HARSHARN KAUR DHALIWAL V. LUFTHANSA GERMAN AIRLINES & ORS.

1. HARSHARN KAUR DHALIWAL
W/O PARAMJEET SINGH DHALIWAL, R/O HOUSE NO.2254,
SECTOR-35-C, CHANDIGARH

……..Appellant(s)

Versus

1. LUFTHANSA GERMAN AIRLINES & ORS.
2. BRITISH AIRWAYS PLC

……..Respondent(s)

Case No: FIRST APPEAL NO. 702 OF 2021

Date of Judgement: 16 Jan 2023

Judges:

HON’BLE MR. DINESH SINGH,PRESIDING MEMBER
HON’BLE MR. JUSTICE KARUNA NAND BAJPAYEE,MEMBER

For the Appellant : Mr. Munish Goel, Advocate
For the Respondent : For Surya Travels & Associates : Mr. Shubham Bhalla, Advocate with

Ms. Akansha Gulati, Advocate
Ms. Ragini Sharma, Advocate
For British Airways : Ms. Ritu Singh Mann, Advocate with
Mr. Dheeraj Garg, Advocate
For Lufthansa German Airlines : Mr. Harshul Choudhary, Advocate with
Mr. Akhil Anand, Advocate
For the Turkish Airlines : NEMO (served)

Facts of the Case

Harsharn Kaur Dhaliwal (complainant) booked return tickets from New Delhi to San Francisco via Zurich and Frankfurt with Swiss Air and Lufthansa German Airlines through a travel agent Surya Travels & Associates.On the outbound journey on 18.01.2018, she travelled from New Delhi to San Francisco via Zurich without any issues.On the return journey on 19.03.2018, after boarding the Lufthansa flight LH-455 in San Francisco and sitting in the aircraft for 3 hours, she was asked to deboard without any reasons.She was unilaterally rerouted by Lufthansa from San Francisco to New Delhi via London and Copenhagen on British Airways flights, without checking her visa requirements or giving her the option of a refund.The British Airways flight BA-286 from San Francisco to London arrived late in London. By the time it landed, her connecting flight BA-820 to Copenhagen had already departed.She was then put on a later British Airways flight BA-822 from London to Copenhagen on 20.03.2018. Her visa requirements for transiting through Denmark were not checked by British Airways while doing so.She was detained on landing in Copenhagen by local police for not having a valid Denmark visa, kept under police guard and surveillance.After 13 hours of detention on 20/21.03.2018, she was allowed to leave Copenhagen only after her husband (a former High Court Judge) intervened from India.She then took Turkish Airlines flights via Istanbul to reach New Delhi on 21.03.2018.

Arguments by Parties

Complainant:

Responsible to ensure visa compliance as per original travel plan, but not required to re-verify visa norms upon unilateral rerouting by airlines. Lufthansa deficient in suddenly offloading without reason, not checking her visa status during rerouting, not providing wheelchair/diet/water assistance. British Airways deficient in delayed flight, not checking her

visa status before putting her on later flight to Copenhagen, not ensuring she catches next flight. Both airlines responsible for detention, no officials present to help, no apology or systemic improvements done. Seeks enhancement of compensation from Rs 70 lakhs awarded by State Commission to Rs 75 lakhs (+interest and litigation cost).

British Airways:
Rerouting happened under working arrangement between airlines, Lufthansa had duty to check visa norms. Its only mistake was not rechecking visa at London before putting her on later flight to Copenhagen. Passengers responsible to ensure own visa compliance for countries visited. Unconditional payment of Rs 10 lakhs made for above mistake, any more compensation unreasonable.

Lufthansa German Airlines:
Rerouting happened under working arrangement, had no duty to check passenger's visa status. Detention happened as she couldn't prove how she would exit Denmark after missing her next flight, not due to lack of visa. Blame lies with British Airways for not checking visa in London before putting her on later flight. She willingly accepted rerouting, so herself responsible for situation faced. Compensation above Rs 10 lakhs already paid would be unreasonable.

Surya Travels and Associates (Travel Agent):
Both airlines responsible for not checking visa norms during unilateral rerouting of passenger. As travel agent, it discharged duty by providing valid tickets to complainant. Remiss airlines responsible for compensation, travel agent not liable.

Relevant Legal Provisions and Case Laws
The case deals with:

Deficiency in service under Section 2(1)(g) of Consumer Protection Act 1986

Unfair trade practice by airlines under Section 2(1)(r)
Award of compensation under Section 14 of Consumer Protection Act 1986

Orders and Directions of the Commission

Upheld State Commission order finding Lufthansa and British Airways deficient in service and resorting to unfair trade practices. Lufthansa to pay total compensation of Rs 30 lakhs (over and above Rs 10 lakhs already paid) to complainant . British Airways to pay total compensation of Rs 20 lakhs (over and above Rs 10 lakhs already paid) to complainant. Interest @5% p.a. on above compensation amounts from date of suffering i.e. 19.03.2018 till realization. Respective airline heads stationed in India advised to fix accountability, inculcate systemic improvements. Claim against travel agent Surya Travels & Associates not pressed and dispensed with.

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Full Text of Judgment:

1. The four (04) appeals, no. 366, no. 396 and no. 320 of 2020 and no. 702 of 2021, challenge the same Order dated 29.01.2020 of the State Commission in complaint no. 95 of 2019.
2. Appeal no. 366 of 2020 has been filed by the opposite party no. 2 in the complaint (hereinafter referred to as 'British Airways'), appeal no. 396 of 2020 has been filed by the opposite party no. 1 (hereinafter referred to as 'Lufthansa German Airlines') and appeal no. 320 of 2020 has been filed by the opposite party no. 3 (hereinafter referred to as 'Surya Travels & Associates'). These three (03) appeals seek setting aside of the impugned Order of the State Commission.
3. Appeal no. 702 of 2021 has been filed by the Complainant before the State Commission (hereinafter referred to as the 'Complainant').

This appeal seeks enhancement in compensation.
4. Ms. Ritu Singh Mann, learned counsel appears for British Airways. Mr. Harshul Chaudhary, learned counsel appears for Lufthansa German Airlines. Mr. Shubham Bhalla, learned counsel appears for Surya Travels & Associates. Mr. Munish Goel, learned counsel appears for the Complainant. No one appears for the opposite party no. 4 before the State Commission (hereinafter referred to as 'Turkish Airlines').
5. We have heard the learned counsel and have perused the record including inter alia the impugned Orderdated 29.01.2020 of the State Commission and the memoranda of appeal (04 nos.).
6. The appeals preferred by British Airways and by Surya Travels & Associates are within limitation.

7. The appeals preferred by Lufthansa German Airlines and by the Complainant have been filed with self- admitted delay of 07 days and 262 days respectively.

The short delay of 07 days in the appeal filed by Lufthansa German Airlines has already been condoned vide
this Commission's Order dated 30.06.2020.
Regarding the delay in the appeal filed by the Complainant, in the interest of justice, inter alia considering the reasons mentioned in the application for condonation of delay, and in particular seeing that these four appeals are connected / cross appeals and impugn the same Order of the State Commission and this Commission has yet to examine the merits of the matter, and as such to enable deciding the matter after hearing all concerned parties rather than ousting one of them only on limitation and confining the hearing to the other three alone, the delay is condoned.
8. Briefly, the Complainant booked tickets through Surya Travels & Associates (a travel agent) with Swiss Air and Lufthansa German Airlines to depart on 18.01.2018 from New Delhi to San Francisco via Zurich and return on 19.03.2018 from San Francisco to New Delhi via Frankfurt.
She was compliant with the visa requirements of the countries

she had to transit in change-over enroute i.e. Switzerland (Zurich) and Germany (Frankfurt) and of the country of destination i.e. United States of America (San Francisco).
The trip from New Delhi to San Francisco on 18.01.2018 went normal.
In the return trip from San Frascisco to New Delhi via Frankfurt on 19.03.2018 she boarded Lufthansa German Airlines flight LH-455 from San Francisco to Frankfurt after checking-in her baggage and having been issued a boarding pass by the airlines. But even after about three hours of boarding the flight did not take off and eventually she was told to de-board and collect her baggage.
Lufthansa German Airlines then re-routed her journey from San Francisco to New Delhi via Copenhagen on British Airways flight BA-286 from San Francisco to London, British Airways flight BA-820 from London to Copenhagen and Air India flight AI-158 from Copenhagen to New Delhi.
She was not offered the option of refund.
She was simply handed-over tickets from San Francisco to New Delhi via London and Copenhagen.
Neither Lufthansa German Airlines, whose ticket she originally bought and who did the re-routing, nor British Airways, on whose flight the Complainant was put on at San Francisco after the re-routing, exercised diligence to ascertain whether she possessed the requisite visa(s) for the countries she had to transit in change-over. She was not consulted or asked about the visa(s) she held on her passport.
British Airways flight BA-286 from San Francisco to London arrived late. By that time the connecting British Airways flight BA-820 from London to Copenhagen had departed.
British Airways then put her on another flight BA-822 from London to Copenhagen on 20.03.2018. While putting her on its later flight British Airways did not ascertain whether she was fulfilling the visa requirements of the country she had to transit in change-over (i.e. Denmark).
Nor did it exercise diligence in ascertaining whether its later flight BA-822 would reach in time to enable her to catch

the next connecting Air India flight AI-158 from Copenhagen to New Delhi, and, if not, to make the requisite alternative arrangements for the last leg of the journey from Copenhagen to New Delhi.

British Airways flight BA-822 reached Copenhagen at around 10.00 p.m. on 20.03.2018. The Complainant was detained at the airport by the local Police, arraigned for not being compliant with its visa requirements for transit. Her liberty was curtailed. She was put under Police watch and guard. She was put to insult and humiliation. She suffered mental agony and physical harassment. After spending considerable hours in detention, throughout the night and early morning, she was ultimately allowed by the local authorities to depart from Copenhagen after her husband, a former judge of the High Court, intervened from India and was able to establish the bonafides of his wife and convince the authorities at Copenhagen to let his wife out of detentionand allow her to leave that country and return to New Delhi.

The Complainant then took Turkish Airlines flights from Copenhagen to Istanbul and onward from Istanbul to New Delhi. She boarded Turkish Airlines flight TA-1784 at about 11.50 a.m. on 21.03.2018 at Copenhagen. Her ordeal lasted for about 13 hours, from about 10.00 p.m. on 20.03.2018 to about 11.50 a.m. on 21.03.2018 The Complainant finally arrived back from San Francisco via London and Copenhagen and Istanbul to New Delhi on flights of British Airways and Turkish Airlines after facing mortifying detention and trauma in Copenhagen.

The State Commission vide its impugned Order ordered British Airways, Lufthansa German Airlines and Surya Travels & Associates to pay compensation of Rs. 27.50 lakh, Rs. 37.50 lakh and Rs. 5 lakh respectively i.e. total Rs. 70 lakh to the Complainant within 45 days failing which the same shall carry interest at the rate of 9% per annum from the date of filing of the complaint.

9. At the time of admission of appeal no. 366 of 2020 preferred by British Airways the following Order was passed by this Commission on 16.03.2020:

1. Heard arguments on admission from learned Counsel for the Appellant, British Airways.
2. Perused the entire material on record, including inter alia the impugned Order dated 29.01.2020 of the State Commission and the Memorandum of Appeal.
3. Learned Counsel submits that the Respondent No. 1, the Complainant, was originally scheduled to make her return travel from San Francisco to New Delhi via Frankfurt (which did not have visa restrictions) by Lufthansa German Airlines, the Respondent No. 2. The concerned flight, No. LH-455, from San Francisco to Frankfurt, was cancelled. She was then re-routed on British Airways flights from San Francisco to London and from London to Copenhagen (which had visa restrictions) and on an Air India flight from Copenhagen to New Delhi. The Complainant was detained by the Police at Copenhagen as she did not possess a valid visa. The deficiency occurred in re-routing the Complainant from San Francisco via Copenhagen (without checking / ensuring that she had a valid visa to travel through Copenhagen), for which Lufthansa German Airlines was solely responsible.
4. Learned Counsel further submits that after the said re-routing from San Francisco, the Complainant reached London by its flight No. BA-286, which arrived late, and, by that time, the connecting flight No. BA 820 from London to Copenhagen had departed. She was then put on a subsequent flight No. BA-822 from London to Copenhagen. The only “mistake” made by British Airways was that it put the Complainant on the said subsequent flight No. BA-822 from London to Copenhagen without checking / ensuring that she had a valid visa to travel through Copenhagen.
5. During the course of the arguments, learned counsel for the appellant requests for a brief interlude to seek instructions.
6. After an interlude, learned counsel submits, on instructions, that, without prejudice to its right to raise all its issues and contentions in the Appeal, for the limited mistake at its end, that, at London, it did not check the visa requirements for Copenhagen when putting the Complainant on

its subsequent flight, British Airways is ready and willing to unconditionally pay a sum of Rs. 10 lakh to the Complainant within six weeks from today. Learned Counsel further submits that, in its Appeal, it will agitate all its issues and contentions and the question of compensation over and above Rs. 10 lakh awarded against it by the State Commission.

7. The afore submissions, made on instructions, during the course of the arguments, are recorded.

8. The Appellant, British Airways, is directed to unconditionally pay a sum of Rs. 10 lakh to the Complainant by way of 'payee's a/c only' demand draft or by electronic transfer directly to the Complainant within six weeks from today.

9.Learned Counsel submits that the said sum of Rs. 10 lakh will be paid by British Airways with the due courtesy required towards a lady complainant who is a senior citizen.

10.The afore submission is recorded.

11.Issue notice to the Respondents, subject to payment of Rs. 20,000/- to the Respondent No. 1 / Complainant within six weeks from today to defray travel and allied expenses.

12.Learned Counsel furthermore submits that, taking into account its assurance of unconditional payment of Rs. 10 lakh to the Complainant within six weeks from today, the operation of the impugned Order of the State Commission, in so far as it relates to compensation over and above Rs. 10 lakh awarded against it by the State Commission, may be stayed.

13.Contingent to the Appellant, British Airways, unconditionally paying a sum of Rs. 10 lakh to the Complainant within six weeks from today, the operation of the impugned Order of the State Commission, in so far as it relates to compensation over and above Rs. 10 lakh awarded against British Airways, shall remain stayed.

14.It is made clear that the (conditional and limited) stay on the operation of the impugned Order qua the Appellant, British Airways, shall ipso facto stand vacated if the condition attached therewith, i.e. payment of Rs. 10 lakh unconditionally to the Complainant within six weeks from

today, is not complied with within the stipulated period. In such contingency, the State Commission shall undertake execution of its Order in its entirety as per the law.
15.It is further made clear that there is no stay on the operation of the Order dated 29.01.2020 of the State Commission in so far as it relates to the Respondent No. 2, Lufthansa German Airlines, and / or to the Respondent No. 3, Surya Travels & Associates.
16.The Registry is directed to ensure that the notice is issued and despatched to all the Respondents, No. 1 to No. 4, within ten days from today.
17.Let the notice also be 'dasti', in addition.
18.The Appellant is directed to ensure the due 'dasti' service of the notice on the Respondent No. 1 / Complainant and on the Respondents No. 2 and No. 3 (against whom the State Commission has inter alia made its Award), within six weeks from today, without fail.
19.List on 18.08.2020.
20.Let the Order also be 'dasti', in addition, to facilitate timely compliance.

As such we note that British Airways submitted on 16.03.2020 before this Commission that at San Francisco the deficiency occurred in re-routing the Complainant from San Francisco via Copenhagen without checking or ensuring that she had a valid visa to travel through Copenhagen and further that Lufthansa German Airlines was solely responsible for this. It admitted that it committed a "mistake" at London while putting the Complainant on its subsequent flight BA-822 without checking or ensuring that she had a valid visa to travel through Copenhagen. For this "limited mistake" "at its end" it was ready and willing to unconditionally pay a sum of Rs. 10 lakh to the Complainant. It also submitted that the said sum of Rs. 10 lakh will be paid by the British Airways with the due courtesy required towards a lady Complainant who is a senior citizen. Submission was made that in its appeal it will agitate its issues and contentions and the question of

compensation over and above Rs. 10 lakh awarded against it by the State Commission.
10. In reference to the above learned counsel for British Airways submits that a sum of Rs. 10 lakh has since been paid to the Complainant. She also informs that the Order dated 16.03.2020 of this Commission has not been put to challenge or review.
11. At the time of admission of appeal no. 396 of 2020 preferred by Lufthansa German Airlines the following Order was passed by this Commission on 30.06.2020:
Taken up through video conferencing.
1. In furtherance to the previous Order dated 22.06.2020, learned Counsel for the Appellant, Lufthansa German Airlines, submits, on instructions, that, without prejudice to its right to raise all its issues and contentions in the Appeal, Lufthansa German Airlines is ready and willing to unconditionally pay a sum of Rs. 10 lakh to the Complainant within six weeks from today. Learned Counsel further submits that, in its Appeal, it will agitate all its issues and contentions and the question of compensation over and above Rs. 10 lakh awarded against it by the State Commission.
2. The afore submissions, made on instructions, are recorded.
3. The Appellant, Lufthansa German Airlines, is directed to unconditionally pay a sum of Rs. 10 lakh to the Complainant by way of 'payee's a/c only' demand draft or by electronic transfer directly to the Complainant within six weeks from today.
4. Learned Counsel submits that the said sum of Rs. 10 lakh will be paid by Lufthansa German Airlines with the due courtesy required towards a lady complainant who is a senior citizen.
5. The afore submission is recorded.
6. Learned Counsel furthermore submits that the short delay of 07 days in filing the Appeal may be condoned.
7. Considering the reasons stated in the application for condonation of delay, and having regard to the obtaining environment caused by COVID-19, sufficient cause to condone

the delay is well evident. Also, the matter, per se, is such that it requires to be decided on merit.

8. The delay in filing the Appeal is condoned.

9. Issue notice to the Respondents, subject to payment of Rs. 20,000/- to the Respondent No. 1 / Complainant within six weeks from today to defray travel and allied expenses.

10. Learned Counsel furthermore submits that, taking into account its assurance of unconditional payment of Rs. 10 lakh to the Complainant within six weeks from today, the operation of the impugned Order of the State Commission, in so far as it relates to compensation over and above Rs. 10 lakh awarded against it, Lufthansa German Airlines, by the State Commission, may be stayed.

11. Contingent to the Appellant, Lufthansa German Airlines, unconditionally paying a sum of Rs. 10 lakh to the Complainant within six weeks from today, the operation of the impugned Order of the State Commission, in so far as it relates to compensation over and above Rs. 10 lakh awarded against it, shall remain stayed.

12. It is made clear that the (conditional and limited) stay on the operation of the impugned Order qua the Appellant, Lufthansa German Airlines, shall ipso facto stand vacated if the condition attached therewith, i.e. payment of Rs. 10 lakh unconditionally to the Complainant within six weeks from today, is not complied with within the stipulated period. In such contingency, the State Commission shall undertake execution of its Order in its entirety as per the law.

13. It is further made clear that there is no stay on the operation of the Order dated 29.01.2020 of the State Commission in so far as it relates to the Respondent No. 3, Surya Travels & Associates.

14. The Registry is directed to ensure that the notice is issued and despatched to all the Respondents, No. 1 to No. 3, within ten days from today.

15. Let the notice also be ‘dasti’, in addition.

16. The Appellant is directed to ensure the due ‘dasti’ service of the notice on the Respondent No. 1 / Complainant

and on the Respondents No. 2 and No. 3 (against whom the State Commission has inter alia made its Award), within six weeks from today, without fail.
17. List on 18.08.2020, along with the connected F.A. No. 366 of 2020.
18. Let the Order also be ‘dasti’, in addition, to facilitate timely compliance.
As such we note that Lufthansa German Airlines submitted on 30.06.2020 before this Commission that without prejudice to its right to raise all its issues and contentions in the appeal it was ready and willing to unconditionally pay a sum of Rs. 10 lakh to the Complainant. It also submitted that the said sum of Rs. 10 lakh will be paid by the Lufthansa German Airlines with the due courtesy required towards a lady Complainant who is a senior citizen. Submission was made that it will agitate all its issues and contentions and the question of compensation over and above Rs. 10 lakh awarded against it by the State Commission.
12. In reference to the above learned counsel for Lufthansa German Airlines submits that a sum of Rs. 10 lakh has since been paid by it to the Complainant. He also informs that the Order dated 30.06.2020 of this Commission has not been put to challenge or review.
13. At the time of admission of appeal no. 320 of 2020 filed by Surya Travels & Associates the following Order was passed by this Commission on 03.12.2020:
Taken up through video conferencing.
Heard learned counsel for the appellant. Perused the material on record.
Mr. Shubham Bhalla, advocate, learned counsel for the appellant, submits that in reference to the Order dated 16.03.2020 in connected first appeal no. 366 of 2020 and Order dated 30.06.2020 in connected first appeal no. 396 of 2020 and Order dated 23.11.2020 in the instant first appeal no. 320 of 2020, an affidavit dated 24.11.2020 has been filed by the appellant by way of I.A. No. 6985 of 2020. Learned counsel further submits that the appellant is not ready and willing to

unconditionally pay any sum to the complainant. He furthermore submits that according to the appellant “this is the first time such an incident has taken place, for no fault of his own but entirely attributable to the respondent airlines.”.

Notice has earlier been issued in connected first appeals no. 366 of 2020 and no. 396 of 2020.

Notice be issued in this instant first appeal no. 320 of 2020, subject to payment of Rs. 20,000/- to the respondent no. 1 – complainant within one week from today to defray travel and allied expenses.

The Registry may ensure that the notice is issued and despatched within three days from today.

Let the notice also be ‘dasti’ in addition.

The appellant is directed to ensure the due ‘dasti’ service of the notice on the respondents within seven days from today and to file proof of having effected ‘dasti’ service with the Registry before the next date of hearing.

Contingent to the appellant, Surya Travels & Associates, depositing the entire decretal amount (with clear and cogent calculation sheet) with the State Commission, the operation of the impugned Order of the State Commission in so far as it relates to the appellant, Surya Travels & Associates, shall remain stayed.

List the instant first appeal no. 320 of 2020 along with connected first appeals no. 366 of 2020 and no. 396 of 2020 on 17.12.2020.

The Registrar to kindly ensure timely intimation of the next date i.e. 17.12.2020 to all parties and to their learned counsel.

As such Surya Travels & Associates submitted on 03.12.2020 before this Commission that it was not ready or willing to pay any sum to the Complainant. Submission was made that this was the first time such an incident had taken place for no fault of its own but entirely attributable to the respondent airlines.

14. Advancing arguments on behalf of British Airways, learned counsel contends that Lufthansa German Airlines did the re-

routing at San Francisco under a mutual working arrangement between the two airlines. The onus to check and to ensure that the Complainant was compliant with the visa requirements to transit through Copenhagen in change-over was on Lufthansa German Airlines who did the re-routing. As such Lufthansa German Airlines was solely responsible for this lapse.

On a query from the bench learned counsel submits that no correspondence was ever made by British Airways with Lufthansa German Airlines in this regard.

Learned counsel further submits that as earlier conceded on 16.03.2020 a “mistake” was made by British Airlines at London in not checking and ensuring that the Complainant was compliant with the visa requirements to transit via Copenhagen while putting her on its later flight BA-822 from London to Copenhagen after its flight BA-820 on which she had been initially booked in re-routing had departed by the time she arrived at London.

Another limb of her argument is that the duty of an airlines regarding the passengers fulfilling visa requirements is owed to the country to which its flight is departing to and is not owed to the passengers per se. Submission is that the passengers are themselves responsible to ensure that they are compliant with the visa requirements of the concerned country of transit / change-over or destination.

Regarding the quantum of compensation, learned counsel submits that the British Airways has already paid a sum of Rs. 10 lakh unconditionally for its “mistake” at London while putting the Complainant on its later flight to Copenhagen. The State Commission has grossly erred on the higher side while awarding total compensation of Rs. 70 lakh of which Rs. 27.50 lakh has been saddled on British Airways. Submission is that even the unconditionally paid sum of Rs. 10 lakh is enough and any more compensation over and above Rs. 10 lakh will be entirely unjust and inequitable.

15. Learned counsel for Lufthansa German Airlines submits that it re-routed the Complainant on British Airways flight at San Francisco under a mutual working arrangement between the two

airlines. He also submits that it did not check whether the passenger was compliant with the visa requirements of the countries of transit in change-over, but further submits that this is not very material since the detention at Copenhagen was not because of non-fulfilment of visa requirements in transit but because by the time British Airways flight BA-822 from London to Copenhagen had arrived the next connecting flight of Air India AI-158 from Copenhagen to New Delhi had already departed and the Complainant could not justify her presence or show the means of exiting the country to the local authorities. Submission is that the troubles and trauma of the Complainant were caused due to the uncalled for delay on the part of British Airways which caused the Complainant to arrive at Copenhagen after her next connecting Air India flight had already departed. On a query from the bench learned counsel submits that no fact-finding inquiry was conducted and further that no correspondence was ever made by Lufthansa German Airlines with the concerned authorities at Copenhagen.

Learned counsel admits that no official of Lufthansa German Airlines was present at the relevant time at Copenhagen to provide assistance to the Complainant but adds that no official was required to be available because no passenger of Lufthansa German Airlines per se was travelling through Copenhagen. Another limb of his argument is that visa requirements ought to have been checked by British Airways at London when it put the Complainant on its later flight to Copenhagen and as such the blame lies with British Airways alone.

He also makes a submission that since the Complainant willingly accepted the re-routing she was herself responsible for her troubles and travails.

Regarding the quantum of compensation, learned counsel submits that any compensation above Rs. 10 lakh which has already been unconditionally paid will be unreasonable and unjust.

16. Learned counsel for the Surya Travels & Associates submits that both Lufthansa German Airlines, whose ticket the

Complainant originally held and who did the re-routing at San Francisco, and British Airways, on whose flight the Complainant was put at San Francisco and who put the Complainant on its later flight from London to Copenhagen, are responsible for not checking and ensuring that the Complainant was compliant with the visa requirements of the countries of transit in change-over. Submission is that both the concerned airlines, British Airways and Lufthansa German Airlines, are squarely liable for the troubles and travails of the Complainant.

Learned counsel further submits that as a travel agent it had discharged its principal duty of giving the Complainant valid tickets and even afterwards when the problem occurred at Copenhagen it had telephonically liaisoned with both the airlines as well as with the husband of the Complainant as is evident from its mobile call record which it has placed on record. Submission is that though it is pained with the pain of its customer but it cannot be saddled with liability of compensation which can only be apportioned on the two remiss airlines who are the actual culprits.

17. Learned counsel for the Complainant submits that the Complainant was put to loss and injury due to the deficiency and the unfair trade practice on the part of both the concerned airlines, British Airlines and Lufthansa German Airlines.

At San Francisco the Complainant was first made to sit inside Lufthansa German Airlines flight LH-455 scheduled for Frankfurt for about three hours. She was then de-boarded without any reason told which was virtually an uncouth defenestration.

She was not given the option of refund.

Without consulting with her in any manner or checking from her regarding the visas she possessed she was unilaterally re-routed from San Francisco to New Delhi via London and Copenhagen on British Airways and Air India flights.

Neither wheel-chair assistance, nor the required diet suited to her health and medical conditions, nor even water was made

available to her though the Complainant was a senior citizen with many age-related diseases.

The Complainant being a responsible and law abiding person had duly ensured that she was compliant with the visa requirements of the countries she had to transit in change-over as well as the country of destination before undertaking her journey as per her original travel itinerary and ticketing. The re-routing on the return trip was done unilaterally without in any manner consulting her or ascertaining as to which visas she possessed. Submission is that it is tellingly obvious that when an airlines is re-routing a passenger the onus is on the airlines to ensure that it routes the passenger through countries with whose visa requirements the passenger is compliant with. Learned counsel argues that it is totally illogical and absurd to attempt putting the blame on this count on a passenger who is thus re-routed.

Learned counsel further submits that the Complainant was detained at Copenhagen since she did not have a transit or tourist visa for Denmark. She was confined and Police watch and guard was kept over her. No official from either of the airlines, Lufthansa German Airlines and the British Airways, was available at Copenhagen to sort out the problem even though it was their own creation. Learned counsel submits that a passenger has no concern with the working arrangement between the two airlines inter se. As far as the Complainant is concerned, both Lufthansa German Airlines, whose ticket she originally held and who undertook the re-routing at San Francisco under its working arrangement with British Airways, and British Airways, on whose flight she was put on and who made a change in her flight at London, were responsible for causing her visa–related detention at Copenhagen. If either of them has a case against the other, it does not concern the Complainant.

Learned counsel submits that pertinently none of these airlines who are now passing the buck on each other have shown any material as may show that either of them had taken up the matter with the other. Nor either of them has individually

undertaken any fact-finding inquiry. Submission is that without any fact-finding inquiry, keeping complete opacity and lack of accountability, without empathy towards the Complainant, with complete disregard to the curtailment of her very liberty itself, her detention, the insult, the humiliation and the mental agony and the physical harassment she suffered, the case is being inhumanly and mechanically defended by anyhow making untenable defences and irrational arguments. Though both airlines are squarely liable, the each is trying to blame the other rather than fairly admitting their mistakes and coming clean up-front. No submission of regret or apology is being made. The indefensible is being defended.

Submission is that both airlines are liable for deficiency and unfair trade practice and further that in addition to compensation to the Complainant the two airlines ought to be directed to inculcate systemic improvements for future so that such instances do not recur with passengers at large.

Regarding Surya Travels & Associates learned counsel however concedes that, though it had not cooperated with the Complainant’s husband and had been remiss in sorting out the problem at Copenhagen, but seeing that the actual culprits who caused the problem were the two airlines and considering that Surya Travels & Associates was just the travel agent, the Complainant does not wish to press her case against Surya Travels & Associates for compensation but strongly presses it against the two airlines.

Regarding the quantum of compensation, learned counsel submits that the State Commission has awarded total compensation of Rs. 70 lakh but the Complainant wishes to seek the amount of Rs. 80 lakh with interest at the rate of 12% per annum from the date of suffering i.e. 19.03.2018 till payment along with Rs. 2,00,000/- towards litigation cost, as was claimed by her in her complaint. He further submits that as the compensation of Rs. 5 lakh awarded against Surya Travels & Associates is not being pressed, the total compensation from the two airlines may be curtailed to Rs. 75 lakh.

18. We may first observe that the State Commission appears to have passed a well-appraised and reasoned Order and has aptly dealt with the issues germane to the matter in arriving at its findings of deficiency and unfair trade practice on the part of the two airlines, Lufthansa German Airlines and British Airways.

The Complainant was made to sit in Lufthansa German Airlines flight LH-455 at San Francisco for about three hours before being made to de-board with no reason told. She was not offered the option of refund. She was unilaterally re-routed. Visa requirements of the country/ies of transit i.e. change-over were not checked or ascertained. That the connecting flights during change-overs will be smoothly boarded was not kept in sight.

The British Airways flight BA-286 from San Francisco to London was delayed. By the time it arrived at London, the connecting flight BA-820 from London to Copenhagen had already departed. The later flight BA- 822 did not enable her to catch the next flight of Air India AI-158 from Copenhagen to New Delhi since it had departed by the time BA-822 arrived at Copenhagen.

Though her initial itinerary was from San Francisco to New Delhi via Frankfurt, she was re-routed from San Francisco to New Delhi via London and Copenhagen and ultimately reached New Delhi via London and Copenhagan and Istanbul. In between she was detained in Copenhangen for considerable period throughout the night and early morning under the watch and guard of the Police for not being compliant with the visa requirements of Denmark.

Disconcertingly enough wheel-chair assistance, diet suited to her health and medical conditions, and even water was not provided.

When the problem occurred at Copenhagen, where she was detained, kept under hovering Police watch and guard, no official of either airlines ever bothered or made himself available to salvage, mitigate or sort out the doings of their creation.

19. An argument that an airlines owes the duty of visa

compliance only to the country of destination and not to the passenger per se is bereft of any worth or merit in the present facts and circumstances. No doubt a passenger is required to show diligence at her end and ensure that she has the requisite visas for the countries of transit and destination. In the present case the Complainant had shown the diligence. She was compliant with the visa requirements of Switzerland, Germany and United States of America, as per her original travel plans and ticketing. It is absurd to suggest that the passenger has to again check the visa requirements of any other country or countries while waiting at the airport if she is being re-routed by the airlines itself whose very business is travel transport and who is required and expected to be aware of visa and allied requirements of the countries where it provides its services to. Particularly so when the re-routing is done suo motu without even consulting the passenger far less than checking or ascertaining from her regarding the visas she possesses.

20. An argument that the detention took place since the connecting flight of Air India AI-158 had already departed and the Complainant could not show how she would be existing the country is also totally bereft of any worthwhile substance. The principal duty in re-routing is to check and ensure that the passenger is compliant with the visa requirements of the countries of transit in change-over, and this duty is of the airlines which is undertaking the re-routing. An allied but significant aspect remains that the re-routing be done in a manner that the passenger is able to catch the connecting flights, and in case of delay, if a passenger is put on a later flight, it be concomitantly confirmed that the passenger will be able to catch the next connecting flight.

21. In the present case visa requirements of the country of transit were not checked and ensured during re- routing. The Complainant was detained at Copenhagen for a considerable period throughout the night and early morning due to non-compliance of visa requirements, which was certainly

nightmarish for the elderly lone lady. No attempts to fix responsibility and accountability or to imbibe systemic improvement for future were ever made by either airlines. And no regret or apology at all.

22. British Airways cannot be suffered to wriggle out from its admission of “mistake” at London in not checking the visa requirements at the time of putting the Complainant from London to Copenhagen on its later flight.

Additionally, British Airways, while putting the Complainant from London to Copenhagen on a later flight ought to have also checked to ensure that the Complainant would be able to catch her next connecting flight of Air India AI-158 from Copenhagen to New Delhi. But in this too it was remiss.

Regarding the submission that the onus of checking and ensuring visa compliance while re-routing at San Francisco was on Lufthansa German Airlines alone, which undertook the re-routing, no material has been placed on record to show that it had ever raised or taken up this matter with Lufthansa German Airlines. British Airways cannot escape its liability since it was its flight the Complainant was put on at San Francisco and the Complainant had no concern with the mutual working arrangement between British Airways and Lufthansa German Airlines.

23. Lufthansa German Airlines accepts that it did not examine visa requirements at the time of re-routing. Regarding the submission that the detention was not due to non-fulfilment of visa requirements but since the next connecting Air India flight AI-158 had departed and the Complainant could therefore not show the means of exit, no material has been placed on record that it had ever taken up this matter with the authorities at Copenhagen. Pertinently no inquiry howsoever cursory was ever conducted. As such this is a hypothetical conjecture based on misplaced premises, nothing else.

Unarguably the ticket was originally of Lufthansa German Airlines. The Complainant was first made to sit for over three hours in its flight which was then cancelled. The flight is told to have been cancelled due to “technical issues”. There

is opacity on the actual issue per se, whether it was a genuine reason or was some misaccounted carelessness etc. It undertook the re-routing at San Francisco. No fact-finding inquiry was ever made.
It too cannot escape its liability.
24. The case against Surya Travels & Associates needs no further examination in the light of the submission made by the learned counsel for the Complainant that it does not wish to press for compensation against the travel agent but seeks it only against the main actual culprits i.e. the two airlines.
25. Regarding the quantum of compensation, it may be observed that in various situations where the consumer is not given a fair deal and where he is made to suffer by the service provider by being deficient in service or by resorting to some unfair trade practice, the eventuality of such plight has been adequately taken care of by the legislation and in order to redress his grievance statutory provisions have been enacted. Sections 14 of the Act 1986 contemplates to provide compensation for the loss or injury that may be suffered by such consumer and grant even punitive damages in appropriate cases where it is deemed fit. The legislature in its wisdom has not laid down any specific method fixed in nature or any specific manner in which the loss or injury suffered by a given consumer may be quantified. It also does not provide any rigid or fixed methodology by which the grievance of a consumer may be compensated and the damages for the same may be quantified. It is not even otherwise feasible to find or provide any cut-and-dried formula of universal application or to lay down any straight-jacket guidelines with absolute objectivity in order to estimate the loss or injury suffered by a consumer or the amount of compensation which may be mathematically equal to the loss or injury suffered with objective exactitude. The facts of each case vary and so shall vary the myriad factual and legal nuances of each transaction that may take place between consumer and the service provider. There may be cases where the circumstances of a consumer, the extent of his travails, the degree of his predicament or the

enormity of his loss or injury may be such that the same may persuade the concerned authority, judicial or quasi-judicial as it may be, to stringently discountenance the deficiency or unfairness & deceptiveness of the service provider and put it to strict terms and lean ungrudgingly towards the suffering consumer in order to provide him compensatory anodyne of justice. Similarly, on the other hand, there may be cases where the service provider may successfully demonstrate the circumstances which may go to mitigate its guilt or to extenuate the degree of its liability. It may in such cases successfully display its bonafides, its diligence, its sincerity in providing service and the fairness of its trade practice. The service provider may in such cases show circumstances and prove that the loss suffered by the consumer is not the consequence of its doing or that the degree or the extent of its liability is not so enormous as may call for escalated degree of damages or compensation. As the facts of each case may naturally vary infinitely, it is eventually for the concerned judicial or quasi-judicial forum to make a dispassionate assessment of the whole situation and to approach each case with a non-partisan attitude without prejudice or prediction so that it may strike the chord of balance and may do conscionable justice within the peremeters of law. At times, lumpsum amount of compensation for the loss or injury suffered by the consumer is provided and a specific quantified amount is ordered to be paid. It is for the reason of variance of circumstances of each case that the amount of compensation to be fixed by the forums may keep varying from case to case. No rule-of-thumb is possible to be adopted for all times or for all cases. The different forums while discharging their judicial or quasi-judicial functions can neither afford to be oversensitive while assessing the grievance of the consumer nor can they be found reluctant in providing just and appropriate compensation commensurate with the loss or injury suffered or in awarding condign damages wherever called for. They cannot allow themselves to either become instruments of converting the solemn provisions of the

Act into means of exploitation of service providers in the name of consumer justice or to ever disregard the plight of the aggrieved consumer with apathy or indifference. The forums have to be unfailingly judicious, and try to meet the scales of equity in each case having regard to its particular facts & circumstances and specificities.

26. Reverting to the facts of the case at hand, we feel that the whole situation, from being made to sit in an aircraft for about three hours, then being made to de-board without reason told, then unilaterally re-routed without option of refund, then the re-scheduled flight being delayed, then being put on a later flight which reached when the next connecting flight had already departed, the flagrant omission of checking and ensuring visa requirements of the countries of transit in change-over, the consequential detention and curtailment of liberty and the inflicted insult, humiliation, mental agony and physical harassment, non-availability of officials at Copenhagen to salvage or sort out the problem, not providing wheel-chair assistance, suitable diet or even drinking water moreso when the Complainant was a senior citizen with many age-related diseases, the absence of any fact-finding inquiry by either airlines, the absence of any inter se communication or communication with the authorities at Copenhagen, the opacity in operations and functioning even in aspects directly related to the Complainant, no regret or apology, all this, taken together, has to be holistically seen while awarding compensation.

We may also observe that liberty is the very essence of human existence. Its curtailment, even if for a “very short” duration, with the concomitant stigmatic insult as well as the depthless fear of further legal consequences, and that too for no fault or act attributable to the person being detained, cannot be treated as a simple matter of no particular significance, the injury suffered needs to be seen as what it actually is.

The human rights to dignity and personal liberty, which include freedom from physical restraint or coercion, are the

hallmarks of the civilized society and have to be zealously guarded. They are inalienable and irrefragable rights and cannot be rendered illusory out of sheer apathy or negligence of a service provider. Nor can they be trampled over in any part of the globe where the rule of law prevails. If the deficient and unfair act of someone leads to any serious impairment of these arch values of our life it has to be reproved and the institutions in charge of dispensing justice must hurry up to rescue and cry a halt. Curtailment of liberty of an innocent person anywhere is injury to liberty everywhere, just as injustice to one is injustice to all. In matters where the damage has already been done and the injury or loss already inflicted, the least that can be done is to award condign reparations as an anodyne of justice. The provisions of the Consumer Protection Act to award adequate compensation and even punitive damages in appropriate cases take care to ameliorate the grievances of consumers befittingly when they have been made to suffer by the deficient acts or unfair practice of the service providers.

An innocent lady who spent her life in keeping with law had to undergo a harrowing experience for no fault on her part when she was treated as an insidious suspect for having committed a trespass in foreign land, where she was kept under the hawking eyes of surveillance of police guard even when she attended the calls of nature, where she remained unheard and ununderstood for long hours thousands of miles away from her home and family and where the importuning of the sobbing lone elderly lady did not yield any compunction in the authorities and she feared the worst, and where the prospects of an impending trial or even internment for the alleged breach loomed large. She was pushed into this precarious situation by the negligent apathy and deficient conduct of the two airlines regarding which we have already given our reasons while upholding the findings arrived at by the State Commission against them.

27. In our considered view, Lufthansa German Airlines, whose ticket the Complainant originally held and who did the re-

routing at San Francisco, ought to and therefore shall pay a total sum of Rs. 30 lakh as compensation and British Airways, on whose flight the Complainant was put on at San Francisco in re-routing and who put the Complainant on a later flight at London, ought to and therefore shall pay a total sum of Rs. 20 lakh as compensation to the Complainant, both with interest at the rate of 5% per annum from the date of the suffering i.e. 19.03.2018 till realisation. The respective sums of Rs. 10 lakh each already paid shall be duly adjusted therein. The balance awarded amount shall be made good by the two airlines within eight weeks from today, failing which the State Commission shall undertake execution, for 'enforcement' and for 'penalty', as per the law.

Compensation against Surya Travels & Associates is dispensed with as not pressed by the Complainant.

28. The two airlines, through their respective senior-most officials stationed in India, shall be better advised to introspect into the facts and happenings of the present case with all seriousness, and, while fixing responsibility and accountability, also inculcate and imbibe systemic improvements for future so that such trouble and trauma are avoided to passengers at large in future.

29. So disposed.

30. The Registry is requested to send a copy each of this Order to the parties in the appeals and to their learned counsel as well as to the State Commission immediately. The stenographer is requested to upload this Order on the website of this Commission immediately.

'Dasti', in addition, to facilitate timely compliance.