

Harsharn Kaur Dhaliwal vs Lufthansa German Airlines on 29 January, 2020

Daily Order

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

U.T., CHANDIGARH

Complaint case No.

:

95 of 2019

Date of Institution

:

02.05.2019

Date of Decision

:

29.01.2020

Harsharn Kaur Dhaliwal, aged 60 years w/o Paramjeet Singh Dhaliwal, R/o House no.2254, S

.....Complainant

V e r s u s

Lufthansa German Airlines, Head Office: 12th Floor, DLF Building No.10, Tower-B

Second Address:-

Lufthansa German Airlines, 56-Janpath, New Delhi-110001 through Authorized Signatory and

Third Address:- Lufthansa German Airlines, Corporate Office: 2nd Floor, Novotal Pullman

Email ID:customer.relations@lufthansa.com

British Airways, DLF Plaza Tower, Phase I, DLF City, Block B, Sector 26A, Sikan

Second Address:-

British Airways Plc. Room No.292, Cargo Terminal Indira Gandhi International Airport, Ne

Third Address:- British Airways, Head Office Address: British Airways PLC, Waterside PO

Fourth Address:- British Airways, PLC, SC0 No.59-60, Sector 9-D, Chandigarh through its

Fifth Address:- British Airways, PLC, SC0 No.16-17, Sector 9-D, Chandigarh through its

Email ID:- onbiz.india@ba.com

Surya Travels & Associates, SC0 Nos.94-95, 1st Floor, Sector 17-C, Chandigarh-1

.....Opposite parties

Turkish Airline Unit No.1001 A 10th Floor Time Tower, M.G. Road, Sector 28, Gur

....Proforma opposite party

Complaint under Section 17 of the Consumer Protection Act, 1986.

BEFORE: JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT.

MRS. PADMA PANDEY, MEMBER.

MR. RAJESH K. ARYA, MEMBER.

PRESENT: Sh.Aman Dhir, Advocate for the complainant.

Ms.Raina S. Thakur, Advocate for opposite party no.1 Sh.Shashank Shekhar Sharma, Advocate for opposite party no.2.

Sh.Suresh Kumar, Partner of opposite party no.3.

Opposite party no.4 exparte vide order dated 19.08.2019.

JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT The complainant, a senior citizen (date of birth 18.08.1958), had suffered a great mental agony and physical harassment, due to the re-routing, cancellation of the confirmed flights by Lufthansa German Airlines and British Airways, she was taken into custody of the Airport Police at Copenhagen (Denmark) because she was arbitrarily sent on the route, for which she was not having visa and even the transit visa was not provided to her.

The other facts necessary for the disposal of this complaint are that the complainant arranged round-trip booking, through Sh.Suresh Kumar, a representative of Surya Travels & Associates, Chandigarh (opposite party no.3 herein), with Star Alliance member Swiss Air and Lufthansa to travel from New Delhi to San Francisco via Zurich and return-journey tickets from San Francisco to New Delhi via Frankfurt, in the following manner:-

18.01.2018 New Delhi to Zurich (First Leg flight) Flight No.LX-147 18.01.2018 Zurich to San Francisco (Second Leg flight) Flight No.LX-38 19.03.2018 San Francisco to Frankfurt (First Leg flight) Flight No.LH-455 20.03.2018 Frankfurt to New Delhi (Second leg flight) Flight No.LH-760 All the tickets were confirmed. Her first journey started on 18.01.2018 and remained successful, except for non-providing of diabetic food as per demand and also a wheel chair.

She suffered much harassment and agony on the return journey. Infact "this was terrible". As per schedule, she boarded flight no.LH-455 of Lufthansa Airlines from San Francisco to Frankfurt on 19.03.2018 and also got checked-in her baggage and was issued boarding pass in due course of time. She remained in the aeroplane for about three hours but it could not take off. Thereafter, she was told to de-board the flight and collect her baggage. On de-boarding, she suffered ordeal, which was highly miserable and eventful. She was not provided any assistance of wheel chair and it was difficult for her to locate and collect the luggage. She was left in lurch at the airport without any assistance from the staff or the Lufthansa Airlines Authorities. However, she managed to call her son at the airport and collected luggage.

It was to her surprise and dismay when the Lufthansa Airlines, without consulting or informing her, re-routed her journey from San Francisco to New Delhi. This time, she was handed over the air tickets from San Francisco to New Delhi via London on British Airways, as alternative arrangement, vide flight no.BA-286 (flight no.1) from San Francisco to London, then by flight no.BA-820 (flight no.2) from London to Copenhagen, and then by flight no.158 of Air India (flight no.3) from Copenhagen to New Delhi and all were the connected flights. She was a stranger in San Francisco; she was not running good health and thus was eager to return. Thus, she was compelled to accept the re-routing for her return to India.

In accordance with the alternative/re-routing plan, on 19.03.2018 at 9.35 p.m. she boarded in first flight no.BA-286 from San Francisco but it arrived too late at Heathrow-London airport, as a result of which, the connected flight no.BA-820 from London to Copenhagen had already departed. Thus, due to the joint fault of Lufthansa Airlines and British Airways, she missed the flight.

Surprisingly, no alternative arrangements were made for the complainant for her safe return to New Delhi. Ultimately, after much persuasion, she was made to board another flight no.BA-822, which departed London at 7.05 pm. on 20.03.2018 and reached Copenhagen (Denmark) at 10.00 pm. Again there was no connected flight to New Delhi, as per the schedule.

As the connected flight was not available at Copenhagen (Denmark), she was stranded at the airport without any proper visa. Although, it was the duty of both the airlines i.e. Lufthansa Airlines and British Airways, which re-routed her return journey, to provide transit visa of Copenhagen (Denmark) but nothing was done. Even wheel chair, special diet and other basic facilities were not provided to her. Rather, she was treated as a criminal. She is a diabetic and hypertension patient and also suffering from Knee problem but was not provided any help/assistance. The airport

authorities as well as both- Lufthansa Airlines and British Airways did not pay any heed to her prayer and request, therefore, she contacted her husband in Chandigarh and apprised him the dismay. This Commission would like to narrate hereunder her tale as contained in para nos.10 to 12 of the complaint:-

"10 That at the Copenhagen Airport, the complainant suffered shock, as the complainant was marched out of the aircraft by the local Border police, like criminals, as the complainant was not having visa for the said country. The complainant became confused and perplexed in the company of Border Police of Copenhagen. At that point of time, the complainant was lost, confused, disoriented and her mind went blank. The complainant was utterly befuddled. The complainant sobbed uncontrollably for long time. The complainant also faced difficulty in communicating with the Border Police officials at the Airport, as they were speaking their local language and were not even talking in English. Ultimately, the police officials called their interpreter to whom the complainant told the entire history that the complainant had boarded flight of Lufthansa Airlines/opposite party No.1 from San Francisco for New Delhi via Frankfurt. That flight was cancelled for the reasons best known to the said Airline. The complainant was given re-routing tickets without explaining the travel route, but due to wrong rerouting, tickets given by the officials of Lufthansa Airlines at San Francisco; the complainant had landed in Copenhagen via Heathrow London by British Airways flight and had to reach New Delhi. Then the complainant was told that the complainant will be sent back to Heathrow, London on the flight of British Airways next morning. The complainant was taken into custody by border police and confined in the Airport as the authorities of British Airways or the Lufthansa airline did not make any arrangement for transit visa, meals, accommodation, communication and comfortable stay of the complainant, who happened to be 60 year aged lady with special disabilities like knee problem, hypertension and diabetes. The complainant felt shocked, harassed and remained under mental stress in the Airport, as the Airport was closed at night. No one was there, except the Border Police personnel. The complainant suffered a solitary confinement, without any meals and other facilities. The sufferings of an aged person, especially a lady, can be imagined in such circumstances. The police personnel kept a watch on their movement of the complainant like a criminal, even if the complainant had to go to attend the natural calls. The complainant was not even given drinking water nor was it available at night in the Airport, as all the shops were closed. During the entire night, at the Airport, the complainant leaned on the sides of the chair and could not sleep, resulting into further high blood pressure, headache, fatigue etc. The complainant could not even change her dress/clothings, as the baggage was not available to her at that point of time. Copy of the photograph where the complainant remained confined with their Border Police, Copenhagen is attached as Exhibit C-11.

11. That on next morning, Border police officials asked the complainant to accompany them and they also conversed with the British Airways officials and also contacted complainant's husband via cell phone No.004572588538. The complainant's husband explained to the Border Police Officer that the complainant had suffered at the hands of above said Airlines and the complainant had no intention to settle in Denmark. The complainant and her family are well settled and have high status being a former Judge of the High Court, now holding equivalent post of President. He also explained his status. Border Police officer felt convinced and checked visa of USA on a Diplomatic Passport, then agreed that they will make alternative arrangement for her return to Delhi at the earliest possible and take up the matter with the Lufthansa Airline and British Airways.

12. That it is the bounden duty of the Airlines that when the flight is cancelled, they should take care of the passengers minute to minute, specifically when the passenger is aged lady and suffering from special disabilities and ailments. The complainant contacted her husband in India and son in USA on cell phone and narrated the whole story and the ordeal the complainant was facing at that point of time. On coming to know of the complainant's bad condition, on account of inconvenience and ill-treatment given by the Lufthansa and British Airlines and sufferings at the Airports and questioning by the police officials like a criminal though they were performing their duty at Airport at Copenhagen. The complainant's family members tried to contact the Airport Office Staff at Copenhagen and other authorities to find out other alternative and were ready to purchase fresh ticket. The family members of the complainant were shocked and helpless at that point of time, being at a distant place in Chandigarh. International roaming on the cell phone of the complainant was specially activated, in order to console and remain in touch with her. They also could not sleep whole night and tried to pacify her and suggested to maintain calm. They were apprehensive that the complainant being a person with special disabilities specifically hypertension, diabetic anything could have happened to her in such circumstances. The stress is the biggest killer. Due to the high blood pressure, the complainant may have suffered haemorrhage."

Thus, she was unauthorizedly detained by Airport Police at Copenhagen (Denmark) for whole of the night without her fault and was treated like a criminal. With great difficulty, her husband contacted the Ambassador concerned and with his assistance, she was got released and was again sent to India by Turkish Airlines-TK-1784 from Copenhagen to Istanbul (Turkey) and thereafter boarded another flight TK-0716 on 21.03.2018 from Istanbul and ultimately reached New Delhi on 22.03.2018 at 5.50 a.m. After suffering above said mental agony and physical harassment, she fell ill for which she took treatment in Fortis Hospital. By stating that the aforesaid act and conduct of the opposite parties amount to deficiency in providing service, negligence and adoption of unfair trade practice, thereby causing her mental agony, humiliation and physical harassment, the present complaint has been filed seeking compensation to the tune of Rs.80 lacs and also litigation expenses

to the tune of Rs.2 lacs.

Notice of this complaint was served upon the opposite parties including proforma opposite party. As none put in appearance on behalf of proforma opposite party on 19.08.2019, it was proceeded against *ex parte*.

Her claim has been contested by opposite party no.1 on numerous grounds, *inter alia* that this Commission did not vest with territorial jurisdiction to entertain this complaint; that she did not fall within the definition of consumer; that since the cause of action accrued to the complainant with regard to delay in flights, illegal confinement, non provision of wheel chair and diabetic food etc. outside India, as such, this complaint is not maintainable against it; that as per Clause 14.6 of the Conditions of Carriage, responsibility of opposite party no.1 was limited to rebooking of passengers in another aircraft or carrier's flight; that opposite party no.1 kept the complainant updated about the state of flights and also made endeavour to re-route/re-book the tickets immediately, on cancellation of the flight in dispute from San Francisco to London on technical ground, as such, it cannot be held liable at all.

It has further been pleaded in the written reply of opposite party no.1 that to avoid any delay, the complainant was rebooked for British Airways flight from San Francisco to London and from London to Copenhagen and then to India on Air India Flight, which was done with her consent only. Furthermore, necessity of transit visa arose as the re-routed flight BA-286 operated by opposite party no.2 from San Francisco to London was delayed in landing at London Heathrow Airport, as a result whereof the connected flight BA-820 from London to Copenhagen was missed. Opposite party no.2 further rebooked the complainant in flight no.BA-822 from London to Copenhagen, which was scheduled to depart from London at 19.05 hours on 20.03.2018, as a result whereof, she missed her onward flight i.e. AI 0158 from Copenhagen to New Delhi, which was scheduled at 19.50 hours. This left her stranded at Copenhagen Airport as there was no flight available for India on that day therefrom, as a result whereof; the Police at Copenhagen (Denmark) Airport had to take her into custody. It has been alleged that fault if any lies on the part of British Airways i.e. opposite party no.2 only and opposite party no.1 has no role to play in the matter. It is also pleaded that as far as provision of wheel chair and diabetic food is concerned, it was clearly mentioned on the tickets and if the airlines did not provide the same during journey period, then opposite party no.1 cannot be held responsible for the same. The complainant was offered compensation equal to Euro 600 in accordance with the Rules and Regulations of European Parliament and of the Council but she refused to accept the same.

Opposite party no.2/British Airways in its written reply took various pleas *inter alia* that it has nothing to do with the purchase of tickets by the complainant from opposite party no.3 (Surya Travels); that because initially the tickets were purchased for travel on Swiss International Airlines and Lufthansa Airlines, as such it was having no role to play either for supply of wheel chair or special meals to the complainant; that for the inconvenience caused to her during journey, opposite party no.2 cannot be held responsible in any manner; that flight no.BA-286 was delayed for about an hour, for the reasons beyond the control of opposite party no.2; as per Rules, she was given boarding pass for the next flight to Copenhagen; that she was also provided refreshment voucher of

10 ponds at London; that opposite party no.2 was not aware about onward journey of complainant to Copenhagen (Denmark) and that she was not having a visa for Denmark; that because at the time of booking of tickets by opposite party no.1 it was nowhere mentioned regarding special requirement regarding wheel chair or special diet, as such the same was not provided to her; and that it was the duty of opposite party no.1 to take care of the journey of the complainant, after re-routing it.

Opposite party no.3-Survy Travel and Associates in its written statement pleaded that it being the agent of opposite party no.1 performed its duty with due diligence; that while returning back to New Delhi, there was an immediate change in the boarding of the flight, which was done by opposite parties no.1 and 2 (Lufthansa Airlines and British Airways); that the complainant had received confirmed tickets for 19.03.2018 of Lufthansa Airlines, yet, due to some technical issues, the complainant was de-boarded from the flight no.LH-455; that on account of harassment suffered by the complainant she has already received compensation from the insurance company on 20.07.2018; and that opposite party no.3 being agent cannot be held responsible for the act and conduct of opposite parties no.1 and 2.

In the rejoinder filed, the complainant reiterated all the averments contained in the complaint and controverted those of the written reply filed by the opposite parties no.1 to 3.

This Commission has afforded adequate opportunities to the parties to adduce evidence by way of filing affidavit in support of their respective contentions. In pursuance thereof, they have adduced evidence and also produced numerous documents.

We have heard the contesting parties and have carefully gone through the material available on the record.

From the pleadings of parties and other material available on the record, the main question which arises for consideration is, as to whether, there was any deficiency in providing service, negligence and unfair trade practice on the part of the opposite parties no.1 to 3 or not?

First we will deal with the objection raised by opposite party no.1 that this Commission did not vest with territorial jurisdiction, it may be stated here that Sub-section 2 of Section 17 of the Act envisages that person aggrieved have remedy to file a complaint before a State Commission within the 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 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 carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case

may be, acquiesce in such institution; or

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

In the present case, it is an admitted fact that opposite party no.3 is an authorized agent of opposite parties no.1 and 2 airlines, who is carrying out the business at Chandigarh, address whereof has been mentioned in the head-note of this complaint. There is also no dispute with regard to the fact that the tickets in question were purchased by the complainant from opposite party no.3 at Chandigarh. A similar question with regard to territorial jurisdiction has already been dealt with by this Commission in *Ranju Aery Vs. Spice Jet Limited*, consumer complaint bearing no.347 of 2015 decided on 29.12.2015, wherein it was held, a person can file consumer complaint, at a place from where the air tickets have been booked either through internet or physically. Feeling aggrieved, Spice Jet Limited filed Revision Petition No.1396 of 2016, which was dismissed by the Hon'ble National Commission, vide order dated 07.02.2017. Even, the Special Leave Petition filed by Spice Jet Limited, before the Hon'ble Supreme Court of India was also dismissed. Under these circumstances, since a part of cause of action arose to the complainant within the territory of Chandigarh, this complaint is maintainable before this Commission.

Now we will deal with the grievance raised by the complainant with regard to de-boarding her from flight no.LH-455 at San Francisco on 19.03.2018. There is no dispute with regard to this fact. She was issued boarding pass at San Francisco to Frankfurt - New Delhi, in due process and she kept waiting for three hours in the aeroplane but thereafter she was asked to de-board without any cogent reasons. Lufthansa Airlines in its reply stated that infact the passengers were de-boarded from flight no.LH-455 at 1700 hours, due to some technical/mechanical defect therein. No document has been produced on the record to establish that the said flight was cancelled due to some technical/mechanical defect. It was the duty of opposite party no.1/ Lufthansa Airlines to provide alternative aeroplane, if there was any technical/mechanical defect in the flight no.LH-455. This fact itself has caused a great mental agony and physical harassment to the complainant.

It has been candidly stated in the complaint as well as affidavit filed by the complainant that she de-boarded the said flight but was not provided any assistance by the staff of opposite party no.1 and even wheel chair was not provided to her despite request made, as she was suffering from knee problem. In such a situation, it was the duty of the Lufthansa Airlines not only to provide wheel chair but also to assist the complainant in the difficulty, so that she may approach the alternative flight. Although, it has been mentioned in para no.5 of its written reply that the complainant was provided wheel chair with assistant and was taken to the counter by the staff of opposite party no.1 but this fact has been denied by the complainant. Under this situation, it was the duty of the Lufthansa Airlines to disclose the name of the staff and place on record his affidavit, who provided her wheel chair and took her to the counter. By not doing so, the Lufthansa Airlines attract adverse inference against itself. Similarly, the British Airways had not provided any wheel chair to her.

Now we will deal with the grievance raised by the complainant with regard to re-routing of her journey. It may be stated here that she was stranded at San Francisco airport and was hapless because LH-455 (first leg flight) was cancelled and she brought on record the circumstances, which required her return to India as per the schedule given in para no.2 (ibid). The return journey of the complainant was re-routed without consulting her and knowing fully well that she was not having any requisite visa for the places, especially Copenhagen (Denmark), where she was compelled to board the aeroplane and return India by re-routing her journey. Infact, it was duty of both-Lufthansa Airlines and British Airways to arrange her transit visa at Copenhagen (Denmark), because the re-routing was sudden and at a strange place. She was thrown on the airport like a luggage. A passenger in such a situation is helpless and unable to arrange transit visa. This fact should have been taken into consideration by both these airlines but they miserably failed in this regard, rather, the re-routing was made arbitrarily and abruptly without watching the interests and safety of the passenger.

By merely re-routing and arranging tickets of British Airways, the liability and responsibly of Lufthansa Airlines does not come to an end. It was its bounden duty to watch the interests and safe journey of its passengers.

Even as per re-route, she boarded flight no.BA-286 from San Francisco on 19.03.2018 at 9.35 pm. She was provided connecting flight BA- 820 from London to Copenhagen but flight no.BA 286 did not reach in time, as a result whereof, she missed connected flight no.BA-820 from London to Copenhagen. It further added salt to her injuries. As per initial schedule, she was to reach Delhi on 20.03.2018 at 1.30 a.m. but due to re-routing, she reached New Delhi on 22.03.2018 at 5.50 am. by different aeroplanes and different routes. Thus, she suffered ordeal for about 52 hours and was thus caused mental agony, pain and physical harassment.

However, again she was provided air ticket from another flight BA- 822 from London to Copenhagen from where she was to board in the connecting flight. She reached Copenhagen at around 10.00 pm. on 20.03.2018 but no connecting flight was provided from Copenhagen to New Delhi. Both Lufthansa Airlines and British Airways were not oblivious of the fact that she was not having any transit visa for Denmark Country. Before re-routing her journey, it was the duty of both Lufthansa Airlines and British Airways to get her travel in those countries, whereby she has been permitted to travel or they should arrange for her transit visa, but infact, she was treated in a rude and unacceptable behaviour.

She was taken into the custody by the Border Police and confined in a lockup at the Copenhagen Airport, solely due to the reason that neither Lufthansa Airlines nor British Airways made any arrangements for her transit visa. Since she was neither conversant with the language of Denmark nor she was well conversant in English, it was the duty of the both Lufthansa Airlines and British Airways to arrange an English translator for her at Copenhagen Airport but they failed to do so, thereby causing her further harassment.

The complainant was suffering from diabetics, knee problem and hypertension. Neither any type of meals, accommodation or communication facilities were provided to her. She underwent a

lot of mental agony and stress. At night, the airport was closed. She was alone and only the personnel from border police were there. Infact she suffered a solitary confinement without any meals and basic facilities of living. It has come into evidence that the Police personnel kept a watch on her as if she was a criminal, even they accompanied her, when she went to attend nature's call and that there was no provision of water at night, as all the shops within the airport premises were closed and she was compelled to lean at the chair and could not sleep resulting into rise of her blood pressure, headache, fatigue etc. Even there was no dressing room, so that she can change her clothes. She placed on record the photograph (Annexure C-11) of the lockup where she remained kept for whole night. Psychologically, she remained under constant fear whole night.

Detaining a person without his fault is the gravest act of inhumanity and the person arrested actually suffers an irreparable loss which cannot be compensated in terms of money. If a lady is detained publicly, at an airport, it amounts to ignominy and it will gravely lower the reputation of the detainee. Infact her arrest and detention in the circumstances of the case in hand, without her fault and due to sheer negligence of both the airlines requires that the exemplary cost be imposed.

Even her journey on the next date was not smooth. However, it was only after whole night hectic efforts of her husband, who explained his status to the Border Police of Denmark and only after checking visa of USA on a diplomatic passport, that they agreed for making alternative arrangement for the complainant for her return to New Delhi. Even the travel agent Mr.Suresh Kumar, Partner of Surya Travels/opposite party no.3 did not provide any help to the complainant. He got information with regard to re-routing through Copenhagen (Denmark) but he did not stress the Lufthansa Airlines and British Airways to stop the re-routing as she has no transit visa for Denmark. In these circumstances, her husband contacted Sh.Amit Taneja of Clear Trip, and thus arranged her remaining last leg of return journey for New Delhi. Ultimately, she was issued tickets of Turkish Airlines-TK-1784 from Copenhagen to Istanbul (Turkey) and thereafter boarded another flight TK-0716 on 21.03.2018 from Istanbul and ultimately reached New Delhi on 22.03.2018 at 5.50 a.m.

It is not difficult to visualize the kind of mental harassment and torture complainant would have suffered during those hours. She was certainly entitled for a better treatment from international air carriers like Lufthansa Airlines and British Airways as well as from Surya Travels. She has suffered a lot due to her no fault and as such the conduct of Lufthansa Airlines and British Airways as well as airport authorities was highly condemnable. Infact all of them adhered to un-humanitarian, barbaric approach which was contrary to the Air Traffic protocol.

Her medical record establishes that she was provided medical aid immediately on reaching Chandigarh, as she remained admitted in Fortis Hospital. Her family members also remained under the state of mental trauma. From a conspectus of the entire circumstances, there is no escape from the conclusion that the opposite parties no.1 to 3 have not only committed grave deficiency in service but the said act would also amount to adoption of unfair trade practice, for which the complainant is entitled to be compensated.

It is well settled that the word 'Compensation' is of very wide connotation and once the Court is satisfied that the complainant has suffered harassment or mental agony and is entitled to compensation, it is obliged to adequately compensate him/her for the actual loss or expected loss,

which would extend to compensation for the physical, mental or emotional sufferings. On the question of determination of compensation for the loss or injury suffered by a consumer on account of deficiency in service, the following observations by a three Judge Bench of the Hon'ble Supreme Court in *Charan Singh v. Healing Touch Hospital & Ors.*, - (2000) 7 SCC 668 are also apposite:

"While quantifying damages, Consumer Forums are required to make an attempt to serve the ends of justice so that compensation is awarded, in an established case, which not only serves the purpose of recompensing the individual, but which also at the same time, aims to bring about a qualitative change in the attitude of the service provider. Indeed, calculation of damages depends on the facts and circumstances of each case. No hard and fast rule can be laid down for universal application. While awarding compensation, a Consumer Forum has to take into account all relevant factors and assess compensation on the basis of accepted legal principles, on moderation. It is for the Consumer Forum to grant compensation to the extent it finds it reasonable, fair and proper in the facts and circumstances of a given case according to the established judicial standards where the claimant is able to establish his charge."

As far as plea taken by Counsel for opposite party no.1 that the complainant is entitled to compensation equal to Euro 600 only, in accordance with Regulation (EC) No.261/2004 of the European Parliament and of the Council (EC Regulation) and that opposite party no.1 is liable for indirect and consequential damage as per Article 14.1.7 of the Conditions of Carriage, unless such damage is caused intentionally due to gross negligence or willful misconduct on its part. In the first instance, it may be stated here that sequence of events narrated above, leaves no doubt for this Commission to come to the conclusion that there was a high state of negligence and willful misconduct on the part of the opposite parties no.1 to 3, in handling the case of the complainant. Else what worst can happen to a person that during the period intervening of her journey, the complainant was not provided wheel chair as she was suffering from knee problem; she was not provided diabetic meal; she was not provided even drinking water at Denmark airport; she was taken into custody because of her no fault as transit visa was not arranged by the opposite parties no.1 to 3 who arranged her re-routing; she was not provided basic facilities during her period of custody in Denmark including the bedding in accordance with her health; she was not provided language translator there so that she is able to communicate her version; she was not informed with regard to cancellation of her first flight; even she was not provided alternative arrangement from Copenhagen for the last leg for New Delhi; and her journey was delayed for about 52 hours.

Not only as above, under similar circumstances, a similar plea with regard to making payment of paltry compensation referred to above was negated by the Hon'ble National Commission in the case *Air France Vs. O.P. Srivistava and ors.*, First Appeal No.310 of 2008, decided on 22.03.2018, while holding as under:-

" In so far as the question of applicability of the Carriage by Air Act, 1972, as amended by the Carriage by Air (Amendment) Act, 2009, incorporating the relevant provisions in conformity with the 'Montreal Convention', adopted on 28.05.1999, for

determination of statutory compensation payable under the said Act is concerned, it has to be considered in a larger perspective, keeping in view the rapid strides in the civil aviation industry, traceable from a hot-Air balloon flights in the 18th century to the present age of super-sonic jets. In the course of these developments, a number of international instruments governing the liability of Air Carriers for injury, death, loss or damage of baggage or cargo delays etc. have evolved. India has also subscribed and ratified the Warsaw convention 1929; the Hague Protocol 1955 and lastly the 'Montreal Convention' 1999, giving effect to the same by way of appropriate legislations, such as Indian Carriage by Air, 1934; the Carriage by Air Act, 1972 and Act 28 of 2009, including the III Schedule and other amended provisions to the existing Act. With regard to the liability to pay compensation it is the 'Montreal Convention' that has brought about drastic changes in the International Civil Aviation Sector. Although signatory to both the earlier conventions - i.e. Warsaw Convention and the Hague Protocol, India took nearly two decades to take a firm decision to subscribe to 'Montreal Convention' and bring forth necessary legislation to give effect to the same, by introducing the Carriage by Air (Amendment) Bill, 2007.

24. By virtue of the Montreal Convention, a 'two-tier' liability regime was introduced for the first time, providing compensation in terms of 'SDR' (Special Drawing Rights). As per the first tier, in the case of death or bodily injury, the liability of the Carrier was limited to 'One Lakh SDR', per passenger, making the Carrier subject to strict liability, regardless of fault. For proven damages above 'One lakh SDR', though there was no pre-specified limits of liability, the Carrier was declared as not liable to such extent, if it was proved that the damage was not caused by its negligence or other wrongful act or omission. Simultaneously, enhancement was also made on the compensation in respect of damage caused to baggage/cargo.

25. The earlier Convention, i.e. Warsaw System, provided 'four choices' of jurisdiction for filing a claim by the passenger or legal heirs, namely, (1) the place where the ticket was issued or the contract of carriage was made (2) principal place of business of Carrier, (3) the place of destination of the passenger, and (4) the place of domicile of the Carrier. The Montreal Convention 1999, added a '5th jurisdiction', i.e. the 'place of domicile of the passenger', provided the Airline had presence there. This fact, highlighted in the Bill, enabled an Indian National to file his claim in India, even if the journey was undertaken outside India and the ticket was purchased outside India, provided the Carrier had presence in India. It provided for simplified and modernized documents of the carriage (passenger ticket and way bill): thus enabling utilization of electronic data processing in the Air Transport Industry. The Montreal Convention 1999 sought to establish much needed uniformity and predictability of the Rules relating to the international carriage of passengers, baggage and cargo, protecting the interest of passengers by introducing the modern 'two-tier' liability system and providing for the swift recovery of proven damages, without the necessity to have lengthy litigation, simultaneously enabling the Airline operators to achieve

substantive operational savings, through the use of electronically generated simplified documents of carriage and efficient risk management. After the necessary inputs by the Committee to which the bill was referred, the bill was piloted by the Minister for Civil Aviation (vide Ext. P11 Speech dated 30.04.2008), projecting the salient features. The bill was passed by both houses and necessary amendment to the Statute was effected as per Carriage by Air (Amendment) Act, 2009 (Act 28 of 2009) and India became a signatory to the 'Montreal Convention' accordingly.

26. We have made reference to the evolution of law with regard to the liability of the Air Carriers at the international and domestic levels because a big issue relating to the applicability or otherwise, of the Montreal Convention on the facts of the present case was sought to be made out by the Learned Counsel for the parties, although we are of the view that the question of award of compensation to the Complainants on account of the alleged harassment for the delay in their departure from Paris to Delhi due to admitted overbooking by the Appellant deserves to be examined under the provisions of the Act (CPA, 1986) de hors the Air Act or the above-noted conventions/protocol. However, before entering this arena, we deem it necessary to clarify that we are examining the question of award of compensation to the Complainants in addition to what is payable or paid to them under the afore-noted Conventions.

27. It needs little emphasis that the Act (CPA, 1986) was envisaged as a special social legislation to protect consumer rights unlike other legislations that create dispute resolution mechanisms between level players, this legislation establishes a level-playing field between unequal players i.e. Consumers and large Corporations. The following observations of the Hon'ble Supreme Court in Lucknow Development Authority v. M. K. Gupta - (1994) 1 SCC 243, clearly and finally delineate the objective behind the enactment of the Consumer Act:-

" The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, 'a network of rackets' or a society in which, 'producers have secured power' to 'rob the rest' and the might of public bodies which are degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, and fighting against it, is accepting it as part of life. The enactment in these unbelievable yet harsh realities appears to be a silver lining, which may in course of time succeed in checking the rot. A scrutiny of various definitions such as 'consumer', 'service', 'trader', 'unfair trade practice' indicates that legislature as attempted to widen the reach of the Act.

.....

It has been approved by this Court in *Regional Director, Employees' State Insurance Corpn. v. High Land Coffee Works of P.F.X. Saldanha and Sons*, (1991) 3 SCC 617; *CIT v. Taj Mahal Hotel, Secunderabad* - (1971) 3 SCC 550 and *State of Bombay v. Hospital Mazdoor Sabha*, AIR 1960 SC 610. The provisions of the Act thus have to be construed in favour of the consumer to achieve the purpose of enactment as it is a social benefit oriented legislation. The primary duty of the Court while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and is not contrary to the attempted objective of the enactment." (Emphasis supplied)

28. A similar approach has been recommended by the Hon'ble Supreme Court in its recent decision in *National Insurance Co. Ltd. v. Hindustan Safety Glass Works Ltd.* - (2017) 5 SCC 776, wherein, it has been observed as follows:

"..... in a dispute concerning a consumer, it is necessary for the Courts to take a pragmatic view of the rights of the consumer principally since it is the consumer who is placed at a disadvantage vis-a-vis the supplier of services or goods. It is to overcome this disadvantage that a beneficent legislation in the form of the Consumer Protection Act, 1986 was enacted by Parliament."

29. The area of operation of the Act (CPA, 1986) on the one hand and the Carriage by Air Act, 1972 has been examined and reconciled by the Hon'ble Supreme Court in *Trans Mediterranean Airways (Supra)*. Answering the issue whether a Consumer Fora has the jurisdiction to entertain and decide a complaint filed by the consignor claiming compensation for deficiency of service by the carrier, in view of the provisions of the Carrier by Air Act and the 'Warsaw Convention' or whether domestic laws can be added or substituted for the protection of the consumers, relying on the observation in the three-Judge decision in *Ethiopian Airlines Vs. Ganesh Narain Saboo* - (2011) 8 SCC 539, the Hon'ble Supreme Court had opined that the protection provided under the Act (CPA, 1986) to the consumers is in addition to the remedies available under any other statute. It does not extinguish the remedies under another statute but provides an additional or alternative remedy. Consequently, the Supreme Court affirmed the decision rendered by this Commission, holding the carrier in that case, deficient in rendering service to the Complainant. In the light of the stated authoritative pronouncement, we have no hesitation in rejecting the contention of the Appellant that the compensation to Complainants has to be determined under the Air Act and not under the Act (CPA).

30. Now adverting to the question of deficiency in service on the part of the Appellant, in our view, in the light of specific averment in the Complaint to the effect that the procedure like searching for

the volunteers, the Airlines are required to follow in situations created by them on account of the over bookings, was not followed. In the absence of any cogent evidence by the Airlines to rebut the averment and prove that all necessary measures to avoid the unnecessary delay in Complainants' departure, or that it was impossible for it to take such measures, as stipulated in Article 20 of the 'Warsaw Convention' and Article 19 of the 'Montreal Convention' no fault can be found with the finding returned by the State Commission on the point, particularly when nothing has been brought on record to show that the practice of overbooking the flights has the sanction of Director General of Civil Aviation (DGCA). The practice of overbooking may be a commercially viable international practice being adopted by all the Airlines, probably, to ensure that seats in the flights do not go vacant in the event of no-shows by booked passengers(s) but the same cannot be at the altar of the passengers. Not permitting a passenger, holding confirmed ticket to board a flight, amounts to deficiency of service on the part of an Airline."

In this view of the matter, this Commission is of the considered opinion that the opposite parties no.1 to 3, jointly and severally, are liable to compensate the complainant, for their willful misconduct leading to deficiency in providing service, negligence and unfair trade practice, thereby causing mental agony, humiliation and physical harassment to her.

For the reasons recorded above, we are of the view that although the complainant suffered irreparable loss & injury, mental harassment & agony, humiliation, yet, we quantify the compensation in total to the tune of Rs.70 lacs (Seventy Lacs), which shall be paid by opposite parties no.1 to 3 in the following manner and under the following heads:-

Lufthansa Airlines (opposite party no.1) to pay Rs.10 lacs (Ten Lacs) as compensation to the complainant for not communicating her regarding cancellation of the initial flight no.LH-455 from San Francisco airport, as a result whereof, she kept sitting in the aeroplane for more than three hours therein without any reason as well as for suffering mental agony due to cancellation of the flight.

Lufthansa Airlines and British Airways (opposite parties no.1 and 2) to pay Rs.5 lacs (Five Lacs) in equal shares as compensation to the complainant for making re-routing of her return journey without her written consent, despite the fact that they were having knowledge that she is not having a transit visa for Denmark.

Lufthansa Airlines and British Airways (opposite parties no.1 and 2) to pay Rs.10 lacs (Ten Lacs) in equal shares as compensation to the complainant for not arranging of transit visa especially for Denmark.

Lufthansa Airlines and British Airways (opposite parties no.1 and 2) to pay Rs.25 lacs (Twenty Five Lacs) in equal shares as compensation to the complainant publicly arresting her and illegal detention by Border Police and keeping her whole night in lockup at Copenhagen (Denmark) Airport on 20.03.2018, for her no fault, wherein

she suffered ignominy, a lot of mental agony, humiliation, psychological fear and physical harassment, as even drinking water was not provided to her what to speak of other basic facilities.

Lufthansa Airlines and British Airways (opposite parties no.1 and 2) to pay Rs.10 lacs (Ten Lacs) in equal shares as compensation to the complainant for causing her mental agony and physical harassment by not providing arrangements of wheel chair; diabetic meals and assistance throughout her journey.

Lufthansa Airlines and British Airways (opposite parties no.1 and 2) to pay Rs.5 lacs (Five Lacs) in equal shares as compensation to the complainant for the delayed journey for about 52 hours.

Surya Travels & Associates (opposite party no.3) is also liable to pay Rs.5 lacs (Five Lacs), in total, as compensation to the complainant, for its fault and shirking from the responsibility as aforesaid.

Opposite parties no.1 to 3, jointly and severally to pay Rs.50,000/- (Fifty thousand) as cost of litigation to the complainant.

In this view of above, it is clarified that liability of Lufthansa Airlines (opposite party no.1) comes to Rs.37,50,000/-; that of British Airways (opposite party no.2) comes to Rs.27,50,000/- and that of Surya Travels & Associates (opposite party no.3) comes to Rs.5 lacs. Apart from it, all the opposite parties shall share the litigation expenses to the tune of Rs.50,000/- in equal shares. However, we impose joint and several liability on Lufthansa Airlines and British Airways/opposite parties no.1 and 2 with regard to the amount of compensation as mentioned above in head nos. (ii) to (vi) of this paragraph.

The amount awarded above, shall be paid within a period of 45 days, from the date of receipt of a copy of this order, failing which, the same shall carry penal interest @9% p.a. from the date of filing of this compliant, till realization.

The said period of 45 days has been given to the opposite parties to afford them an opportunity to comply with this order, failing which, penal action may be taken under the provisions of Section 27 of the Consumer Protection Act, 1986 which provides punishment with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousands rupees but which may extend to ten thousand rupees, or with both.

Complaint against proforma opposite party is dismissed with no order as to costs.

Copies of this order be sent to the parties, free of charge through registered post as well as email for information and compliance.

The file be consigned to Record Room, after completion.

Pronounced 29.01.2020 Sd/-

[JUSTICE RAJ SHEKHAR ATTRI] PRESIDENT Sd/-

(PADMA PANDEY) MEMBER Sd/-

(RAJESH K. ARYA) MEMBER Rg.