

(1999) 06 NCDRC CK 0053

In the National Consumer Disputes Redressal Commission

NAVBHARAT TOURS AND TRAVELS

APPELLANT

Vs

KALAPI BALVANTRAY SANGHAVI

RESPONDENT

Date of Decision : 14-06-1999

Acts Referred:

Citation : 1999 3 CPR 491 : 2000 1 CLT 210 : 2000 1 CPC 234 : 2000 1 CPJ 44

Hon'ble Judges : C.V.Jani , Jatin P.Vaidya J.

Final Decision : Appeals partly allowed

Judgement

1. MR. Justice C.V. Jani, President-The appellant in all these ten appeals is M/s. Navbharat Tours and Travels, who renders service of arranging tours and travels to different parts of India for consideration paid by the intending passengers. Ten appeals arise from 10 complaints filed by 10 different consumer-passengers, who travelled under the same package tour commencing on 5.11.1991 and ending on 23.11.1991, and as each of the respondents filed a different complaint for recovering compensation for deficiency in service, and as all the appeals involve the same points, they are taken up together for hearing and are disposed of by this common judgment. The following is the chart of ten complaints filed by 10 different complainants for recovering different amounts by way of compensation from the appellant, which has now filed 10 different corresponding appeals.

Appeal No.	Com. No.	Complainant	Passengers	Claim in Complaint	Award	Costs	Total Rs.
202/96	100/92	Kalapi	3	10,500/-	3,000/-	500/-	3,500/-
203/96	101/92	SJ Jani	3	90,000/-	3,000/-	500/-	3,500/-
204/96	102/92	KM Shah	4	1,20,000/-	4,000/-	500/-	4,500/-
205/96	103/92	RN Soni	4	1,20,000/-	4,000/-	500/-	4,500/-
206/96	104/92	MJ Thakker	4	1,20,000/-	4,000/-	500/-	4,500/-
207/96	105/92	KS Patel	4	1,20,000/-	4,000/-	500/-	4,500/-
208/96	142/92	RC Vaishnav	2	60,000/-	2,000/-	500/-	2,500/-
209/96	143/92	S Pandya	1	30,000/-	1,000/-	500/-	1,500/-
210/96	144/92	HP Pandya	2	60,000/-	2,000/-	500/-	2,500/-
423/96	106/92	PK Mehta	6	1,80,000/-			

6,000 500 6,500 21,000/- 750/- 2,01,750/-

2. THE facts are common. THE appellant-original opponent had organised a package tour for South India in November, 1991. THE complainants, therefore, deposited Rs. 3,975/- per passenger, for the services to be rendered by the opponent in the form of hotel accommodation, food of good quality, railway travelling and bus service, as well as breakfast, coffee, tea etc. THE passengers were to be taken from Ahmedabad to Madras by railway and from Madras to Bangalore by bus, and to cover religious places like Tirupati Balaji, Srirangapatnam, Pondichery, Mysore, Trichinapalli, Rameshwaram, Kodaikanal, Ooty, Madurai and Bangalore. After the passengers arrived at Madras, they had to travel in an old and dirty bus, and the opponent Navbharat Travel Service had failed to provide 3 x 2 luxury bus from Madras. THE passengers had to travel in this bus for 15 days. Complaints were immediately made to the Manager of the travel service with a request to change the bus and such a request was made in writing also at Pondichery and Kanyakumari. Due to such a condition of the bus family members of the complainants fell ill. THE bus had broken window panes and some of the glasses of the windows were so tight that they could not be slid or moved even by force. It was alleged that when the bus was proceeding to Ooty, it stopped for 12 hours during night time as there was a heavy rainfall and the opponent did not provide even the break fast. Due to the heavy fatigue, the passengers could not get down for sight seeing. It is alleged that even though only one night journey was to be undertaken as per the schedule, the passengers had to travel in the bus for four nights continuously without taking any rest. It was also alleged that the jumpers of the bus were not in a satisfactory condition and that the passengers had to suffer hardships. It is also alleged that even the bottom and ceiling of the bus was broken and at many places water was leaking inside the bus and the windows could not be closed. Because of such a dilapidated condition of the bus, it could not run at more than 20 kms. per hour. According to the complainants, the travelling for 15 days had become a nightmare. THE complainants, therefore, filed 10 different complaints for recovering Rs. 3,000/- as compensation per day per passenger and Rs. 3,500/- as compensation for food, accommodation and costs etc. In the written statement, M/s. Navbharat Tours and Travels admitted that the complainants and their family members were accepted as passengers in tour No. 6 for South India, which was subject to the conditions printed on the reverse side of the receipt and the pamphlet was also issued to each passenger containing information about the arrangement made by the travel service. It was denied that the bus provided for the passengers was a third class one and it was not running speedily. It was contended that the bus had to move slowly while climbing the hilly area and also because of the fact that the passengers had taken more luggage and the road was a single track road and the bus had to pass through villages. It was stated that at Pondichery there was some trouble in the bus which had to be repaired.

On appreciation of the evidence on record, the Ahmedabad City Consumer Disputes Redressal Forum found that the complainant in each case was a

consumer and that Navbharat Tours and Travel service had not provided a luxury bus of 3 x 2 with video as mentioned in the pamphlet and bus which was provided was not in a satisfactory condition, which resulted into physical and mental suffering on the part of the complainants and their family members. It was further found that though as per the tour programme, one night journey was provided, due to slow speed of the bus, the passengers had to travel in the bus during four nights.

3. THE City Forum found that the passengers had to submit complaints on 11.11.1991, 15.11.1991 and 23.11.1991 and this shows that the service provided by Navbharat Tours and Travels was deficient. THE City Forum also found that the grievances enumerated by the complainants were exaggerated, as a person going on tour by bus is bound to experience some fatigue and also unexpected contingency. According to the City Forum, a luxury bus of 3 x 2 with video was not provided as per pamphlet and so the City Forum directed M/s. Navbharat Tours and Travels to pay a sum of Rs. 1,000/- to each passenger for compensation for deficiency in service and Rs. 500/- as costs. It dismissed the claim for compensation @ Rs. 2,000/- per day per passenger, and also claim for Rs. 3,500/- by way of compensation in each case. THE complaints were partly allowed and M/s. Navbharat Tours and Travels was directed to pay an amount of Rs. 1,000/- to each passenger and Rs. 500/- by way of costs to the complainants within one month. These uniform orders are being challenged by M/s. Navbharat Tours and Travels by filing 10 different appeals.

4. THE respondents are served and they have appeared through different Advocates. But at the time of hearing, neither the respondents nor their Advocates have appeared. The appellant's Advocate has made two main submissions. 8(A). He has submitted that the City Forum erroneously proceeded on an assumption that a luxury bus was to be provided to the passengers for travelling from Madras to Bangalore. The learned Advocate relies on the pamphlet pertaining to tour No. 6 which was to commence on 5.11.1991. It mentions only 3x2 video bus and not 3x2 luxury video bus. The passengers had to pay Rs. 3,795/- per ticket. Thus, according to the appellant's Advocate, M/s. Navbharat Tours and Travels had never promised to provide luxury bus, and the City Forum had committed an error in proceeding on the basis that the passengers had suffered the inconvenience by travelling in a bus which was not a luxury bus. Now, so far as this submission is concerned, the appellant's Advocate is factually correct, as the pamphlet for tour No. 6 did not make provisions for a luxury bus for travelling from Madras to Bangalore, but at the same time the passengers had suffered great discomfort and inconvenience due to dilapidated condition of the bus in which they had to travel for a period of about 13 days. The passengers submitted complaints to the Manager on 11.11.1991 and 15.11.1991 and 23.11.1991 with a request to change the bus. Simply because the pamphlet issued by M/s. Navbharat Tours and Travels did not promise service by luxury bus, it cannot be said that they were not expected to provide a reasonably good bus in a satisfactory condition for travelling

continuously for about 13 days. 8(B). The next submission made by the appellant's Advocate is that there were several consumers in each case but complaints were not filed with the permission of the City Forum on behalf of several consumers. Only 10 complaints were filed to cover the claims of 33 consumers and so such complaints would not be maintainable in view of the procedural requirement mentioned in Section 12(1)(c) of the Consumer Protection Act, 1986. The relevant part of Section 12 of the Consumer Protection Act, 1986 reads as under :

"A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by- (a) xxx xxx xxx (b) xxx xxx xxx (c) one or more consumer, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of or for the benefit of all consumers so interested; or (d) xxx xxx xxx" (i) Clause (c) of Section 12(1) would not apply in the present case as the complainants were heads of families who had filed complaints to recover compensation for the hardships suffered not only by them but also by their family members. The complainants had made the payments for getting services from Navbharat Tours and Travels for each of the family members, and any hardship or discomfort suffered by the family members during travelling on account of deficiency in service of the travel agency, was actually experienced by the complainant also, who was a consumer "availing of the service for a consideration" as indicated in the definition of "consumer" in Clause (b) of Section 2 of the Consumer Protection Act, 1986. Each complainant accompanied by his family members was a consumer for consideration so far as Navbharat Tours and Travels was concerned. There was no question therefore of seeking permission of the City Forum in order to claim compensation for dis-service to the complainant's family members who accompanied him in the travel. Section 12(1)(c) would naturally apply in some other circumstances. We are unable to accept this submission of the appellant's Advocate. (ii) We also do not accept the submission for the reason that no such contention had been taken before the City Forum when M/s. Navbharat Tours and Travels filed their written statement. Had such a contention been taken, it is likely that the complainants would have submitted applications with the City Forum for permission to pursue the complaints for the benefit of their family members who had travelled with them, by way of greater caution. After the City Forum have decided the complaint on merits, it would defeat the ends of justice if such a procedural contention is permitted to be taken up at this stage in order to hold that the complaint itself was not maintainable and the order passed by the City Forum awarding compensation was without jurisdiction. (iii) Even otherwise, every complainant in these 10 cases had sought to recover compensation for deficiency in service on the part of Navbharat Tours and Travels which had resulted into discomfort and mental agony for himself, as aggravated by the discomfort and mental agony of his family members also.

So far as the amount of compensation awarded by the City Forum in each case is

concerned, we are of the view when the complainant had actually paid Rs. 3,795/- for each passenger for travelling from Ahmedabad to Madras and then to Tirupati Balaji, Kanchipuram, Pondichery, Srirangapatnam, Rameshwaram, Madurai, Kodaikanal, Kanyakumari, Trivandrum, Ootty, Mysore, Shravanabalagola, Bangalore and Madras again for about 18 days, and the passengers were expected to undergo some hardship during such a long journey, the compensation awarded @ Rs. 1,000/- for each passenger would be quite disproportionate as against the return they enjoyed for Rs. 3,795/- for 15 days by travelling in South India with service of daily necessities rendered by the appellant. We are of the view that the ends of justice would be met if compensation is awarded at Rs. 500/- for the discomfort and fatigue experienced by each passenger. We make it clear that the measure for calculating the compensation per passenger is a rough and ready measure, but it has nothing to do with the question whether each passenger has to file a separate complaint or whether one complainant has to take permission of the City Forum for filing the complaint on behalf of other passengers who happen to be his family members.

5. THE appeals are, therefore, partly allowed. THE orders passed by Ahmedabad City Forum in Complaint Nos. 100/92 to 106/92 and 142/92 to 144/92 are set aside, and the following orders are passed. Orders (1) In Appeal No. 202/96 filed against Kalapi B. Sanghvi, M/s. Navbharat Tours and Travels will pay an amount of Rs. 1,500/- by way of compensation and Rs. 500/- by way of costs of the complaint to the respondent. (2) In Appeal No. 203/96 filed against Saroj J. Soni, M/s. Navbharat Tours and Travels will pay an amount of Rs. 1,500/- by way of compensation and Rs. 500/- by way of costs of the complaint to the respondents. (3) In Appeal No. 204/96 filed against Kanaiyalal M. Shah, M/s. Navbharat Tours and Travels will pay an amount of Rs. 2,000/- by way of compensation and Rs. 500/- by way of costs of the complaint to the respondent. (4) In Appeal No. 205/96 filed against Rajnikant M. Soni, M/s. Navbharat Tours and Travels will pay an amount of Rs. 2,000/- by way of compensation and Rs. 500/- by way of costs of the complaint to the respondent. (5) In Appeal No. 206/96 filed against Mahendra J. Thakker, M/s. Navbharat Tours and Travels will pay an amount of Rs. 2,000/- by way of compensation and Rs. 500/- by way of costs of the complaint to the respondent. (6) In Appeal No. 207/96 filed against Dr. Kirit S. Patel, M/s. Navbharat Tours and Travels will pay an amount of Rs. 2,000/- by way of compensation and Rs. 500/- by way of costs of the complaint to the respondent. (7) In Appeal No. 208/96 filed against Rajnikant C. Vaishnav, M/s. Navbharat Tours and Travels will pay an amount of Rs. 1,000/- by way of compensation and Rs. 500/- by way of costs of the complaint to the respondent. (8) In Appeal No. 209/96 filed against Suhasini Pandya, M/s. Navbharat Tours and Travels will pay an amount of Rs. 500/- by way of compensation and Rs. 500/- by way of costs of the complaint to the respondent. (9) In Appeal No. 210/96 filed against Harit P. Pandya, M/s. Navbharat Tours and Travels will pay an amount of Rs. 1,000/- by way of compensation and Rs. 500/- by way of costs of the complaint to the respondent. (10) In Appeal No. 423/96 filed against

Pravinchandra K. Mehta, M/s. Navbharat Tours and Travels will pay an amount of Rs. 3,000/- by way of compensation and Rs. 500/- by way of costs of the complaint to the respondent.

THEre will be no order as to costs of these appeals. M/s. Navbharat Tours and Travels will comply with these orders within one month. In case of default they will also pay interest at the rate of 18% p.a. on the amount becoming due after one month. Appeals partly allowed.