/- , unless there were special declaration by the passenger, the Airlines cannot be made liable for the amounts claimed lost since the contents of each baggage is not known to the Airlines unless and until the declaration is made. Therefore, we are of the view that the Conditions of Carriage of the Airlines constitute a valid and binding contract between the passenger and the Airlines.

17. However, having regard to the peculiar facts and circumstances of the case that Complainant has travelled within three days of her marriage to her marital home and loss of the precious garments, which she has purchased exercising her choice and want to use them at her marital home and there is some emotional attachment to the same, on a suggestion from the Bench the Airlines has offered to settle by agreeing to the release of the amount deposited before this Commission in compliance of order dated 17.04.2018, we are of the considered view that the same may be released to the Complainant with accrued interest. It is clarified that this amount is being paid to the Complainant only based on the peculiar facts and circumstances of the case involved and will not set any sort of precedent in matter of lost baggage.

18. This Revision Petition is disposed of with the aforementioned observations and direction. Parties to bear their own cost.

.....J
R.K. AGRAWAL
PRESIDENT
.....
M. SHREESHA
MEMBER