

## **JUDGMENT SHEET**

### **ISLAMABAD HIGH COURT, ISLAMABAD,** **JUDICIAL DEPARTMENT**

#### **Writ Petition No.1422 of 2019**

Air Blue (Pvt) Ltd through its M.D.

*versus*

Judge Consumer Court (West), Islamabad and another.

#### **Writ Petition No.2579 of 2019**

The Manager (Sales) Air Blue and others

*versus*

Judge Consumer Court (West), Islamabad and another.

**Petitioners by:** Muhammad Ikhlaq Awan, Advocate.

**Respondents by:** Nemo for respondents, Advocate.

**Date of Decision:** 21.10.2022

**MOHSIN AKHTAR KAYANI, J:** By way of this common judgment, I intend to decide both these petitions arising out of similar question.

2. In Writ Petition No.1422 of 2019 the respondent Agha Ahtisham Nawaz Khan filed a consumer complaint under Islamabad Consumers Protection Act, 1995, with the allegation that on 29.01.2016 he travelled from Islamabad, Pakistan to Dubai, UAE through Air Blue flight No. PA-210, however, he could not retrieve his baggage booked via tag No.DXBXH67336, therefore, he immediately lodged his complaint through baggage claim form. The respondent has also referred value of his lost baggage of Rs.1,12,000/-. On the other hand the petitioner issued a cheque of Rs.20,000/- in the name of complainant, which he received under

protest and claims his compensation, as well as, damages on account of mental agony.

3. The Consumer Court after receiving the pleadings framed the issues vide order dated 15.12.2018 and proceeded further, which order has been assailed by the petitioner Air Blue (Pvt) Ltd. on the ground that the Consumer Court lacks jurisdiction to decide the matter in terms of Carriage by Air Act, 2012.

4. In Writ Petition No. 2579 of 2019 the Manger Sales, Air Blue and two others have assailed the order dated 18.05.2019 passed by the Additional Sessions Judge / Consumer Court (West) Islamabad, whereby, the complaint filed by respondent No.2 / Farhan Nawaz has been entertained by the Consumer Court, whereby, he sought recovery of damages alongwith amount of Rs.1,70,500/- for purchase of a ticket for performing of *umrah* which was cancelled by the petitioner without any legal justification. The petitioner has contested the complaint and raised the objection of maintainability in terms of special law Carriage by Air Act, 2012, and the same has not been entertained.

5. Learned counsel for the petitioner contends that in both these petitions Consumer Court has not been vested with jurisdiction to entertain the consumer complaint, especially, when the remedy of damages has been provided in accordance with the standard set out in the Carriage by Air Act, 2012, which provides a jurisdiction in terms of section 33 of the Act to initiate the proceeding at the option

of plaintiff in the territory of one of the state parties. It is lastly contended that the Consumer Court has no jurisdiction to entertain such a complaint rather it is within the domain of court of plenary jurisdiction.

6. The counsel for private respondents despite giving an opportunity have not tendered appearance, even the names of learned counsel are reflected in the cause list, hence, respondent No.2 in both these petitions are proceeded ex-parte. The matter is decided in light of the available record and law after hearing the petitioner side.

7. Perusal of record reveals that in two difference complaints filed by the private respondents in these Writ Petitioners, where services of petitioner's company has been hired for travelling, in which the luggage of one of the respondent namely Agha Ahtisham Nawaz has been lost, despite that same was booked vide tag No.DXBXH67336 by the petitioner's company at Dubai Airport, who has claimed an amount of Rs.112,000/- but he was paid an amount of Rs.20,000/-through a cheque on 09.03.2017, which he received under protest and in the second petition the petitioner's company has cancelled the *umrah* ticket of the respondent Farhan Nawaz and caused him a loss, whereby, the question of legal jurisdiction has been raised by the petitioner's side in accordance to the Islamabad Consumers Protection Act, 1995, and Consumer Court has no jurisdiction in this regard, rather the issue raised in the consumer

complaint qua damages exclusively falls within the domain of court of plenary jurisdiction to award damages under Carriage by Air Act, 2012. No doubt, the Carriage by Air Act, 2012, has been notified on 08.02.2012 in Pakistan after assent given by the President of Pakistan to deal with the issues relating to International Carriage by Air known as Montreal Convention for the Unification of Certain Rules for International Carriage by Air, 1999, and to enable the rules contained in that convention to be applied.

8. The outline of the said law explains the Carriage by Air Conventions and its application to Pakistan. Section 4 of the Act empowers the court in Pakistan to decide any suit brought by the high contracting party or parties or State party or parties to the Carriage by Air Convention. The parties can enforce a claim in respect of the carriage undertaken by such company or party before the Court and High Court in terms of sub section 2 of section 4 can make the rules of procedure providing for all matters which may be expedient to enable such suits to be instituted and carried on.

9. The act provides a schedule which cover the WARSA Convention 1929, including the concept of damages in case of death and injury of passenger or damage to baggage under chapter III, section 17 provided in the fourth schedule, where Montreal Convention for the Unification of Certain Rules for International Carriage by Air, 1999, has been highlighted, even the concept of jurisdiction has also been explained in Montreal Convention with

reference to section 33, where an action for damages must be brought at the option of the plaintiff, in the territory of one of the State Parties, before the court of domicile of the carrier or of its principle place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination, as well as, the convention also provides the concept of arbitration in terms of section 34 of Carriage by Air Act, 2012.

10. Learned counsel for petitioner has been confronted to demonstrate from the relevant provision qua any special tribunal jurisdiction which has been notified to claim damages under this law, however, he is unable to explain any specific provision for exclusion or inclusion of legal jurisdiction of any special tribunal / forum to seek damages. In such scenario, the plain reading of the provisions, compelled to apply is section 9 of the Civil Procedure Code, 1908, where the court shall have jurisdiction to try all suits of a civil nature excepting suit of which their cognizance is either expressly or impliedly barred. While comparing section 9 of CPC in juxtaposition with Carriage by Air Act, 2012, this Court is of the view, that when there is no specific bar in any special law to exclude the jurisdiction of a Civil Court, the parties or person aggrieved with the actions under their special enactment can exercise jurisdiction for his rights with the ordinary court. In this regard I am guided by 2007 SCMR 262 (Evacuee Trust Property Board Vs. Mst. Sakina

Bibi), PLD 1969 [SC] 252 (The Gujranwala Central Co-operative Bank Ltd. Hafizabad Vs. Muhammad Feroze), PLD 1968 [SC] 381 (Chalna Fiber Company Ltd. Vs. Abdul Jabbar). There is no cavil to the proposition that where exclusive jurisdiction or tribunal has not been constituted, the jurisdiction of Civil Court will not stand ousted. Now question arises as to whether the passenger whose luggage has been lost due to negligence of the airline or whose ticket has been cancelled by the airline without any justification, which resulted into financial loss, could approach the Consumer Court in terms of Islamabad Consumers Protection Act, 1995? The answer is to be seen in the light of the provisions of consumer Act which deals with the concept of damages with reference to the definition of consumer provided in section 2 (c) of the Act, which means “*any person who buys goods for consideration which has been paid or partly paid and partly promised to be paid or under any system of deferred payment*”, similarly, sub clause (ii) of section 2 (c) also covers “*services for consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any beneficiary of such services*”, though, the services have separately been explained in section 2 (e) of the Act which covers the concept of transport, such aspect *prima facie* demonstrates that person being consumer can have recourse to remedy under Islamabad Consumers Protection Act, 1995, a special legislation to deal with the complaints of consumers, providing the penalties and appeal, without

providing any ouster clause, hence, the Islamabad Consumers Protection Act, 1995, shall also apply on complaints received from air passengers as well.

11. However, by comparison of Islamabad Consumers Protection Act, 1995, with Carriage by Air Act, 2012, it appears that the later Act recognized the rights of a passenger / traveller who used the Carriage by Air and his rights to recover the damages have been recognized in this law, even he has been provided with a way forward to file a suit for damages within the jurisdiction of that court, where he hired the services and even the convention provides him an option to initiate the proceedings at place of his choice among multiple stations where he lands or where he disembark from the airplane. The Islamabad Consumers Protection Act, 1995, specified the tribunal / court and empowers the authority in terms of sec 2 (a) of the Act, to the Court of Sessions Islamabad to deal with the consumer complaints, even the complaint was only for services including but not limited to traveling or transport, which covers the air travel or Carriage by Air under the law. As such there is no bar upon any consumer for such relief against airline, hence, it is the choice and option of the passenger / consumer to approach the court of plenary jurisdiction under Carriage by Air Act, 2012, or to file a complaint before Consumer Court under Islamabad Consumers Protection Act, 1995, which is a speedy remedy, though Carriage by Air Act, 2012, is a law which deals with the specific

subject is more appropriate to be applied, even otherwise , if a compliant has been filed in Consumer Court, the court shall exercise its jurisdiction by considering the principle set out in the convention referred in the Carriage by Air Act, 2012. On the other hand, learned counsel for the petitioner has heavily relied upon 2012 CLD [Lahore] 846 (Regional Manager, Adamjee Insurance Company Ltd. Vs. Presiding Officer, District Consumer Court, Lahore and 3 others.), PLD 2015 [Lahore] 204 (Pakistan Mobile Communication Ltd Vs. Judge District Consumer Court, Gujranwala and 3 others.) and PLD 2011 [Karachi] 514 (Dr. Naheed Fatima and 3 others Vs. Messrs Pakistan International Air Corporation (PIAC) through Chairman and another), and argued his case that when special tribunal or law on the subject is available, the jurisdiction of Consumer Court is not legally justified, but such argument is misplaced when no ouster of jurisdiction clause or over riding provision is available in the Carriage by Air Act, 2012. In absence of such provision the mandate of legislature is clear that a passenger has been given option to approach a forum of his choice either in country of its origin from where he start his journey irrespective of his nationality / citizenship or where he disembark from the airplane. Similarly, the facts highlighted in the above mentioned three case laws, where in the case *Pakistan Mobile Communication Limited* supra; the Telecom Consumers Protection Regulations, 2009 provide a special forum. In case of *Regional Manager, Adamjee*



*insurance Company Ltd. supra*; Insurance Ordinance, 2000, provides insurance tribunal for resolution of the complaint, whereas in case of *Dr. Naheed Fatima* which was filed against PIAC in terms of Carriage by Air (International Convention) Act, 1966, and pertains to suit for damages, where the question of jurisdiction was challenged, which was settled by the Sindh High Court while referring that “*amount claimed by the plaintiff has been correctly computed in terms of the rules laid down in the First Schedule, or falls entirely (or in part) outside the scope of the 1966 Act is a question that will have to be (and can only be) decided at the conclusion of the trial of the suit, the Plaintiffs cannot be non-suited for this reason alone*”. Such aspect acknowledges the jurisdiction of a Civil Court without referring any special tribunal, hence, the facts narrated in these cases are distinguishable.

12. I have no hesitation to hold that the Carriage by Air Act, 2012, alongwith its schedule highlights the conventions in which manner of determining the liability of a carrier and the quantum whereof are the matters covered by the First Schedule, and the person, for whose benefit such claim can be made, comes within the ambit of second schedule. In either case, of course, the general provisions of law stands excluded and matter has to be determined within the four corners of Act of 2012 read with its conventions referred in the schedules. This special act only provides the mechanism to quantify the damages under the terms of convention but there is no exclusion provision in this law to exclude the jurisdiction of any other court,

tribunal or forum, therefore, the legislative intent has to be considered accordingly and the claim submitted by the petitioner in these writ petitions requires no interference.

13. The consumer or the complainant or any passenger who suffers loss at the hands of any carriage by air company or airline can either approach the Consumer Court to claim his original amounts of loss suffered being a consumer or can claim further damages, special damages, pecuniary damages from plenary court of Civil Jurisdiction, however, his rights with reference to damages or loss suffered could only be calculated on the yardstick provided in Carriage by Air Act, 2012, hence, both these Writ Petitions are not maintainable and same are hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)  
JUDGE

*Approved for Reporting.*

A.Waheed.