

(1993) 09 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

CONSUMER PROTECTION COUNCIL, TAMIL NADU

APPELLANT

Vs

THIRUVALLUVAR TRANSPORT CORPN

RESPONDENT

Date of Decision : 27-09-1993

Acts Referred:

Citation : 1993 0 NCDRC 88 : 1993 3 CPJ 341 : 1993 3 CPR 379 : 1994 1 CLT 80

Hon'ble Judges : V.BALAKRISHNA ERADI , Y.KRISHAN , B.S.YADAV J.

Advocate : S.PUSHPAKARAN , M.CHANDRASEKARAN , V.KRISHNAMURTHY

Judgement

1. THE facts of the case briefly are that late Shri S. Kumar was travelling from Kumbakonam to Thanjavur on the 3rd of June, 1990 in the Thiruvalluvar Transport Corporation (for short TTC) bus. According to the TTC, the bus met with an accident while overtaking a bullock cart. The bullocks got agitated and panicky and in order to avoid a major accident, the bus driver swerved the bus to left, as a result the right hand side rear portion of the bus dashed against the branches of a tree on the road side and damage was caused to side glasses. Further, on account of swerving the vehicle and suddenly applying the brake, one of the passengers sitting in the middle of the last row was thrown forward and he came into contact with the iron side bar (part of the frame which holds the seat) and sustained a head injury, as a result of which he died.

2. THERE is some difference in the version of the complainant as to how the accident was caused and where the deceased was sitting in the bus, but that is not material to the disposal of this complaint. The basic question to be considered is as to how the death of Shri Kumar was caused and whether this was due to any negligence on the part of the Opp. Party TTC?

3. A complaint was filed before this Commission by the Consumer Protection Council, Tamil Nadu on behalf of the family of the deceased. The complainant has alleged that the deceased was sitting in the last row and when the driver suddenly applied the brakes, he was thrown forward. The twin seats in front of him was without back rest and had only the iron-frame. The deceased struck against the skeleton of the iron frame of the seat and sustained serious head

injuries, as a result of which he died. According to the complainant the cause of accident was indisputable, the result of the projecting steel tube hitting and penetrating the forehead of the victim. The absence of the back rest cushion leaving the steel tubes protruding dangerously was negligence on the part of the Opp. Party TTC and constitutes deficiency in service in running the transport service.

4. THE deceased was working in Ashok Leyland, Madras and was drawing a salary of about Rs. 3,000/- p.m. He was only 32 years old and would have continued to work for another 26 years had he not died in the accident. He was the only bread winner of his family which consisted of his wife (23 years), a daughter of (3½ years), a dependent aged father (72 years) and mother (60 years). He was the only son. As such, the complainant claimed compensation of Rs. 15 lakhs and also punitive damages of Rs. 5 lakhs from the Opp. Party TTC. In its counter, the Opp. Party TTC has challenged the locus standi of the petitioner council to file a complaint. It has stated that the claim of compensation, if maintainable, can be filed only by the affected party though the widow of the deceased has also been made a petitioner/co-signatory to the complaint.

5. ACCORDING to the Opp. Party TTC either on account of the swerving the vehicle or applying the brakes one of the passengers sitting in the middle of the last row was thrown forward and came into contact with the iron side of bar (part of the frame which holds the seat) and has sustained head injury. It has denied that the two-seater in front of the deceased passenger was without backrest and had only, the iron frame and that the deceased struck against the protruding skeleton tube of the seat and sustained serious head injuries. According to it, the post-mortem certificate does not reveal any penetrating wound on the fore-head. It has also challenged the photographs of the vehicle showing the condition of the two-seater against which the head of the deceased struck as not of the vehicle involved in the accident but of some other vehicle.

6. WE heard the parties at length and we have also gone through the records. We find that the Opp. Party TTC has been changing its statement of facts as to how the injury was caused to the deceased.

7. IN a letter of 7th of July, 1990 to the Hindu, the Chairman of the Opp, Party TTC, had stated that the particular seat occupied by the deceased was at the end of the gangway and there was no seat in front of it, hence he did not have anything to hold on to avoid falling. The deceased received injury on his forehead near the left eye, as a result of the swerving of the bus to the left and sudden application of the brakes to bring the vehicle to a halt. In the present counter statement, as already noticed above, it has stated that the deceased was thrown forward due to the swerving of the vehicle and/or the application of the brakes and thereupon he came into contact with the iron side bar (part of the frame which holds the seat) and sustained head injury. In the written submissions on behalf of the Opp. Party, the Opp. Party TTC has stated that the

back rest of the seat was there but it was possible that it got detached, as a result of the impact at the time of the accident. In its opinion, in all probability, the back rest could have got detached on account of the impact of the overhead branch of the tree hitting the rear portion of the bus and that there was no negligence on its part.

8. IT will be evident from the narration of facts above especially the narration of the version of the Opp. Party TTC that it has been changing its version as to whether injury was caused by the absence of back rest cushion leaving the steel tubes of the seat frame protruding upward against which the deceased struck his head. The FIR filed by the driver of the bus on 3rd of June, 1990 states clearly that "one passenger travelling in my bus collided against the steel tubes on the side seats". Again the Inquest report states that the passenger "Shri Kumar co Hided against the steel tube of the seat in front of him and his fore-head was broken". The Inquest Report only confirms the FIR filed by the driver of the bus, This should leave no room for doubt that there were protruding steel tubes of the frame of the seat in front of the deceased and in ail likelihood the back rest was missing, making the protruding of the steel tubes a serious hazard to the safety of passengers.

9. REGARDING the suggestion of the Opp. Party TTC that the photograph of the seats of the vehicle was fake or of some other vehicle and not necessarily of the vehicle which was involved in the accident, the Sub Inspector of Police, Thanjavur certified that these photographs were of the very same vehicle which was involved in the accident.

10. THE nature of the injury is also relevant in determining whether the Opp. Party TTC has stated categorically that the post-mortem certificate does not reveal any penetrating wound on the fore-head. The post-mortem certificate states that the lacerated wound was 9 cms. in length vertical over the right side of the fore-head starting from above the inner end of right eyebrow. The laceration of brain over the base of both frontal lobes noticed each measured 6 X 5 x ¼ cms.

11. THESE , along with the other features of the wound described in the post-mortem certificate, would leave no room for doubt that the deceased had received a massive injury to the brain resulting in his death. The likely cause of such a massive injury could only be the dashing of head of the deceased against the protruding steel tubes of the seat in front.

12. AFTER considering the evidence, we believe the version of the complainant that the seats in front of the deceased did not have the back rest with the result that the bare steel frames of the seat were protruding and the deceased hit his fore-head against the tube receiving a massive injury on the forehead, as a result of which he died. The absence of the back rest and the existence of protruding steel tubes clearly constituted negligence and deficiency in service on the part of the Opp. Party TTC. As regards the compensation payable to the

family of the deceased, it is observed that during the negotiations between the parties for an out of Court settlement, a sum of Rs. 5.10 lakhs was agreed to be paid as compensation subject to the approval of the Board of Directors of the Opp. Party TTC. We consider that on the materials available on record it would be reasonable to fix the compensation at the said figure and we accordingly direct that the Opp. Party shall pay a compensation of Rs. 5.10 lakhs to the complainant widow with interest at 18% per annum from 1st of May, 1992 onwards till the date of payment. Time for payment is fixed as three months from this date. We direct that the Opp. Party shall also pay a sum Rs. 10,000/- by way of costs to the complainant within the same time limit.