

(1993) 03 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

KUSUMBEN JITENDRABHAI

APPELLANT

Vs

GUJARAT STATE TRANSPORT CORPORATION

RESPONDENT

Date of Decision : 22-03-1993

Acts Referred:

Citation : 1993 2 CPR 430 : 1993 3 CPJ 1379

Hon'ble Judges : S.A.Shah , Leelaben Trivedi J.

Final Decision : Appeal partly allowed with costs

Judgement

1. THE appellant is the original complainant. Being aggrieved by the decision of the District Forum, Surendranagar, has filed this appeal. We will address the parties and complainant and opposite party. THE complainant was travelling with her family from Patan to Halvad on 19.6.91, and has board the bus going from Ambaji to Morbi. THE complainant boarded the bus at Patan. THE bus reached Dhrangadhra and at about 8.30 p.m. the bus started from Dhrangadhra and while going to Halvad, it appears that near village Soladi three persons who were travelling in the bus who appears to have boarded the bus from Dhrangadhra threatened the driver and asked to stop the bus. When the bus was stopped they looted the passengers. THE complainant who was going to Halvad after attending the auspicious occasion of janoi had some ornaments on her body. THEse miscreants threatened the complainant and took away the gold ornaments valued at Rs. 18,700/-. THE other persons were also similarly looted but there is no complaint from them. It also appears that the conductor had cash with him but according to the conductor that cash has not been looted by the miscreants because he put the cash under the seat. However, he says that under threat he has given Rs.38/- to the miscreants. THE driver of the bus also lost Rs. 300/-.

2. THE Corporation having no personal knowledge has not adduced evidence regarding the ornaments. It cannot have any personal knowledge but have rested upon the theory that it is for the complainant to prove the value of the ornaments. So far the facts are concerned, there is no dispute. THE District Forum had heard the parties and discussed the evidence elaborately. It seems

the District Forum awarded Rs. 250/- by way of cost to the complainant. THE District Forum in para 13 has observed that the opposite party who is extensively running buses all over Gujarat ought to have taken appropriate steps for the safety of the passengers and their property. It should seriously think over this aspect and should implement the same. The questions that arise for our consideration in this appeal are that: (1) Not providing guards or some measures for the safety of the passengers in the buses which travel after sun set would amount to deficiency in service. (2) what is the liability of the "Corporation regarding the damages suffered by the passengers on account of looting.

Mr. Rawal, the learned Advocate appearing on behalf of the appellant has relied upon the decision of Rajasthan State Commission in the case of Smt. Kamlesh Sharma v. Rajasthan State Road Transport Corporation & Ors. reported in 1992 (2) CPR Page 75. In that case also some miscreants not only looted the passengers but also killed one of them and the complaint for damages was filed by the complainant. The bus was travelling at night and going through jungle. The Commission has observed in para 12 of the judgment as under: "The next question which arises for determination is whether on account of this lapse on the part of RSRTC, can it be said that the service rendered by the RSRTC suffered from deficiency. Having bestowed our best attention to the definition of "deficiency" as stated in Section 2(1)(g) of the Act, there is no doubt that the service of RSRTC in not providing the police guards during night from Haridwar to Jaipur suffered from shortcoming or inadequacy in the manner of its performance, for it has undertaken for the safe journey of the passengers of the bus. Even otherwise when the complainant's husband purchased 4 tickets inclusive that of the complainant by paying Rs.120/- per ticket for one journey from Haridwar to Jaipur by contract, it assured for the safe and secure journey for it is expected that the RSRTC should provide safe and secure journey to its passengers travelling in the bus. Transport services are included in the definition of the service." We are in agreement with the observation of the Rajasthan Commission. When a passenger purchases ticket and when the bus is travelling at night, passenger expects that he will reach the destination safely though the transport company cannot be said to be insurer of the passengers. But if the transport company which runs the buses at night and when it passes either through jungle or uninhabited place some measure ought to have been taken by providing guards or taking insurance or giving arms to the conductor or the driver. Safety of the passengers is one of the considerations of transporting a passenger. Providing of the safety measures is dependent upon the time of journey, the places through which the buses are travelling and so many other considerations. We are in agreement with the arguments of Mr. Joshi, the learned Advocate appearing for the respondent that it is not possible for the S.T. Corporation to provide guards in every bus travelling at night because that would be too costly for the S.T. Corporation and ultimately the burden of providing such guards would fall upon the consumers. However, it cannot be said that the consumers are placed totally at the mercy of the miscreants especially when it

has come to the notice of the S.T. Corporation that the events have actually happened in Surendranagar District itself within a short time from the date on which particular incident occurred. We are also of the opinion that the S.T. Corporation ought to have provided some safety measures especially in the buses which are running at night time and where the buses pass through remote places.

3. THE next question therefore arises is as to whether the Corporation is liable for the damages to the complainant and if so what should be the amount of damages. Taking the facts and circumstances into consideration, we are of the opinion that if an amount of Rs. 5,000/- is awarded to the complainant it would be sufficient and adequate since she must have suffered pain, tension and has also lost valuable ornaments. It is very curious to note that the driver last lost Rs. 300/- but the cash belonging to the S .T. Corporation has remained safe with the conductor. Every miscreant who travels in the bus is expected to know that the conductor must be having the cash of the Corporation. But the same has not been touched. It is for the Corporation to consider these aspects of the case.

4. THE argument of Mr. Rawal that the Corporation is responsible for the ornaments as well as refund of other damages cannot be accepted. We can only award the damages for the deficiency in service and cannot award other damages. That the bus was travelling at the night time through remote place and the passengers ought not to have taken valuable ornaments with them and if they take, they take at their own risk and cost but that does not mean that the Corporation is not responsible for the deficiency in service. We are, therefore, of the opinion that awarding Rs. 5,000/-in the facts and circumstances of the case will meet the interest of justice. We, therefore, shall have to partly allow the appeal. We hope that the S.T. Corporation will make suitable arrangements for the safety of the passengers especially when buses are run during the night time. ORDER The appeal is partly allowed. The decision of the District Forum is set aside. The respondent shall pay Rs. 5,000.00 by way of damages and pay interest @ 18% p.a. from the date of this order and will pay cost of the appeal which we quantify at Rs. 2 50.00. The amounts shall be paid within 4 weeks from the date of receipt of this order. Appeal partly allowed with costs.
