

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.115 of 2013

Date	Order with Signature of Judge
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Present: **Mr. Justice Nazar Akbar**

Plaintiff : Muhammad Yamin, through
Mr. Zaheer-ul-Hassan Minhas, Advocate

Versus

Defendant : M/s Swiss International Air Lines, Limited,
through Mr. Muhammad Siddique, Advocate.

Date of hearing : **09.04.2021**

Date of Decision : **24.05.2021**

JUDGMENT

NAZAR AKBAR, J. The Plaintiff had filed this suit on **02.02.2013** for Recovery of an amount Rs.15 Million as Damages from the defendant.

2. Brief facts of the case are that the Plaintiff bought E-Ticket of the defendant Airline for himself and his wife namely Hamida Yamin for business class for journey from Karachi-Dubai-Zurich-Lisbon and return Lisbon-Zurich-Dubai-Karachi through his travel agent. The journey was initiated on 11.5.2012 without any hitch. The plaintiff on journey had heavier luggage to transport to Karachi, and as the Plaintiff did not find any Luggage Allowance mentioned on the E-ticket, he followed the natural course of enquiring from the office of the defendant Airline in Lisbon. The office of defendant as alleged confirmed that the plaintiff and his wife luggage allowance for business class is 2 pieces of 32 kgs. each passenger and cabin luggage, 2 pieces of maximum 8 kg. each passenger and accordingly the plaintiff and his wife packed their suitcases within the allowable

limits as advised to them by the officials of the defendant at Lisbon. It was averred that on **05.12.2012** when the Plaintiff and his wife reached the Lisbon airport as per the reporting time of the flight LX-4581, they were harassed and made to run from pillar to post to plead the legitimacy of the weight of their luggage and the officials of the defendant did not listen the plaintiff. The plaintiff was asked to make excess baggage charges for checked in luggage and one piece for hand luggage. In the meanwhile, the flight was closed and the Plaintiff and his wife were made to return their boarding cards. Later, they were re-routed through Madrid, Spain on altogether different flights and the Plaintiff had accepted this change under protest as he considered Madrid inconvenient and risky for wheel chair case, therefore, the episode of coercion and continued harassment has caused irreparable psychological damage and health hazard to already ailing and wheel chair bound passengers. On reaching Karachi, the Plaintiff claimed refund of two excess baggage coupons of Euro 450.00 and Euro 390.00 from the Defendant vide letter dated **12.12.2012** explaining the circumstances leading to these illegitimate charges. The defendant unilaterally rejected the claim of the plaintiff through their letter dated **24.01.2013**. It was further averred that whatever luggage the plaintiff was carrying was within the limit as advised by the Lisbon office of the defendant which the defendant was bound to honor. The excess baggage charges were illegitimate, ab-initio and the defendant is liable to refund the same. According to plaintiff, defendant's malicious act has deprived the plaintiff from a sum of 840 Euro, therefore, the plaintiff is entitled to recover the same as well as the plaintiff claimed Rs.15 million as damages from the defendant for suffering mental agony. Therefore, the plaintiff filed the instant suit for damages.

3. Notices of the instant suit were sent to the defendant and they filed their written statement wherein they denied the claim of the Plaintiff stating therein that the suit of the Plaintiff is liable to be dismissed as the Plaintiff has been treated strictly in accordance with the terms and conditions laid down in the Electronic Ticket No.724-2125-179-768 and Electronic Ticket No. 724-2125-179-770 issued in favour of the Plaintiff and his wife. Both the tickets categorically state baggage entitlement of the two passengers, which is a part of the conditions of contract between the parties. If the Plaintiff and his wife were carrying baggage in excess of their entitlement, then they were liable to be charged for excess baggage carried by them, therefore, the suit filed by the Plaintiff is liable to be dismissed.

4. On **15.03.2018** from pleadings of the parties, followings issues were framed:-

1. Whether the suit is barred by the conditions of contract between the plaintiff and defendant?
 2. Whether the suit suffers from non-joinder of necessary party?
 3. Whether the plaintiff has been treated in accordance with the terms and conditions laid down in Electronic Ticket 724-2125-179-768 issued in favour of the plaintiff and Electronic Ticket 724-2125-179-770 issued in favour of Mrs. Hameeda Yamin?
 4. Whether the plaintiff is entitled to recover any sum on account of overcharging?
 5. Whether the plaintiff is entitled to recover any sum on account of damages?
 6. Whether the plaintiff is entitled for relief prayed for?
 7. What should the order be?
8. The plaintiff had filed his own affidavit-in-evidence and he was cross-examined by the learned counsel for the defendant. The defendant examined one Muhammad Amir Abdullah, Employee in

Customer Services with the defendant. He was also cross-examined by learned counsel for the Plaintiff.

9. I have heard learned counsel for the parties and perused the record. My findings with reasons on the issues are as follows:-

10. The plaintiff in his evidence has categorically admitted that he has not produced any documentary evidence regarding his claim of luggage as 2 pieces of 32 kgs. each passenger as checked in luggage and 2 pieces of maximum 8 kgs. each per passenger as cabin luggage. It has also come on record that admittedly the plaintiff has not produced any witness to support his claim as per his own statement in the cross examination in the following words:-

“.....It is correct to suggest that I have not produce the original passenger ticket and luggage check..... It is correct that I have not produced any documentary evidence to the support of para-4 of my affidavit-in-evidence. It is correct to suggest that I cannot produce three persons namely, Phili, Iriene and Elinda as witnesses. It is correct to suggest that I did not complaint in writing or by telephone to the persons mentioned in Para No.4 of my affidavit-in-evidence that I was not allowed baggage allow me two pieces.”

The above evidence clearly indicates that the plaintiff has not produced any documentary evidence in support of his claim. He has not even produced any witness in support of his claim and even he has not made his wife as plaintiff in the instant suit to support his claim and in absence of any documentary evidence the damages claimed by the Plaintiff cannot be granted. In this context one may refer to the case of Malik Gul Muhammad Awan vs. Federation of Pakistan through Secretary M/o Finance and others (**2013 SCMR 507**). Para-4 of the said judgment is reproduced below:-

4. It is by now a well established principle that the person claiming special damages has to prove each item of loss with reference to the evidence brought on record

and for general damages as claimed by the petitioner relating to mental torture, agony, defamation and financial loss, those are to be assessed following the Rule of Thumb and the said exercise falls in the discretionary jurisdiction of the court which has to decide it in the facts and circumstances of each case. The courts below having appreciated the evidence led have already determined the damages to which petitioner could be entitled. In order to show that the amount of damages determined by the learned Division Bench vide the impugned judgment is not commensurate with the extent of shock and injury suffered by the petitioner, he has placed on record photocopies of certain documents which were never tendered in evidence during trial or appeal. These documents at this belated stage are of no avail to him. At no stage, the petitioner filed application for additional evidence either. The concurrent findings of fact, in the afore-referred circumstances, have not been found by us to be against the record and the law declared. The petition lacking in merit is accordingly dismissed and leave refused.

11. In view of the above facts and law, all the issues are decided against the plaintiff. Consequently, the suit stands dismissed with no order as to costs.

JUDGE

Karachi,
Dated: 24.05.2021

Ayaz Gul