

STATE CONSUMER DISPUTES REDRESSAL COMMISSION
UTTAR PRADESH LUCKNOW

COMPLAINT CASE NO. 68 OF 2008

Dr. Ajit Kumar Kulshrestha,
Care of Kusum Hospital
Katra Road, Karanpur
Pratapgarh 230 001 (U.P.)

Complainant

Versus

Make My Trip (India) Private Limited
Office no. 9 and 10 Ground Floor
Shalimar Square , B.N. Road
Lucknow and another

Opposite parties

BEFORE

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT
HON'BLE RAM PAL SINGH, MEMBER

For the Complainant : Sri Rajesh Chadha, Advocate
For the Opposite party no.1 : Sri S.K. Verma, Advocate
For the Opposite party no.2 : Sri Dinesh Kumar, Advocate

DATED: 14.12..2011

JUDGMENT

MR.JUSTICE BHANWAR SINGH, PRESIDENT (ORAL)

Heard Sri Rajesh Chadha , learned counsel for the complainant, Sri S.K. Verma, learned counsel for the opposite party no.1 and Sri Dinesh Kumar, learned counsel for the opposite party no.2. Also perused the record.

This complaint has been filed for recovery of various amounts as may be spelled out below:-

1. Rs.13,56,664.80 paid as hospitalization bills, by the complainant, alongwith interest @ 18% p.a.
2. Rs. 1,81,375/- paid as tour charges which could not be utilized, Rs. 1,24,862/- incurred on phone charges , Rs.2,42,376/- incurred on return air ticket from Paris to India and Rs.67,000/- incurred on miscellaneous expenses during travel from Delhi to Pratapgarh.

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3. Rs.50,00,000/- as compensation for suffering mental agony , physical tortures and other sufferings alongwith interest @ 18% p.a.
4. Rs.2,00,000/- towards litigation charges.

The facts

The complainant booked a tour with Make My Trip (India) Private Limited under the latest advertised scheme known as "Glimpses of Europe". The package included air fare, boarding, lodging, taxes, visa charges and overseas medical insurance. A total sum of Rs.1,71,375/- was paid to the opposite party no.1. The complainant boarded the flight from Delhi to Brussels being capital city of Belgium in the morning on 22.05.2008 and he arrived there at the Belgium Airport on the same day at 9 a.m. From Belgium he went to Germany, Switzerland and Paris. In the night between 28/29.5.2008 the complainant experienced severe pain in his stomach. He contacted the Tour Director on telephone and made a request for immediate medical assistance. The Tour Director did not provide any assistance. Under the compelling circumstances the complainant while feeling severe pain got himself admitted at Center Hospital, Neuilly. There, urgent abdominal ultrasound was conducted , intra venous slued was started and other medical assistance was provided. The Tour Director as alleged in para 12 of the complaint, fled the hospital leaving the complainant in lurch. It was with great difficulty that the complainant could be able to contact his family members on 30.05.2008 and then payment of the medical bills was arranged. The Tour Director, Sri Kashyap Mehta though contacted the complainant in the afternoon on 04.06.2008 but left with false assurance to help. The complainant was informed by the opposite party no.1 to contact the Bajaj Allianz General Insurance Company Limited for payment of the hospital's bills but no relief came from either of the two. The complainant incurred huge expenditure on the telephone bills as he had to contact his family members time and again for every kind of help. The Tour Director even did not arrange for the return journey ticket of the

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complainant. Consequently he had to make his own arrangement for the return journey and to his utter shock when he came to India, he received a repudiation letter from the Bajaj Allianz General Insurance Company Limited, by virtue of which his claim was repudiated on the basis of manufactured plea of "non disclosure of material information".

The crucial question is as to whether the complainant's claim is liable to be rejected on the ground of concealment of pre-existing ailment?

The Center Hospital, Neuilly prepared history of the abdominal pain the complainant had been suffering from and at the top of the medical papers under the heading "Histories" it was recited to be a case of Diabetes type-II Acute Pancreatitis. It is on the basis of this recital about the diabetes type-II that the Bajaj Allianz General Insurance Company Limited, has repudiated the complainant's claim on the ground that the complainant failed to provide details of his problem of diabetes. The two opposite parties in order to interpret their own defense version have come forward with different pleas of defense. Whereas the Bajaj Allianz General Insurance Company Limited says that the complainant had filled up a proposal form and as per the terms and conditions of the policy he was under an obligation to disclose about the pre-existing disease he might have been suffering from. In this context it is important to note that inspite of an opportunity specifically granted for the purpose neither the opposite party no.1 nor the opposite party no.2 has brought on record any proposal form which might have been duly filled in or signed by the complainant. It appears that the two opposite parties had their interse arrangement for extending insurance facilities to the members of the "package tour", without asking such members to sign any paper. Had some papers been signed, the documents should have been adduced in evidence. The contention of the two opposite parties that terms and conditions of the insurance company were provided to him does not seem to be sustainable as it is not borne out from any record. At this juncture Sri S.K. Verma, learned counsel for the opposite party no.1 has drawn

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our attention towards the brochure which was entrusted to Sri. Rajesh Chadha learned counsel for the complainant. Sri Verma has pointed out that the terms and conditions must have been there in the brochure. It has been placed before us. It is a very attractive brochure containing pictures of buildings and snow etc. Indeed it seems to be an excellent brochure in so far as it is meant to attract travellers towards investment and booking of tours. However, there is no mention in it about the terms and conditions of the medical insurance. At page 42 under the heading "Visa Charges and Overseas Medical Insurance" a charge of Rs.15,000/- has been prescribed and it is not denied that the opposite party no.1 has realized it from the complainant. What were the terms of overseas medical insurance are not recited anywhere in this brochure and therefore, the contention of the opposite parties that the complainant was under an obligation to provide his medical history of past, is not acceptable.

Moreover, there is not an iota of evidence before us which can prove that the complainant suffered in the past from diabetes resulting in acute pancreatitis. As we know the ailment of diabetes is a silent killer and in most of the cases it is not detectable unless and until the patient comes across a serious problem such as in the case in hand the complainant had suffered from abdominal pain. Recital of Type-2 Diabetes in the medical history prepared by the Center Hospital cannot be interpreted to mean that the complainant was in know of his diabetes problem before he had gone on the tour to Paris. He has sworn in his affidavit that he was never before treated of diabetes nor he had consulted any doctor in this respect. There is no evidence on record such as medical bills, prescription of some doctor or hospital record from which it could be established that the complainant before going to "Glimpses of Europe" was suffering from any kind of diabetes what to talk of Type -I diabetes. He never suffered any abdominal pain earlier to his hospitalization in Neuilly.

We are therefore, not inclined to accept the as usual baseless plea of

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the insurance company that the complainant was guilty of concealment. The manufactured plea of defense taken by the opposite parties is therefore, liable to be rejected.

The details of the compensation as mentioned in the earlier part of this judgment are as follows:-

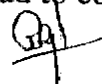
The hospital bill dated 09.06.2008 (Annexure-4) clearly proves that the complainant has paid 19345 Euros and also he incurred expenditure on return journey ticket amounting to 3656 Euros. The total of these two bills comes to 22801 Euros i.e. Rs.15,99,040.80 (Rs.13,56,664.80 + Rs.2,42,376.00) plus telephone bills. We endorse the entire claim as it is factual.

The opposite party no.1 was under an obligation to take care of the complainant in the hospital and also arrange for his return journey ticket. We are of the opinion that it failed in discharge of its duties on both the counts and committed serious kind of deficiency in service. Therefore, the opposite party nos. 1 and 2 both shall pay the amount of hospitalization bill amounting to Rs.13,56,664.80. Their liability shall be joint as well as several.

The opposite party no.1 shall be liable to pay the amount of the return journey ticket amounting to Rs. 2,42,376/- in addition to Rs.1,24,862/- incurred on phone charges. Since the opposite party no.1 committed breach of terms and conditions of the package tour by ignoring the interest of the complainant and leaving him in lurch of the hospital so as to find his own ways to survive, it will have to refund the money it has realized from the complainant as tour charges. The extent of the said amount is Rs.1,81,375/- (Rs.1,71,375/- + Rs.10,000/-).

The complainant has also prayed for Rs.50,00,000/- as compensation for the mental agony and physical torture. As asserted by him in his affidavit dated Sept. 13/14 Sept. 2010, on account of the language barrier he was not able to communicate his sufferings to the staff of the hospital including doctors and nurses. He then had to contact the Indian





Embassy staff in France but Sri Karan Singh, an official of the Indian Embassy in France who came to meet him was unable to render any help. The complainant remained hospitalized for 12 days i.e. from 29.05.2008 to 09.06.2008 and during this period he was, while suffering from pain, unable to communicate his sufferings to the staff of the hospital as the hospital staff did not understand any language except French and he himself was unable to understand the local language. In the circumstances, he had to contact his family members, friends and helpers. Indeed there was a plausible reason for him to suffer mental agony as no timely help came to him even though he had paid Rs.15,000/- for overseas medical assistance. The opposite party no.1 would have minimized his problems by arranging for the requisite help but it failed to take care of him. Being in the hospital for about twelve days and then coming to India by making his own arrangement he would have certainly been mentally antagonized.

Keeping in view the mental agony which he, alone, might have experienced, lying in a hospital of a foreign country as a helpless creature, we award Rs.25,00,000/- as compensation for his physical sufferings as well as mental agony. The opposite party no.1 shall be liable to pay this amount. This payment will cover the complainant's miscellaneous expenses he might have incurred in making payment of the miscellaneous bills during return journey.

The total of the above awards will be as follows:-

Hospitalization bill	Rs.13,56,664.80
Return journey ticket	Rs. 2,42,376.00
Phone charges	Rs. 1,24,862.00
Amt. realized as tour charges	Rs. 1,81,375.00
Award for mental agony & physical sufferings	Rs. 25,00,000.00

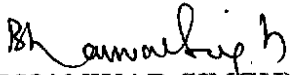
Rs.44,05,277.80


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Whereas the liability of opposite parties shall be joint as well as several in so far as the payment of Rs.13,56,664.80 is concerned, the opposite party no.1 shall pay the balance amount.

In the result this complaint is allowed in terms of above with Rs.20,000/- as litigation charges to be jointly paid by the opposite parties.


(JUSTICE BHANWAR SINGH)
PRESIDENT


14.12.11
(RAM PAL SINGH)
MEMBER

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