

District Consumer Disputes Redressal Commission-I (North District)

[Govt. of NCT of Delhi]

Ground Floor, Court Annexe -2 Building, Tis Hazari Court Complex, Delhi- 110054

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Consumer Complaint No.:218/2017.**Sh. Suresh Kumar Kaushal @ Ravi****S/o Sh. Ghanshyam Kaushal****Village-Katari,****Distt. Amethi-227801,****Uttar Pradesh.****Presently at:****B-16, Christian Colony,****Near Patel Chest Institute,****P. S. Maurice Nagar,****New Delhi-110007.**

Complainant

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Vs

Trackon Courier Pvt. Ltd.**2637, Hudson Lane,****G. T. B. Nagar,****Delhi-110009.****Also at:-****Trackon Courier Pvt. Ltd.,****A-64, Naraina Industrial Area,****Phase-1, New Delhi-110028**

Opposite Party

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ORDER**24/08/2023**Ashwani Kumar Mehta, Member:

(1) The present complaint has been filed under Section 12 of the Consumer Protection Act, 1986. The brief details of facts, as alleged by the Complainant in the Complaint in hand, are that the complainant availed the courier services of the OP to send a parcel containing some medicines, clothes and books to one of his friend Ms. Nazia Sheikh at Allahabad, UP. Before sending the parcel, the complainant bought (1) medicines worth Rs.2648/- and Rs.2201/- (2) clothes from a store and (3) the books and all these items were packed in the parcel which was sent but the parcel didn't reach its destination. It is alleged that the medicines in the parcel were sent on an urgent need to the receiver for the treatment as the receiver was suffering from health problems and these medicines were not easily available in the market area where the receiver resided. The books sent were to help the receiver for preparing her competitive examination. Since the parcel couldn't reached her on time, the receiver had to face hardship. The complainant contacted the OP but the OP has not given any response. The Op has charged Rs.300/- from the complainant for delivery of parcel containing above article of 5 Kg weight on 21.07.2017. While handing over the parcel to OP, the complainant clearly mentioned the very fact to Mr. Rama Shankar, the representative of the OP that "the said parcel is to be delivered on 24/07/2017 because of urgent need to the receiver". The complainant was assured by the representative that the parcel will be delivered positively. However, the complainant was shocked when the receiver informed him that the parcel wasn't delivered to her. Thereafter, the complainant approached the OP and enquired about the status of the parcel and the complainant came to know that his parcel got misplaced and could not deliver to the receiver. The complainant, on several occasions through telephone and personal visits, informed the OP about the irreparable loss and injury and requested them to compensate the complainant but the OP had paid no heed to the numerable requests/visits of the complainant. On 20/09/2017, the complainant gave a written complaint. The complainant states that the OP had admitted their total mismanagement, failure/carelessness, mishandling and total negligence in their courier services but they are not ready to compensate to the complainant towards the loss of the parcel. The complainant contends that the OP has committed deficiency of service and engaged in unfair trade practice and therefore, the OP is liable to compensate the complainant for the damages.

(2) The complainant has filed this complaint alongwith a copy of (1) courier Booking receipt number 1102258255 dated 21/07/2017 (b) receipts of medicines bought from Shristi medical store denoting serial number 162 dated 12/03/2017 and serial number 397 dated 27/05/2017 (c) the bill of the purchase of clothes from the store (d) cash memo of the books worth Rs.1220/- bought with a serial number 024, dated 20/07/2017 and (e) complaint dated 20/09/2017 in support of the facts of the case. The complainant has prayed to:-

- a. *direct the OP to pay the amount of Rs.9,743/- towards the cost of article in the parcel;*
- b. *direct the OP to compensate the amount of Rs.5,00,000/- (Rupees Five Lakh Only) to Complainant, towards the losses incurred to them due to negligent services of the OP;*
- c. *direct the OP to pay a sum of Rs.20,000/- as compensation, damages for the cause of mental agony, torture, deficiency in service to the Complainant;*
- d. *direct the OP to pay a sum of Rs.5,500/- as litigation charges to the Complainant.*

(3) Accordingly, notice was issued to the OP and in response, the OP has filed its reply stating that it has mentioned its liability via declaration given on the front page of the booking receipt which reads "If not covered by special risk surcharges, claim value on this shipper shall, in no circumstances exceed Rs 2000 for

parcels and Rs.100/- for pack of documents". The OP has further contended that by agreeing to such conditions a consignor cannot, at a later stage, seek a claim more than what is stipulated therein as per his whims and wishes. The OP has also stated that the booking receipt provided by the complainant mentions about the terms and conditions of booking as discussed below:-

1. Clause 3 says that the sender must state the actual and correct nature of goods;
2. Clause 4 states that in case of loss, theft etc.;
3. Clause 6 makes it mandatory that in case of valuable parcel, consignor should declare the value and pay guarantee charges@ 1% FOV for which separate receipts are issued by the Ops and in the absence of which no claim shall be entertained.

(4) It is further submitted that the complainant has not fulfilled any of these conditions and hence, the complainant is barred under law to retract from the contract/agreement and take advantage of his own wrongdoing. The OP states that "It is a common principle of law that by agreeing to the T&Cs of any contract, a party binds itself to abide by the same and cannot retract from it at a later stage in violation of agreement." And in this case, the booking receipt which was issued to the complainant denotes a written agreement between the complainant and OP, therefore, the complainant is bound to it and the law prohibits from going against the agreement to make any illegal gain. The OP contends that any medicine, clothes and books as alleged were booked is denied and it is an absolutely false claim made to harass the OP by the complainant. The OP has also contended that it is beyond reason and logic that a prudent man, who claims an amount of Rs.5,00,000/- as compensation, would book an expensive consignment without obtaining transit insurance. The OP states that the complainant was duty bound to disclose the contents of the consignment which he didn't and thus, he is guilty of suppressing of material facts. It is further stated by OP that there was no declaration made regarding the contents of the consignment nor any necessary documents like Invoice, documents for inter-state shipment of goods of the alleged items was provided at the time of booking. The OP has further added to its defence that due to unforeseen circumstances the complainant's consignment got lost in transit between Delhi and Allahabad and it couldn't be traced out despite best efforts. The OP states "sometimes, despite best possible care and precautions, loss or damage of consignments during transit cannot be ruled out." It is precisely for these reasons the OP insists on Transit Insurance to be taken by the consignor in case the consignment is valuable which in this case, the complainant didn't opt for. The OP states that the complainant was offered 4 times the courier charges as per the policy of the OP's lost undeclared consignments and the same was initially agreed to by the complainant. However, the complainant backed out and filed a frivolous complaint to harass OP. The OP further contends that the 2 Invoices (receipt) dated 12/03/2017 and 27/05/2017, filed by the complainant as Annexure C-2, are doubtful with regard to their authenticity because the consignment was booked on 21/07/2017. In this regard, the OP has contended that had the complainant sent important items which were urgently required for treatment, why the complainant waited for a period of 4 months, viz. March 2017 to July 2017. The OP has further stated that they were ready to compensate as they offered 4 times the courier charges for loss of consignment. Since the complainant didn't disclose the contents or commercial value thereof, the OP cannot pay more than 4 times the booking charges.

(5) Accordingly, the complaint has been examined in view of the facts of the case and averments/documents/Evidence put forth by the complainant & OPs and it has been observed that:-

- a. It is not dispute that the Complainant has booked a parcel on 21.07.2017 through the OP courier company for delivery at Allahabad but the same was not delivered and lost in transit.
- b. The booking receipt issued by the Courier Company, declares the weight of consignment as 5 Kg but value/details of the items booked in the parcel are not mentioned.

- c. The OP has admitted its fault and has offered four times of the courier charges as compensation to the Complainant taking shelter of the terms and conditions created by itself but it could not furnish any evidence that such terms & conditions were conveyed to the complainant at the time of booking the parcel.
- d. The OP has denied to compensate the Complainant suitably under the garb of its own terms and conditions claim to have been printed on the booking receipt issued by the OP to Complainant after booking of the parcel. The copy of the receipt filed by the Complainant does not indicate such terms and conditions which might be printed on the back of the receipt which has not been got Photostatted by the Complainant while filing the complaint. But the OP has also not filed its own copy of the booking receipt to establish that these terms and conditions were duly printed on booking receipt and was acknowledged by the Complainant.
- e. The Complainant has given a written communication/ Complaint to the OP on 20.09.2017 intimating the details of the articles packed in the parcel booked on 21.07.2017 but the OP did not reply to that written communication which amounts to deficiency of service on the part of OP.

(6) In view of the above observations, we are of the considered view that the complainant has suffered directly due to deficient service of the OP (M/s. Trackon Courier Pvt. Ltd.) in terms of the deficiency defined in the Act which includes any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained in relation to any service and includes any act of negligence or omission or commission by such person which causes loss or injury to the consumer.

(7) Therefore, we feel appropriate to direct the OP (M/s Trackon Courier Pvt. Ltd.) to pay Rs.9743/- (Rupees Nine Thousand Seven Hundred Forty Three only) within thirty (30) days from the date of this order, with interest at the rate of 9% p.a. from 21.07.2017 (date of filing of complaint) till the date of the payment. Besides, the OP is also directed to pay Rs.25000/- (Rupees Twenty Five Thousand only) as compensation to the Complainant, for the mental pain, agony and harassment. It is clarified that if the abovesaid amount is not paid by the OP to the Complainant within the period as directed above, the OP shall be liable to pay interest @12% per annum from the date of expiry of 30 days period.

(8) Order be given dasti to the parties in accordance with rules. Order be also uploaded on the website. Thereafter, file be consigned to the record room.

ASHWANI KUMAR MEHTA

Member

DCDRC-1 (North)

HARPREET KAUR CHARYA

Member

DCDRC-1 (North)

DIVYA JYOTI JAIPURIAR

President

DCDRC-1 (North)