



This article is brought to you for “free” and “open access” by Beyond Briefs Law Review. It has been accepted for inclusion in Volume 1 Issue 2 of Beyond Briefs Law Review after due review.

The Copyright of the Article duly remains with the Author and the Journal.

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of the Publishing Editor of Beyond Briefs Law Review. The Editorial Team of Beyond Briefs Law Review and the Author holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of Beyond Briefs Law Review. Though all efforts are made to ensure the accuracy and correctness of the information published, Beyond Briefs Law Review shall not be responsible for any errors caused due to oversight or otherwise.

CASE COMMENT: COL. D.K. KAPUR VS KLM NORTHWEST AIRLINES

~Sayonee Mangaraja¹

NATIONAL CONSUMER DISPUTE REDRESSAL COMMISSION CASE: 30th November, 2010

PETITIONER: Col. D. K. Kapur

RESPONDENT: KLM Northwest Airlines

BENCH: Hon'ble Mr. Anupam Dasgupta

EQUIVALENT CITATIONS: 2011 SCC OnLine NCDRC 312; [2011] NCDRC 310:
MANU/CF/0174/2010

FACTS OF THE CASE ²

- Colonel D.K. Kapur, a senior citizen and had served in the army. During his journey from Seattle, USA via Detroit, Col. Kapur had availed the services from the KLM Northwest Airlines. However, there was a long delay in the departure and ultimate cancellation of the flight. During his journey, Col. Kapur faced deficiency of services, consequent harassment, and he also faced the same problems in the recovery of baggage at Detroit, USA. He bought a complaint alleging various deficiencies in the services against the airlines before the District Consumer Disputes Redressal Forum, New Delhi.
- Col. Kapur's scheduled airline trip from Delhi via Amsterdam to Seattle on July 24, 2006, experienced a protracted delay in departure and ultimately resulted in the cancellation. Till the following flight's departure, the Airlines housed Col. Kapur and the other passengers at the Hotel Grand in Vasant Kunj, New Delhi. In his hotel room, Col. Kapur experienced problems; the majority of the services were paid for; and the lights in his room were broken. He was ultimately issued a boarding pass for the route Delhi - Amsterdam - Detroit - Seattle rather than the initial Delhi - Amsterdam - Seattle. He spent hours seeking his luggage

¹ You may contact the author at the following email address: sayoneemangaraj@gmail.com.

² Col. D.K. Kapur v Klm Northwest Airlines, (2010) SCC OnLine NCDRC 312.

when one of his checked-in items went missing in Detroit, and no airline employee was able to assist him. As a result, he missed his airline departure from Detroit to Seattle. Since his luggage had been transported by a separate Detroit-Seattle aircraft from his own, it wasn't until his son searched frantically for three hours for the luggage and discovered that it was in the Seattle airport.

- Col. Kapur filed a case in the District Consumer Disputes Redressal Forum, New Delhi against the KLM Northwest Airlines. The District Forum found the Airlines guilty of deficiency in services and directed them to pay a compensation of Rs. 25,000 and costs of Rs. 10,000 within 30 days of its order. The Delhi State Consumer Disputes Redressal Commission, New Delhi received an appeal from the disgruntled party against the District Forum's decision. The District Forum's conclusions and reward were validated by the State Commission. Col. Kapur, who was still not satisfied, filed a revision petition under section 21(b) of the Consumer Protection Act of 1986 in an attempt to increase the amount of compensation and eventually it was granted to him.

ISSUES RAISED³

- Whether there was deficiency of services on the part of the KLM Northwest Airlines?
- Whether the complainant was wrong in interpreting the Airlines' liability clauses?
- Whether the amount fixed for compensation by District Forum should be modified?

ARGUMENTS ON BEHALF OF THE COMPLAINANT

The Complainant's side i.e. Colonel D.K. Kapur made certain arguments before the Court on various alternative grounds:

- When it came to delayed flight departures and delayed luggage delivery, respondent Airlines' liability limitations were significantly greater.
- In several other instances, the State Commission granted far larger sums of compensation for deficiencies far less severe than the ones the petitioner had to endure.

³ Ibid.

- The Petitioner spent hours seeking his luggage when one of his checked-in items went missing in Detroit, and no staffs from the concerned airlines helped him locate the baggage.
- The Airlines made no prior notification that customers would be given food and beverages in exchange for payment.

ARGUMENTS ON BEHALF OF THE RESPONDENT ⁴

The Respondent's side i.e. KLM Northwest Airlines provided a number of arguments to refute the allegations made by the Complainant:

- The petitioner failed to provide evidence of respondent Airlines' carelessness or service deficiencies; hence the suit should be rightly dismissed.
- The complainant might have paid for food and services as requested by hotel personnel and claimed reimbursement from the airlines based on bill production. He did not do so and went back home; it is difficult to hold the respondent Airlines liable for a lack of service.
- As per the Airlines timetable, the previous journey was the first in a series of flights to Seattle. The complainant was placed on a well-known US Airlines flight that was operating from Detroit to Seattle.
- According to US regulations, travelers on overseas flights have to pick up their checked luggage at the airport upon arrival in the country.
- The petitioner did not experience any harm or loss on such account, and he did not even claim that his luggage was lost or damaged, even if there may have been a delay in the delivery of his missing baggage.

JUDGEMENT ⁵

The Delhi State Consumer Disputes Redressal Commission held that the District Forum's decision was right regarding the failure on the part the respondent Airlines inadequate service regarding the petitioner's lost baggage in Detroit and Seattle. Further it was held that, the Airline had not previously informed the passengers at the five-star hotel that they would be allowed to pay for meals and beverages and that they would be repaid for their spending up to a certain amount per

⁴ Col. D.K. Kapur v Klm Northwest Airlines, (2010) SCC OnLine NCDRC 312.

⁵ Ibid.

person upon the presentation of bills. The Commission also stated that the Respondent were right in proving the fact that the complainant was wrong in interpreting the Airlines' liability clauses in support of his claim for compensation was misplaced and the claim was grossly exaggerated. Finally, the compensation modified the compensation amount to a sum of Rs. 50,000, and asked the respondent to pay the amount within four weeks of the order.

ANALYSIS

Col. D.K. Kapur v KLM Northwest Airlines⁶ is a case relating to Deficiency of Services faced by a consumer while availing aviation sector. The Commission not just provides compensation to the Petitioner of the case, but it also discusses the issues which a senior citizen faced in case of deficiency of services. The State Commission tries to justify the decision given by the district forum and finally modifies the sum for the compensation. Additionally, the standard that must be upheld for products or services should not be limited to the legislative obligation made by the trader, manufactures, and sellers, whether explicitly stated or implicit, in any way. Since, the ancient time, India has followed the principle of "*Caveat Venditor*" which translates to "*let the seller be aware*". This principle is not only reflected in the Consumer Protection Act, 2019 but it has also been covered in Kautilya's Arthasasthra. Kautilya briefly talked about the protection and rights of the subjects. Additionally, he prescribed punishments and penalties for those manufacturer, sellers, traders, and businessmen who tricked or fooled the buyers for their own benefits and profits.

⁶ Supra, Note 1.