

(2010) 07 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

Manju Roy Choudhury

APPELLANT

Vs

S E Railways

RESPONDENT

Date of Decision : 18-07-2010

Acts Referred:

Citation : 2011 4 CPJ 106

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Revision Petition dismissed.

Judgement

1. COMPLAINANT/petitioner undertook journey from Tata Nagar Junction to Puri Junction on 7.7.2004 by 8474 Dn. Utkal Express in Sleeper Class reserved Coach No. S-6 on berth No. 9 as a bona fide passenger. At about 10 p.m. she found that her goods and valuables were missing. She approached the T.T.E. but he did not pay any heed. Since she was going for attending the "Shradh" ceremony of one of her near relation and was in mental agony, she could not lodge the written complaint with the police. She lodged the complaint on 4.8.2004 after returning from Puri. The complaint was filed before the District Forum claiming compensation for the goods lost.

2. THE respondent, on being served, entered appearance and contested the complaint, inter alia, on the ground that the complainant was herself negligent with regard to her articles and the allegation of theft was concocted and fabricated. That since she had neither booked her articles nor had paid freight, she was not entitled to invoke the provisions of the Consumer Protection Act. That she did not file any complaint either with the police on the way or even before the Station Master on termination of her journey at Puri Junction. That she also failed to produce any documentary evidence regarding quantity and price of the stolen articles in support of her claim.

3. DISTRICT Forum, after taking into consideration the pleadings and evidence led by the parties, allowed the complaint and directed the respondent to pay Rs. 89,700 towards value of lost articles along with Rs. 3,000 as compensation. Rs. 2,000 were awarded by way of costs.

4. RESPONDENT, being aggrieved, filed the appeal before the State Commission, which has been allowed by the impugned order. The State Commission has set aside the order passed by the District Forum and dismissed the complaint. State Commission came to the conclusion that the petitioner had failed to prove any negligence on the part of the respondent by putting forth any prima facie evidence and that she had also failed to explain the inordinate delay in lodging the FIR.

5. COUNSEL for the parties have been heard. Admittedly, in the present case, the petitioner undertook journey on 7.7.2004 and the FIR was lodged on 4.8.2004, i.e., after a delay of nearly a month. The explanation given by the petitioner that she could not lodge either the protest or FIR immediately because she was going for attending the "Shradh" ceremony of a close relative, cannot be accepted. Even if it is assumed that she could not lodge the report on 7.7.2004, she could have lodged the same a day or two later at the place where she de-boarded the train. The delay of 28 days in lodging the FIR is inordinate and cannot be easily overlooked. Had the petitioner lodged the report with the TTE/police, it would have given an opportunity to the respondent to search for the accused. Delayed lodging of the FIR deprived the respondent to investigate regarding the truthfulness of the theft or to trace the alleged offender. It is true that the GRPS, Jamshedpur, after investigation, found on 25.11.2004 that the occurrence was true but that does not condone the delay on the part of the petitioner in lodging the FIR. The delay of 28 days in lodging the FIR, under the circumstances, is fatal.

6. THIS apart, the petitioner has also failed to show that there was any negligence on the part of the respondents. It is true that the railways are responsible to take care of and protect the passengers in a reserved compartment and also liable to pay compensation for the theft but that can be ordered only if any deficiency in service is found on the part of the railways. In the present case, it is not alleged that any unauthorized passengers were let in by the TTE. The incident was reported after 28 days and, under the circumstances, in the absence of any alleged deficiency, railways cannot be made liable to make good the loss suffered by the petitioner only because a theft had taken place.

7. WE agree with the view taken by the State Commission. No merits. Dismissed. Revision Petition dismissed.