

(2005) 02 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

HUSSAIN

APPELLANT

Vs

Metropolitan Transport Corpo -Ration

RESPONDENT

Date of Decision : 28-02-2005

Acts Referred:

Citation : 2005 4 CPJ 326

Hon'ble Judges : A.RAMAN , R.VANAROJA J.

Judgement

1. THE complainant was travelling in the bus operated by the first opposite party from Valasaravakkam to Parrys on 1.10.1997 and sustained injury on his left leg. The complainant was badly hurt. He was taken by the first opposite party for treatment to the second opposite party where he was attended to by the 3rd and 4th opposite parties. The 3rd and 4th opposite parties did not properly treat him and simply stated that it was small swelling. But, on the other hand, the complainant has sustained fracture. The complainant is a tailor by profession. On account of deficiency in service on the part of the opposite parties, he is not able to carry on his profession and earn as before. Therefore, on the ground that the opposite parties are guilty of negligence and deficiency in service, the present complaint is laid.

2. THE first opposite party has filed a version admitting that there was an incident in the bus that was proceeding to Parrys and that suddenly there was a big noise and it was found that the spring plate placed on the rear side had broken loose and pierced through the surface near the rear wheel and the passenger sitting in the seat above the rear wheel was injured. They further say that the crew took the passengers who got injured to the nearby hospital for treatment. Thus it was an act of God. It was not due to improper maintenance of the bus. There was no deficiency in service. Hence, the first opposite party denies their liability to pay any compensation. The opposite parties 2 and 4 did not choose to contest the matter. They have been absent and set ex parte.

3. THE points that arise for determination are: (1) Whether there is deficiency in service? (2) Whether the opposite parties are liable to compensate the

complainant?

4. THE Points : Since the opposite parties 2 to 4 are absent, it would mean that they have accepted the accusation of negligence. They have not chosen to be present to raise any contention on merits or on the maintainability of the complaint as against them. Now coming to the first opposite party, the first opposite party admits clearly that when the bus was proceeding towards Parrys and when it was nearing TVS bus stop, there was an incident, that a sudden noise was heard and, therefore, the driver stopped the bus. It was found that the spring plate on the rear side had snapped and had pierced through the floor of the bus causing injury to the passengers nearby. Therefore, that the complainant was injured while he was travelling in the bus of the opposite party is admitted by them. In fact, Ex. B1 is the accident report which also clearly shows that a person was injured and sustained serious injury "(vernacular matter omitted)". The occurrence had taken place on 1.10.1997 at about 11.05 a.m. in the morning. It is stated that the rear spring plate was found cut and it has caused injury to the complainant. It is mentioned as follows: "(vernacular matter omitted)". The complainant has also addressed a letter stating that he has settled the matter and that he is not going to make a complaint to the police against the driver of the bus. Thus Ex. B1 clearly proves the complainants case that while he was travelling in the bus belonging to the first opposite party, the incident took place and one of the spring plates broke loose and injured the complainant who was sitting nearby.

5. NOW coming to the nature of injury sustained by the complainant. The records produced by the complainant shows clearly that the complainant suffered fracture of calcaneum of the left foot. Ex. A2 is the OP ticket/chit issued by the opposite parties 2 to 4 which mentions about the X -ray of leg. It also points out that the patient has been referred for DAOS opinion. It also mentions swelling and tenderness over calcaneum of the left foot. The X -rays taken by the opposite parties 2 to 4 have not been provided to the complainant. The records produced show that the complainant has suffered fracture of left calcaneum. The complainant underwent treatment with Allopathy doctor. Thereafter he went to Puthur where there are bone setters. According to him, he has not completely cured and that he is not able to walk and work as before.

6. EXS . A11 and A12 establish that the complainant is employed as a tailor in the Ordnance Clothing Factory and his basic pay is Rs. 4,800. It is also his case that the increment in pay and promotion are based upon the output. It is stated by him that because of the injury he has suffered at left calcaneum he is not able to work as before and produce more clothing with the result that his earning capacity has been affected. The Supreme Court has held in Indian Medical Council v. V.P. Shanta, III (1995) CPJ 1 (SC) that the service rendered at a Government Hospital, Health Centre/Dispensary where services are rendered on payment of charges and also rendered free of charge to other persons availing such services would fall within the ambit of the expression service as defined in

Section 2(1)(o) of the Consumer Protection Act irrespective of the fact that the service is rendered free of charge to persons who do not pay for such service. Free service would also be service. The National Commission has held in the case reported in I (1999) CPJ 43 (NC) that if a person holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, viz. a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient.

7. THE learned Counsel for the first opposite party contended that the complaint is not maintainable because there is a separate forum namely Motor Accident Claims Tribunal which has to be approached by the complainant for necessary reliefs. The other contention raised by the Counsel for the first opposite party is that the vehicle was kept in a good condition and it had necessary fitness certificate and, therefore, what happened was an act of God. Taking the second contention raised by the learned Counsel for the first opposite party, it is to be pointed out that the vehicle which is said to have been in good condition was sold as a condemned vehicle one year later as evidenced by their own document. Further in a vehicle while running if a spring plate gives way and comes popping off, it would indicate that the vehicle has not at all been properly maintained. It cannot be considered as an act of God. It shows that the vehicle has not been properly maintained. No care has been taken to maintain the vehicle and check it before putting it on road. The very fact that a spring plat breaks free and pierces through the flooring of the bus would show that the maintenance has been poor and that no effort has been made to check the buses daily before putting them on road. It cannot be called an act of God. But it is a sheer case of negligence and improper maintenance.

8. THE first contention is equally untenable because though it is an accident that had happened while the bus was plying, it is not an accident that has been caused because of the bus coming into contact with any other vehicle or hitting the roadblock or median in the road. It is an accident caused inside the bus and on account of the ill -maintenance of the said bus. Therefore, it is not necessary for the complainant to approach Motor Accident Claims Tribunal. The facts of the case cannot bring it under the exclusive jurisdiction of the Motor Vehicles Act. It is a claim which can be maintained only by the Consumer Forum. The complainant is a consumer. He has paid for his travel as we see from Ex. A1. While travelling because of the bad maintenance, one of the parts in the bus had come loose injuring the complainant. Therefore, in such case, it is not an accident that had happened because of the negligent act of the driver or conductor, nor it is a case of negligent driving bringing about the accident. It is an accident that happened because of bad maintenance of the bus. The complainant as a consumer and as a traveller in the bus is entitled to expect the bus has to be maintained in order and fit for travelling. When that is not done, as

a consumer, he can approach the Forum. The contention of the learned Counsel for the first opposite party cannot be accepted at all. There is deficiency in service on the part of the opposite parties 2 to 4. In that, they have not properly advised the complainant. We do not know what happened to those X -rays taken, whether the X -rays were seen by the doctors? Whether the doctors advised him to come up for further treatment or what the further diagnosis the doctors made?

9. THE foot of the human being is formed of 26 bones; 14 phalanges in the toes, five metatarsals in the main part of the foot and seven tarsals in the heel, calcaneum bone is one of the important parts of the foot. Therefore, if an injury is caused to it and the fracture of the same has occurred, it definitely would impair the normal function of the foot with the result that the complainant cannot put pressure or use his foot as freely as before. For a tailor, the mobility of the foot is an important thing. That mobility will be greatly affected if there is a fracture of the calcaneum. That is what has happened here. The opposite parties 2 to 4 have not diagnosed the cause of swelling or tenderness in the foot. They have not taken further course of action or follow -up action. They have failed to treat the fracture. They have not advised him to come back again for any checkup. They simply administered some pain killer and forgot about the complainant. The complainant thereafter had to go elsewhere, seek the advice of other doctors, go to a bone setter and thus on account of the negligence of the opposite parties 2 to 4 in not taking immediate action to rectify the fracture in the calcaneum, the complainant had suffered. Hence, it follows that there is deficiency in service on the part of the opposite parties 1 to 4.

10. NOW coming to the question of compensation, the complainant has prayed in all for a sum of Rs. 2,00,000 towards deficiency in service as against the first opposite party and Rs. 10,00,000 against the opposite parties 2 to 4 for not treating him and for not diagnosing properly and giving a wrong report. There is deficiency in service on the part of the first opposite party. It is on account of the accident which has been caused due to the ill -maintenance of that bus, the complainant sustained of fracture of calcaneum. Therefore, there is definitely deficiency in service for which the first opposite party has to be made liable. Though the complainant has claimed a sum of Rs. 2 lakhs towards the same, we consider in the circumstances a sum of Rs. 50,000 would meet the ends of justice. Now as regards the claim of Rs. 10,00,000 against the 2nd to 4th opposite parties, we have documents to show that the complainant has suffered some disability. The disability has prevented him from carrying him avocation and normal life. But, we cannot accept the complainants case in toto, in the absence of some materials in that regard. But the fact remains that the complainant did suffer a fracture because it was not immediately attended to and it has led to some complication and that has affected his efficiency as a tailor. His movement has been to an extent affected and curbed by the accident. Therefore, we find that the complainant has suffered some hardship and loss which in the circumstances, we would quantify at Rs. 1,00,000, which sum shall be paid by the opposite parties 2 to 4 as compensation for deficiency in service on their

part. Therefore, we hold that there is deficiency in service and that the complainant is entitled to compensation of Rs. 1,50,000 in all from the opposite parties.

11. IN the result, the complaint is allowed. The first opposite party is directed to pay a sum of Rs. 50,000 along with a cost of Rs. 1,000 to the complainant and the opposite parties 2 to 4 are directed to pay a sum of Rs. 1,00,000 with a cost of Rs. 1,000 to the complainant. Time for compliance: Two months. Complaint allowed.