

(2003) 01 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

SAVITRI AVASTHI

APPELLANT

Vs

General Manager, Northern Railway

RESPONDENT

Date of Decision : 30-01-2003

Acts Referred:

Citation : 2003 2 CPJ 672

Hon'ble Judges : Lokeshwar Prasad , Rumnita Mittal J.

Final Decision : Appeal dismissed

Judgement

1. THE present appeal has been filed assailing the orders of District Forum, New Delhi dated 8.10.1999 passed in Complaint Case No. 1563/1995 - entitled Smt. Savitri Avasthi v. General Manager, Northern Railways.

2. THE brief facts, leading to the filing of the present appeal, are that the appellant had filed a complaint before the District Forum under Section 12 of the Consumer Protection Act, 1986 (hereinafter referred to as the Act), averring therein that the appellant was travelling from Kharagpur to New Delhi on 12.12.1994 in Neelanchal Express, and there was no electricity in the evening in the train. When the said train reached New Delhi Station on 13.12.1994 the appellant realized that one brief-case containing valuables was missing. THE appellant had been unable to take care of all her belongings on account of the fact that there was no light in the coach. THE appellant lodged a complaint with the Railway Authorities, as well as, in the Police Station vide FIR No. 1137/1994 dated 14.12.1994. Since no action was taken by the Railway Authorities, the appellant approached the District Forum for compensation of loss suffered by her. The O.P. in its reply/written version filed before the District Forum denied the contention of the appellant that there was no light in the bogie in which the appellant was travelling and that there was deficiency in service on its part. It was also stated by the respondent in its reply/written version filed before the District Forum that in view of the provisions of Section 100 of Railways Act, 1989, in cases where the luggage is carried by the passengers in their personal charge, the Railway Administration is not responsible for the loss, destruction or

damage to the luggage unless the same is on account of negligence or misconduct on the part of the Railways or any of its agents, and as such, in the instant case the responsibility for the loss of luggage of the appellant was not the responsibility of the Railway Authorities. Therefore, the complaint, filed by the appellant, being devoid of merit was liable to be dismissed.

The learned District Forum concluded on the basis of material on record, that there was no deficiency in service on the part of the respondent Railways and, as such, dismissed the complaint of the appellant.

3. AGGRIEVED by the aforesaid order the appellant has preferred the present appeal. We have carefully perused the documents/material placed on record and have also deliberated upon the written submissions filed on behalf of the parties. We have also heard the Counsel for the appellant as none was present at the stage of arguments on behalf of the respondent. The short point in controversy in the instant appeal is as to whether the compartment in which the appellant was travelling was without electricity as alleged by the appellant on account of which fact the suit-case of the appellant containing valuables worth Rs. 53,305/- was stolen. The learned District Forum has relied upon the affidavit of Shri Pankaj Kumar, Assistant Electrical Engineer (Train Lighting), Northern Railways, wherein it has been categorically stated that on arrival of the Neelanchal Express at about 20.05 hours at New Delhi Railway Station, the position regarding each coach was checked and the chart enclosed with the said affidavit reflects that there was proper light in the Coach No. 6439 in which the appellant was travelling. In view of the said record maintained in the normal course of business of the respondent, the learned District Forum dismissed the contention of the appellant that there was no light in the train as alleged. The onus of proving that there was no light in the coach in which the appellant was travelling lay heavily on the appellant and in the absence of any proof regarding the same, it cannot be held that the version of facts as stated by the appellant in her complaint was correct. On the contrary, the concerned Electrical Engineer whose duty is to check and maintain the position of electricity in the coaches, has stated in his affidavit on oath that there was proper light in the Coach No. 6439 and has also produced the photo copy of the relevant register maintained in the normal course by the respondent to rebut the version of facts as stated by the appellant. As such, in the absence of there being anything on record to show that there was any deficiency in service on the part of the respondent Railways, it cannot be held in view of Section 100 of Railways Act that the theft of the baggage of the appellant was on account of any deficiency on the part of the respondent. The decision relied upon by the appellant in case of General Manager, North Eastern Railways v. Ram Pravesh Singh, reported as II (1998) CPJ 442, also does not help the case of the appellant as the same is distinguishable on facts as in the said case it was proved on record that there was no light at the Railway Station whereas in the instant case the said fact is not proved. Therefore, the present appeal, filed by the appellant, being devoid of merit is liable to be dismissed. The same is dismissed accordingly. However, in the circumstances of the case there is

no order as to costs. Appeal dismissed.