

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2947 OF 2005

LUFTHANSA CARGO INDIA PVT. LTD.

Appellant (s)

VERSUS

AFL LTD.

Respondent(s)

(With office report)

Date: 24/02/2010

This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE T.S. THAKUR

For Appellant(s) Mr. H.L. Tikku, Sr. Adv.

Ms. Yashmeet, Adv.
Mr. Sriharsh N. Bundela, adv.
Mr. M.J. Paul, Adv.

For Respondent(s) Mr. Sandeep Narain, Adv.

Mr. Shri Narain, Adv.
Ms. Arti Tiwari, Adv.
for M/S. S. Narain & Co., Adv.

UPON hearing counsel the Court made the following
O R D E R

The impugned judgment and order dated 28.02.2005
is set aside and matter remanded to the National
Commission for deciding afresh the rectification
application filed by the respondent herein in accordance
with law expeditiously. Appeal is allowed. No order as
to the costs.

(Ajay Kr. Jain)
Court Master

(Indu Satija)
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2947 OF 2005

Lufthansa Cargo India Pvt. Ltd.

.... Appellant

Versus

AFL Ltd.

.... Respondent

O R D E R

Heard learned counsel for the parties.

1. This appeal under Section 23 of the Consumer Protection Act, 1986 is directed against the judgment and order dated 28th February, 2005 of the National Consumer Disputes Redressal Commission (hereinafter for short 'the National Commission') whereby the rectification application filed by the respondent herein seeking rectification of earlier order dated 06.01.2004 has been disposed of by the National Commission with a direction to the appellant herein to reimburse the amount of Rs. 10 lakhs to the respondent herein within a period of one month from the date of receipt of order failing which interest @ 9% was directed to be paid on the said amount.

2. It appears that certain goods had been booked by one Bee Gee Handicrafts for being transported to Frankfurt, Germany for being displayed at the trade fair there. The goods were handed over by Bee Gee Handicrafts to DHL Worldwide Express which is a division of the respondent-AFL Ltd. In their turn DHL Worldwide Express handed over the said goods to the appellant herein for transportation to Germany. It was alleged by Bee Gee Handicrafts that some of the goods reached Germany after the trade fair was over and hence Bee Gee Handicrafts suffered a loss. For the said loss, Bee Gee Handicrafts filed a complaint (O.P. No. 87/1998) before the National Commission against DHL Worldwide Express. In the said complaint, a settlement was arrived at between Bee Gee Handicrafts and DHL Worldwide Express on 18.3.2002, a copy whereof is annexed as Annexure P-12 to this appeal. In terms of the said settlement DHL Worldwide Express in full and final settlement of the claim agreed to pay a sum of Rs.10 lakhs to Bee Gee Handicrafts. Simultaneously, DHL Worldwide Express had filed a complaint (O.P. No. 310/1999) before the National Commission against the appellant-Lufthansa Cargo India Pvt. Ltd. in which the

following order was passed on 06.01.2004 :

"The complainant claimed reimbursement of the amount of Rs. 34,298/- and Rs. 39,900/- paid to his clients M/s. Rattan Textiles and M/s. K. Overseas respectively and we feel these amounts should be allowed. He claims, he spent Rs. 1,50,000/- towards costs of litigation, we feel justice would be met if 50% of that is allowed. He claimed expenses of Rs. 40,000/- which we feel 50% of the amount of Rs. 20,000/- is adequate. His claim for Rs. 20,000/- for loss of future business and Rs. 20,000/- as damages for loss of reputation, we feel has no justification and need not be granted. The total amount as derived at in the above claims is Rs. 1,69,198/- which we direct the Respondents to pay with interest at 9% p.a. from 8.1.1998 till realization within two months from the date of receipt of this order."

3. Thereafter, an application for rectification of the abovesaid order dated 06.01.2004 was filed on which the impugned order dated 28.02.2005 has been passed.

4. We have carefully perused the order dated 28.02.2005 and we find that it has relied upon only the settlement reached between Bee Gee Handicrafts and DHL Worldwide Express. There is no independent finding of the National Commission as to the amount of compensation which DHL Worldwide Express can claim from the appellant-Lufthansa Cargo India Pvt. Ltd. for the alleged deficiency. No doubt the settlement between Bee Gee Handicrafts and DHL Worldwide Express is a piece of evidence which can be taken into consideration by the National Commission but certainly it is not res judicata since the appellant herein was not a party to the settlement. In our view the National Commission should also have considered other pieces of evidence while deciding the liability of the appellant herein for compensation to be paid to the respondent herein.

5. Accordingly, we allow this appeal, set aside the impugned judgment and order dated 28.02.2005 and remand the matter to the National Commission for deciding afresh the rectification application filed by the respondent herein in accordance with law expeditiously. Appeal allowed. No order as to the costs.

.....J.
(MARKANDEY KATJU)

.....J.
(T.S. THAKUR)

NEW DELHI;
FEBRUARY 24, 2010