
(1994) 09 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

PRABHAT NALINI DEVI

APPELLANT

Vs

RASHMI TRAVELS

RESPONDENT

Date of Decision : 16-09-1994

Acts Referred:

Citation : 1995 2 CPC 485 : 1995 3 CPR 28

Hon'ble Judges : P.C.Misra , Biswanath Rath , Mrinalini Padhi J.

Advocate : Sangram Das , J.N.Ray , P.Nayab

Judgement

1. THE claimant in this case has claimed a compensation of Rs. 1,92,690/- for deficiency in service and consequently for damages suffered by her.

2. THE case of the complainant is that she was travelling in a bus, bearing Registration No. OIU-75, belonging to the opposite party from Cuttack to Sundargarh on 18th May, 1992 along with her children. She was allotted seat No. 28 whereas her children were allotted nearby seats i.e. seat Nos. 23, 26 & 27. Her case is that she lives at Sundargarh and had come to Bhubaneswar to attend a marriage ceremony held on 28.4.1992. After the ceremony was over she was returning back to Sundargarh on the aforementioned date. Since she had come to attend a marriage ceremony she had taken with her valuable sarees and ornaments and had kept the same in a V.I.P. Suit-case, which she was carrying in the bus. She had initially kept the VIP Suit-case by the side of her seat on the gang-way. But the staff of the bus insisted on keeping the Suit-case on the roof top of the bus assuring her that it would be absolutely safe. According to her, the bus stopped at Khuntuni and Angul where the complainant out of anxiety repeatedly requested the conductor to climb up to the roof top and ensure about the safety of the VIP Suit-case in question. Though, to her knowledge, the conductor did not climb up to the roof top, he assured the complainant that her Suitcase is quite safe and secured and there was nothing for her to sorry about it. THE bus reached Sundargarh at about 6 a.m. on the next day and to her utter surprise the Suit-case was reported to be missing. THE staff of the bus took the plea that it might have slipped off from the roof top of the bus during journey

asserting that it was kept there along with other luggages of the passengers. THE complainant had lodged a written F.I.R. soon thereafter at the Town Police Station, Sundargarh and the staff of the bus admitted before the Police authority that the V.I.P. Suit-case in question was kept by the complainant inside the bus by the side of her seat which they had carried and kept over the roof top of the bus. She also submitted a written complaint on 15.5.1992 to the opposite party complaining about the loss of the Suit-case indicating the contents thereof. But the opposite party's attitude was indifferent. She thereafter brought her grievance to the notice of the Commissioner-Cum-Chairman, State Transport Authority. It is further alleged that in response to the above, the Assistant Secretary, S.T.A. had noticed both parties to appear before the Secretary, S.T.A. in compliance to which the proprietor of the bus appeared on 1.7.1992 and admitted about the removal of the Suit-case from inside the bus to be kept on the roof top which eventually was lost during the journey. According to her, the opposite party is responsible for the loss the V.I.P. Suit-case as the same occurred during the course of the journey when the Suit-case was taken custody of by the staff of the bus. She seems to have suffered mental agony apart from the valuable articles kept in the Suit-case, a list of which has been given in the application. THE articles comprised of gold ornaments some fitted with valuable stones, like, Ruby, Pearl, Diamond etc. and also sarees and dresses total of valuation of which has been given as Rs. 1,42,690/-. She has assessed her physical and mental suffering at Rs. 50,000/-, thus making a total claim of Rs. 1,92,690/-. The opposite party has filed a counter denying the relevant allegation of the complainant. It is the case of the opposite party that if any passenger carries any luggage with him, the same are carried on the bus by issuing separate tickets for the luggages in which event such luggages are to be on the roof top of the bus securely tied by rope. Those luggages are handed over to the passengers at their respective destinations after verification of the luggage tickets. The small articles which the passengers carry with themselves, they carry at their own risk and rack has been provided inside the bus for the purpose. Their further plea is that under no circumstances the staff of the bus under-take any responsibility for safe custody, of the articles which the passengers carry without obtaining luggage tickets as they are supposed to carry the same at their own risk. It has been asserted in the counter filed by the opposite party that for the luggage carried by a passenger without obtaining a luggage ticket therefor, the passenger cannot claim compensation for the loss of the luggage as he has not paid for its carriage and the opposite party has, therefore, no responsibility assuming that the complainant had lost her Suit-case. All other allegations of the complainant has been denied in the counter including the alleged loss of the Suit-case. It has, therefore, been stated that the opposite party came to learn about the lodging of one F.L.R. at Town Police Station, Sundargarh and the police during its investigation held up the cleaner of the bus at Sundargarh and Angul Police Station suspecting him to be the author of the crime. The opposite party has denied its liability for the loss of the Suit-case.

In view of the allegation and the refutation thereof relating to the space available in the bus Mr. A.S. Naidu, Advocate was appointed as a Commissioner to inspect the bus with the consent of the Counsel for both parties and to report about the availability of the space in the bus. Mr. Naidu has submitted an inspection report which is on record.

3. THE main questions which arise for consideration in this case are (1) whether the claimant has lost her Suit-case while travelling in the bus as claimed by her; and (ii) whether the owner of the bus is liable to compensate the loss. It has not been disputed that the claimant had travelled in the bus belonging to the opposite party on 13.5.92 from Cuttack to Sundargarh. She had been allotted Seat No. 28 whereas her son and relations were occupying seat Nos. 23, 26 and 27. The claimant usually resides at Sundargarh and had gone to Bhubaneswar for attending a marriage ceremony whereafter she was returning to Sundargarh on the aforesaid date. That she must have been carrying her clothes and ornaments, if any, in a Suitcase in the normal course of events is acceptable. She has also stated so in the F.I.R. lodged by her immediately after reaching Sundargarh. Her evidence before the Commission is also to the same effect. It is rather unusual that a lady who had gone from Sundargarh to Bhubaneswar to attend a marriage ceremony would not be carrying any personal luggage of her own specially when she was scheduled to stay away from Sundargarh for some days. Thus we believe that the complainant was carrying the luggage in a Suit-case with her during her journey from Cuttack to Sundargarh. At the earliest opportunity when she reached Sundargarh and could not find her suit-case, she had reported the matter to the staff of the bus and lodged F.I.R. in police station when the staff of the bus could not deliver the suit-case to her. These circumstances rather go to establish that she lost the suit-case during the journey from Bhubaneswar to Sundargarh.

4. ONCE we find that the suit-case was lost during the journey, it is necessary to examine as to whether the staff of the bus were responsible for the same and, if so, whether the owner of the bus would be liable to compensate the claimant. The report of Mr. Naidu after inspecting the bus gives the arrangement in the bus so regards the seats of the passengers and the space provided for carrying the luggage. As stated by him, seat No. 28 which the complainant was occupying is placed over one of the rear wheel of the bus and there was no space left below the seat to keep any luggage. Admittedly there, is gangway in between the seats. On each side of the gangway the seats are in two rows. According to the report of Mr. Naidu, there are racks for keeping luggage above each row of the seats the dimension of which has also been stated in the report Without knowing the dimension of the lost suit-case, Mr. Naidu could not say as to whether it could be accommodated in the space provided for the luggages in the rack. The report also mentions that the space in between two rows of the seats which is meant for stretching of the legs of the passengers is inadequate for keeping any luggage. He found a number of stools placed inside the bus which he learnt were being utilised to accommodate passengers by converting the passage as sitting

space. This is exactly what the complainant has stated as the cause of removal of her suit-case, from the gangway. According to the claimant her suit-case could not have been accommodated in the rack placed above the seats. Her plea is that suit-case was taken from the gangway by the cleaner of the bus to the roof top for accommodating passengers by placing stools on the gangway. If we accept that she had carried a suit-case which she had placed near her seat on the gangway and that it was found to be missing at Sundargarh, it is more likely that the suit-case was taken from the gangway elsewhere as no passenger, who had kept a suitcase near her seat would normally be so careless to lose it in course of the journey specially in a Superfast bus which has a few stoppages. Whether it was taken to the roof top or was kept elsewhere may be another question for consideration, but we can at least go to the extent of saying that the suit-case belonging to the claimant was removed from the gangway as stated by the claimant. If a luggage is removed from the gangway it must have been by the staff of the bus for keeping it elsewhere as a matter of convenience. It is true that it was not a luggage booked for carriage. It is a common practice and knowledge that the passengers in a bus take their personal belongings which does not require to be booked as luggage and that is also the evidence of the cleaner who has been examined before us. When a passenger carries his personal luggage with him and keeps it with himself under his own supervision, the staff of the bus have no responsibility in the matter. But if a luggage is entrusted to the staff of the bus for his custody and carried, it is obvious that its safe delivery at the destination is also the responsibility of the staff of the bus. It might be that the claimant suspected theft of the suit-case by the cleaner at the first instance when reaching the destination she was told that the suit-case is missing, but it was merely a suspicion and that would not stop her to claim damages against the owner of the bus who is vicariously liable for the acts and omission of the employees engaged in the bus in course of their employment. The cleaner did travel in the same bus and there is no material on record to conclude that it was a case of theft committed by him. It might be a case of mis-delivery which could be avoided if sufficient care had been taken by the staff while loading the luggage of other passengers. If it was not a case of mis-delivery, the only other possibility is that it has slipped off the bus in its running condition which could be possible because of the carelessness on the part of the staff of the bus. But in either of the possibilities the owner of the bus becomes liable for the loss occasioned to a passenger. We would not proceed to consider the quantum of damages which the claimant would be entitled. The claimant claims to be from a respectable family and she has expected to be travelling with reasonable belongings. According to her, she had come to Bhubaneswar for attending a marriage she had carried with her valuable sarees and garments and also golden ornaments. In the F.I.R. which she has lodged immediately after the loss was reported to her, she had given a list of articles which she was carrying in the suit-case. In her application before the Commission she has also given a list of ornaments and other articles which she lost. The description and weight of the ornaments in both the lists do not tally with each other. While in her application

before the Commission she has given the weight of each ornament and the total weight comes to fourteen bharis in her F.I.R. she has given the weight of the first item only and it is six bharis. In her evidence she has stated before the Commission that her golden ornaments the inside the suitcase weighed six tolas in all. In the F.I.R. as well as in the application before the Commission she has mentioned the weight of first item alone to be six bharis (which is equivalent to six tolas). Thus there is material discrepancy between F.I.R. and the application made before the Commission and again between the application and the deposition. We are therefore of the view that she has exaggerated her claim so far as ornaments are concerned. In her application before the Commission she has mentioned that Video photograph was taken during the marriage ceremony at the reception which would show that she had put on all the ornaments which is now lost. No efforts have been made to produce the said photograph before the Commission which could give an idea as to the nature and number of the ornaments that she was in possession of. Besides, in her complaint petition before the Commission she claims that the value to the contents of the suit-case would be nearly Rs. 11/2 lakhs. If the suit-case would have been containing the articles worth Rs. 11/2 lakhs it is difficult to believe that she would have readily parted with the suit-case to be kept elsewhere during her journey. It is, therefore, difficult for us to accept the story that the suitcase contained all the articles enumerated in the application. Not being in a position to be convinced that the complainant was carrying the articles as mentioned in the application or stated in her evidence, to make a genuine assessment taking into consideration the necessary belongings excluding ornaments which the complainant may have carried with her for a short visit away from her home to attend a ceremony. We thus assess the loss to be Rs. 10,000/- which we direct the opposite party to pay to the complainant within a month from the date of this order. Complaint allowed.