

M/S. S.K. Agency Vs. Fritz Freight Forwarding India Private Limited

M/S. S.K. Agency Vs. Fritz Freight Forwarding India Private Limited

SooperKanoon Citation : sooperkanoon.com/1108405

Court : Maharashtra State Consumer Disputes Redressal Commission SCDRC
Mumbai

Decided On : Feb-21-2012

Judge : The Honourable Mr. S.R. Khanzode, Presiding Member & the Honourable Mr. Narendra Kawde, Member

Appeal No. : Complaint Case No. CC/99/366

Appellant : M/S. S.K. Agency

Respondent : Fritz Freight Forwarding India Private Limited

Judgement :

S.R. Khanzod, Presiding Judicial Member

(1) This consumer complaint deals with alleged deficiency in service on the part of the Fritz Freight Forwarding India Pvt. Ltd. (hereinafter referred to as the Carrier) for not keeping with the commitments of time bound delivery of the consignment i.e. turbine rotor to Skoda Works, Plezen, Czech Republic and also to reship and deliver the same at Mumbai, the entire cargo passage was by air. For the alleged deficiency on the part of the Carrier the Complainant M/s.S.K. Agency (hereinafter referred to as the Complainant) total compensation of Rs.16,75,186/-, which inter alia includes the reimbursement of the amount of Rs.1,67,386/- which the Complainant had to pay to its principal M/s.Atutl Ltd.; Rs.9,22,800/- being the entire freight charges paid by the Complainant to the Carrier; and further

compensation of Rs.5,85,000/- on account of mental stress, loss of reputation, loss of business etc.

(2) Undisputed facts are that, upon enquiry made by the Complainant about need for its client or principal M/s.Atul Limited to ship by air Cargo viz. the turbine rotor to Skoda Works, Plezen, Czech Republic from Mumbai and to receive it back at Mumbai; the Carrier quoted its rates as per its letter dated 24.11.1998. Accepting the same, the Carrier was entrusted the work and handed over the cargo i.e. turbine rotor on or about 28.11.1998 and one way freight charges of Rs.4,14,450/- were paid. The cargo was accordingly booked on Luftansa Air Cargo and was actually delivered at the destination on 07.12.1998. The same was collected for return journey on 22nd December, 1998 and was delivered at Mumbai on 31.12.1998.

(3) It is the case of the Complainant that time was the essence of the contract and understanding between it and the Carrier was that the consignment would be delivered at its destination, supra, latest by 2nd December, 1998 and the same would be redelivered back to Mumbai at the earliest possible time and in any event well before the X-mas of 1998. However, these commitments were observed only in breach by the Carrier. At the time of entrusting the job to the Carrier, the Complainant was assured that Luftansa Cargo has trucking facility between the Frankfurt and Prague everyday and the consignment would be delivered positively by 2nd December, 1998. It is also alleged that even though the consignment was received back by the Carrier by 22nd December, 1998; they could deliver it belatedly at Mumbai only on 31st December, 1998 and that too charging additional amount than what has been agreed. The delay which according to Complainant was intentional, amounts to deficiency in service on the part of the Carrier and hence, consumer complaint is filed on 26.07.1999.

(4) The carrier opposed this complaint as per its written version dated 28.03.2001 and denied that there was any time schedule, as alleged by the Complainant, was agreed and was the essence of the contract. It further pleaded that the consignment was booked under the normal rate and not on express cargo basis or otherwise. The charges of express service are four times more than the normal

service. The Luftansa Airlines was chosen for sending the consignment as per the instructions of the Complainant only and the consignment could be delivered at the destination at the earliest possible time. Further in the re-export of the consignment back to Mumbai, even though there were x-mas holidays and which enjoyed heavy traffic, it could book the earliest possible flight which was available from KLM for 28.12.1998. However, at Amsterdam, in the connected flight of KLM the cargo was not accepted due to operational reasons and therefore, it was rebooked for another flight. It reached Mumbai on the night of 30th December, 1998 and could be delivered to the Complainant on the following day. It is also submitted that in fact Rs.46,900/- are due from the Complainant which are still not paid and the Complainant is avoiding the said payment.

(5) Complainant preferred to file the rejoinder dated 11th May, 2001. In the said Rejoinder it admits that the consignment was due to its weight of 4600 kgs, could never be booked for any express service and, thus, in other words admit that it was the normal service by which the consignment was to be sent through air. It further admits that it only instructed the Carrier that Cargo may be sent through any airline service which would confirm the delivery in short period. This particular statement is important since it falsifies the story of the complaint that there was a specific time schedule i.e. delivery at the destination prior to 2nd December, 1998 and re-import and deliver at Mumbai before the X-mas as alleged.

(6) On behalf of the Complainant Affidavit of its partner - Mr.Sanjay Kolge dated 21.01.2003 is filed in evidence. He has also filed rejoinder dated 11.05.2001. The affidavit dated 21.01.2003 is without any verification and thus, it is not the affidavit at all. Similarly, even the affidavit dated 21st January, 2003, only states that every statement made in the complaint is true and nothing beyond that is stated which of the contents of the complaint are true to his knowledge or otherwise. Therefore, evidentiary value of the said affidavit is get diminished. A useful reference on the point can be made to the decision of the apex Court in the matter of A.K.K. Nambiar V/s.Union of India and Anr., reported in AIR 1970 SC 652. The Carrier relied upon the verification affidavit to its written statement sworn by one Mr.Mukesh Shah, its Managing Director. Both parties further relied upon the number of correspondence including lawyers letter-cum-notice dated 22.04.1999

sent by the Complainant and its reply given by Carrier dated 17.05.1999.

(7) The Carrier raised an objection that Complainant is not a consumer within the meaning of Consumer Protection Act, 1986. However, since services as a Carrier were availed for transshipment of the consignment i.e. goods, the Complainant is a Consumer in view of the fact that avilment of service for commercial purpose was incorporated by an Act No.62 of 2002 and since the present consumer complaint is prior to the same, it will not affect the status of the Complainant as a Consumer. A useful reference on the point can be made to a decision of Apex Court in the matter of Karnataka Power Transmission Corporation and Anr. V/s.Ashok Iron Works Pvt. Ltd., reported in (2009) 3 SCC 240.

(8) On receipt of the confirmation of the order and on receipt of the Cargo i.e. consignment, the Carrier perhaps had written to its counter part or made enquiry about the earlier shipment to the prague since it was found that if the consignment is sent to Frankfurt then further transport to Prague or at the destination would involve additional custom check at the border etc. and would result in delay in delivery of the consignment. Therefore, on receiving the advice from its overseas counter port, as per the fax or telex dated 24.11.1998 received on 03.08. a.m., it ultimately booked the consignment with Lufthansa Cargo. The details of such arrangement made were supplied to the Complainant also as per the communication dated 02.12.1998. The consignment was air lifted on 30.11.1998 and was expected to be delivered on 03.12.1998 at 02.00 p.m. at the destination. Thus, it could be seen that the carrier did everything in its hand to arrange shipment of the consignment to its destination at the early point of time. There is absolutely no evidence to show that any time schedule as tried to be pleaded in the complaint by the Complainant was agreed upon. The correspondence on record never confirm this and, similarly, the statement made by the Complainant in its Rejoinder, supra, also indicative of the fact that no such time commitment was agreed.

(9) The carrier further throws its light, more particularly, in its reply dated 17.05.1999 sent to the letter-cum-notice of the Complainant and gave every details about the movement and the circumstances which delayed the delivery of

re-export consignment from Skoda to Mumbai. It also refers to the operational reasons whereby the KLM could not reload the consignment on its scheduled flight. The problem was of overweight and the consignment could not be sent by its said scheduled flight. The KLM immediately informed about the said situation and thereupon Carrier further advised them in the given situation to handover the cargo/consignment to Air India so that early delivery at Mumbai could be possible. Looking these circumstances, again it cannot be said that the Carrier acted negligently much less there is intentional delay on the part of the Carrier to deliver the consignment at Mumbai. Some grievance is made that only because of some low rates instead of sending back the consignment via Frankfurt by Lufthansa Cargo, the Carrier chose KLM. However, considering the circumstances explained by the Carrier and to which a reference is made earlier, particularly, the fact that looking to the pressure of traffic due to X-mas they could book KLM flight for re-export of the consignment which was earliest available; cannot be disbelieved.

(10) Thus, from the evidence and the material placed on record it cannot be inferred that the Complainant succeeded in establishing any deficiency in service on the part of the Opponent.

(11) What was the agreement between the Complainant and its Principal M/s.Atul Ltd. is not before us. If from the charges payable by M/s.Atul Ltd. to the complainant, M/s.Atul Ltd. got deducted Rs.1,67,386/-, certainly in the given circumstances it would not give any right to the Complainant to claim the same by way of reimbursement from the carrier. Since the Carrier performed its part of contract to deliver the consignment to its destination at Skoda Works, Plezen, Czech Republic, re-collected the Cargo for re-export and delivered it at Mumbai. Since there is no deficiency on the part of the carrier is established, to claim back the expenditure or the payment made to the carrier, by way of compensation, would not be tenable and much less could be granted. For the same reason other claim towards compensation for mental torture, loss of business etc. also cannot be granted.

(12) For the reasons stated above, we hold accordingly and pass the following order:

ORDER

(i) Complaint stands dismissed.

(ii) In the given circumstances, both parties to bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com