

(2014) 10 NCDRC CK 0061

In the National Consumer Disputes Redressal Commission

New India Assurance Company Limited, Through Its D	APPELLANT
Vs	
Pradeep Kumar And Others	RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Citation : 2014 4 CPJ 502

Hon'ble Judges : V.K.JAIN , B.C.Gupta J.

Advocate : C.K.Gola , GANESH DUTT SHARMA , R.S.RANA

Judgement

1. ON 02.5.2012, the complainant boarded a Haryana Roadways bearing registration No. HR -58/7327 for travelling to Yamuna Nagar. When the bus reached Jagadhri bus stand, the driver of the bus asked its conductor to put some water in the radiator of the bus. While asking the conductor to put water in the radiator, the driver neither switched off the bus nor asked the passengers to get down from it. When the bus conductor opened the lid of the radiator, boiling water from the radiator fell on the body of the complainant, which got badly burnt. The matter was reported to the police and the complainant was taken to hospital where he remained till 12.5.2012. He claims to have spent a sum of Rs.50,000/- for the treatment in the hospital. The complainant then filed a complaint before the concerned District Forum, impleading the General Manager, Haryana Roadways as well as the driver and the conductor of the bus as the opposite parties and sought compensation amounting to Rs.3,00,000/- , besides Rs.50,000/- towards the cost of his treatment and Rs.11,000/- as the cost of litigation. Subsequently, the petitioner New India Assurance Co. Ltd. was also impleaded as a party to the complaint. In its reply, Haryana Roadways, inter -alia claimed that the complainant was not its consumer and no accident, as alleged by the complainant, had taken place.

2. THE District Forum, vide its order dated 28.10.2013 directed the insurance company to pay a sum of Rs.50,000/- to the complainant as compensation for the mental agony and pain suffered by him, along with interest on that amount @ 9% per annum. The insurance company was also directed to pay a sum of

Rs.25,653/ - to the complainant on account of hospitalization charges and treatment expenditure, as well as interest on that amount @ 9% per annum. The petitioner was also directed to pay a sum of Rs.3,300/ - to the complainant towards the costs of litigation.

3. BEING aggrieved from the order of the District Forum, the insurance company preferred an appeal before the concerned State Commission. The said appeal having been dismissed vide impugned order dated 22.4.2014, the insurance company is before this Commission by way of this revision petition. A perusal of the order passed by the District Forum would show that an enquiry into the accident in which the complainant sustained burn injury was conducted by the Haryana Roadways and the Enquiry Officer reported that the accident occurred due to fault of the bus driver. In view of the aforesaid finding, it cannot be disputed that the driver of Haryana Roadways was negligent in performance of his official duties. Even otherwise, the driver, before allowing the conductor to put water in the radiator containing boiling water, should not only have switched off the bus but also allowed the water in the radiator to cool. He could easily visualize that if the lid is opened to pour cold water in the radiator containing boiling water, there was all likelihood of the boiling water coming out and falling on the persons sitting near the bonnet of the bus. Alternatively, he should have asked the passengers sitting near the bonnet of the bus to either get down or to go towards the rear of the bus so as to enable the conductor to put cold water in the radiator. Similarly, the conductor of the bus, instead of straightway pouring cold water in the radiator should, either have asked the driver to switch off the bus and allow the water in the radiator to cool or he should have asked the passengers sitting near the bonnet to either get down or to move towards the rear portion of the bus. Since the conductor also failed to take this minimum precaution before opening the lid of the radiator he also was guilty of negligence in performing his official duties. Haryana Roadways being employer of the conductor and driver and also the owner of the bus in which the accident took place is vicariously liable to compensate the complainant for the injury which he sustained on account of the aforesaid negligent act of the driver and the conductor of the bus.

4. AS regards the question is as to whether the complainant was a consumer of the insurance company or not, we may refer to Section 2(1)(d) of the Consumer Protection Act, 1986, which to the extent relevant for our purpose, provides that the consumer includes any beneficiary of the services hired or availed for consideration, other than the person who hires or avails this service, when such services are availed of with the approval of the hirer. A perusal of the insurance policy which Haryana Roadways had taken from New India Assurance Company would show that the liability of the insurance company extended, inter -alia to the passengers travelling in the Haryana Roadways buses. Being a beneficiary of these services availed by Haryana Roadways by taking insurance policy from New India Assurance Company, the complainant became a consumer of the insurance company within the meaning of Section 2(1)(d) of the C.P. Act.

5. THE main contention of the learned counsel for the insurance company was that: (i) The Consumer Forum had no jurisdiction to entertain the complaint since the jurisdiction to award compensation for such an accident vests solely with the Motor Accident Claims Tribunal (MAST); (ii) The insurance policy having been issued in accordance with the provisions in Chapter X and XI of the Motor Vehicles Act, 1988, it does not cover an accident which takes place inside a bus. In support of his contention, the learned counsel relied upon, *The Chairman, Thiruvalluvar Transport Corporation Vs. The Consumer Protection Council*, 1995 SCC (2) 479 and the decision of this Commission in RP/2843/2012, *Manager, Rajasthan State Road Transport Corporation Vs. Kuldeep Singh*, decided on 09.5.2014. He also placed reliance upon the provisions contained in Section 175 of the Motor Vehicles Act. The learned counsel for the complainant, on the other hand, relied upon the decision of the Hon ble Supreme Court in *Secretary, Thirumurugan Co-operative Agricultural Credit Society Vs. M. Lalitha (dead) through LRs & Ors.*, 2004(1) SCC 305. Section 175 of the Motor Vehicles Act, to the extent it is relevant, provides that where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which shall be adjudicated by the Claims Tribunal for that area. Since the Consumer Forum is not a Civil Court, the above referred section is clearly inapplicable and consequently we need not go into the question as to whether the said Tribunal has the jurisdiction to grant compensation in respect of an accident of this nature or not. 8. In *Thiruvalluvar Transport Corporation (supra)*, the complainant was travelling in an omnibus which met with an accident while trying to avert a bullock -cart. When the bus driver was in the process of over-taking the bullock -cart, the bullocks got panicky whereupon the driver swerved the bus to the left and ran into the branches of a tree on the road side, resulting in damage to the vehicle and the window panes having been smashed. As the vehicle suddenly swerved, the driver had to apply brakes, as a result of which the complainant who was sitting the centre of the rear seat was thrown in the front and hit against the iron side-bar, sustaining a serious head injury. Subsequently, he succumbed to the injury. A complaint on behalf of his legal representatives was filed by the Consumer Protection Council of Tamil Nadu. This Commission awarded compensation to the legal heirs of the deceased. Being aggrieved from the order passed by this Commission, the Transport Corporation approached the Hon ble Supreme Court by way of an appeal. Allowing the appeal and setting aside the order of this Commission, the Hon ble Supreme Court observed and held as under: Clearly the Claims Tribunal constituted for the area in question, had jurisdiction to entertain any claim for compensation arising out of the fatal accident since such a claim application would clearly fall within the ambit of Section 165 of the 1988 Act. The 1988 Act can be said to be a special Act in relation to the claims of compensation arising out of the use of a motor vehicle. The 1986 Act being a law dealing with the question of extending protection to consumers in general, could, therefore, be said to be a general law in relation to the specific provisions concerning accidents arising out of the use of motor vehicles found in Chapter XII of the

1988 Act. Ordinarily, the general law must yield to the special law. Besides, the complaint in question cannot be said to be in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided to the deceased. The expression service as defined by the 1986 Act means service of any description which is made available to potential users and includes the provision of facilities inter -alia in connection with transport. The accident that occurred had nothing to do with service provided to the deceased. The complaint in the instant case cannot be said to be in relation to any service hired or availed of by the consumer because the injury sustained by the consumer had nothing to do with the service provided or availed of by him but the fatal injury was the direct result of the accident on account of which he was thrown out of his seat and dashed against the iron handle of the seat in front of him. We have, therefore, no manner of doubt that this case squarely fell within the ambit of Section 165 of the 1988 Act and the Claims Tribunal constituted thereunder for the area in question had jurisdiction to entertain the same. As pointed out earlier, the 1988 Act and, in particular, the provisions in Chapter XII thereof creates a Forum before which the claim can be laid if it arises out of an accident caused by the use of a motor vehicle. That being a special law would prevail over the relevant general law such as the 1986 Act but in the instant case even that question does not arise for the simple reason that the dispute in question did not attract the jurisdiction of the National Commission, whatsoever, and the National Commission has not shown how it had jurisdiction . 9. The above referred decision came up for consideration of the Apex Court in the later decision of M. Lalitha (supra) where the opposite party in a complaint filed under the Consumer Protection Act, inter -alia claimed that in view of the provisions contained in Section 90 of the Tamil Nadu Cooperative Society Act, 1983, the Consumer Forum had no jurisdiction to decide the complaints of this nature and issue. The opposite party, in support of this contention relied upon the decision of the Hon ble Supreme Court in Thiruvalluvar Transport Corporation (supra). Rejecting the contention, the Hon ble Supreme Court inter -alia observed as under: Again in Spring Meadows Hospital and another Vs. Harjol Ahluwalia through K.S. Ahluwalia and another (1998) 4 SCC 39), this Court, having taken note of the background in which the 1986 Act came to be placed on the statute book, observed that the Act creates a framework for speedy disposal of consumer disputes and an attempt has been made to remove the existing evils of the ordinary court system. The act being a beneficial Legislation should receive a liberal construction. A Bench of three learned Judges of this Court in a recent decision in State of Karnataka Vs. Vishwabharathi House Building Coop. Society and Others (2003) 2 SCC 412), expressed the view that the 1986 Act was brought into force in view of the long -felt necessity of protecting the common man from wrongs wherefor the ordinary law for all intent and purport had become illusory and that in terms of the said Act, a consumer is entitled to participate in the proceedings directly as a result whereof his helplessness against a powerful business house may be taken care of. Referring t the Fair Air Engineers (P) Ltd. Case (aforementioned) the Court stated that the provisions of

the said Act are required to be interpreted as broadly as possible. On the question of jurisdiction it is stated that the forums under the Act have jurisdiction to entertain a complaint despite the fact that other forums/courts would also have jurisdiction to adjudicate upon the lis. It is also noticed that the Act provides for a further safeguard to the effect that in the event a complaint involves complicated issues requiring recording of evidence of experts, the complainant would be at liberty to approach the civil court for appropriate relief. The learned counsel for the appellant strongly relied on the decision of this Court in *Chairman, Thiruvalluvar Transport Corporation Vs. Consumer Protection Council* (1995) 2 SCC 479). A deeper look at the facts of that case and question considered therein make it clear that it governs the fact of that case having regard to the specific provisions contained in the Motor Vehicles Act, 1988. In brief the facts of the case are that a person was travelling in an omnibus, the driver of the bus tried to overtake a bullock -cart due to which the bullocks got panicky whereupon the driver swerved the bus to the left and applied brakes. In this situation the person, who was sitting in the rear seat, was thrown in the front and hit against the iron bar sustaining a serious head injury and subsequently succumbed to the injury. The legal representatives of the deceased victim did not file claim petition before the Motor Accidents Claims Tribunal constituted under the Motor Vehicles Act, 1988. After expiry of the period of limitation for filing claim petition before the Motor Accidents Claims Tribunal, the LRs of the deceased filed a complaint claiming Rs.20 lakhs before the National Commission. As can be seen from paragraph 6 of the judgment, the question that arose for consideration was whether the National Commission had jurisdiction to entertain the claim application and award compensation in respect of an accident involving the death of a person caused by the use of a motor vehicle. Taking note of the fact that the Claims Tribunals constituted under the Motor Vehicles Act, 1988 had jurisdiction to entertain claim for compensation which clearly fell within the ambit of Section 165 of the Motor Vehicles Act, 1988, held that the 1988 Act can be said to be a special Act in relation to claims of compensation arising out of the use of a motor vehicle. It is observed that the accident occurred had nothing to do with service provided to the deceased, if one reads the provision along with the definition of complaint in Section 2(1)(c) and service in Section 2(1)(o) of the 1986 Act. This court held that the complaint in that case could not be said to be in relation to any service hired or availed by the consumer because the injury sustained by the consumer had nothing to do with the service provided or availed by him. That was a case in which it was found that the National Commission had no jurisdiction at all. That was not a case of additional remedy available before a forum created under the 1986 Act. In our view the said decisions does not advance the case of the appellant in any way .

10. From a conjoint reading of the above referred two decision of the Hon ble Supreme Court, it appears to us that if the claim filed before a Consumer Forum involves deficiency in the services, hired or availed of by a consumer, the concerned Consumer Forum would have jurisdiction to entertain the complaint even if some other forum also would have jurisdiction to adjudicate upon the

controversy involved in the complaint. In such a case the choice would be with the consumer whether to approach the Consumer Forum or to other forum having jurisdiction in the matter. As noted earlier, in Thiruvalluvar Transport Corporation, there was no negligence on the part of the Transport Corporation. On the other hand, in the case before us there was gross negligence on the part of the officials of the Haryana Roadways in performance of their official duties as the driver and conductor of the bus in which the complainant was travelling. Therefore, in our opinion, the District Forum had the requisite jurisdiction to entertain the complaint and adjudicate upon it. As far the decision of this Commission in Kuldeep Singh (supra) is concerned, we find that in the aforesaid case no finding was recorded by this Commission that there was deficiency on the part of the Rajasthan State Road Transport Corporation in providing services to the complainant. Moreover, in the aforesaid case, this Commission did not take into consideration the subsequent decision of the Hon ble Supreme Court in M. Lalitha (supra). Therefore, the aforesaid decision is of no help to the petitioner.

11. We find no merit in the contention merely because the insurance policy was issued in accordance with the provisions contained in Chapter X and XI of the Motor Vehicles Act, 1988. The insurance company would not be liable to compensate the complainant. The policy may have been obtained by Haryana Roadways in compliance of the statutory requirement contained in Motor Vehicles Act but the terms of the policy are wide enough to include any liability incurred by the Haryana Roadways to a passenger travelling in its bus. Therefore, it would be difficult to say that the case of the complainant is not covered under the aforesaid insurance policy.

12. For the reasons stated herein above, we find no merits in the revision petition and the same is therefore dismissed.