(2010) 05 NCDRC CK 0055

In the National Consumer Disputes Redressal Commission

Thiruvalluvar Transport Corporation Ltd. APPELLANT

Vs

A. Marimuthu , Sevugan , M. Veerasekaran RESPONDENT

Date of Decision : 03-05-2010

Acts Referred:

Citation : 2010 0 NCDRC 63 : 2011 2 CPJ 124

Hon'ble Judges : R.C.Jain J.

Advocate : Anupam Dasgupta , T.Harish Kumar , Prasanth P. , P.Govindrajan , S.Ramamani

Judgement

1. THIS appeal challenges the order dated 16.03.2005 of the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai (in short, the State Commission) in OP No. 49 of 1998. By this order, the State Commission passed the following order: In the result, this complaint is allowed with a cost of Rs.2, 000.00. There will be a direction to the opposite parties to pay a compensation of Rs.3, 00,000.00. Time for payment: Two months. If the award is not complied within the period of two months, it shall carry interest @9% p.a. from the date of complaint, i.e., 24/02/1998 till realisation.

2. THIS appeal has been filed after a delay of 158 days. The appellant, Thiruvalluvar Transport Corporation Limited (hereafter, TTCL) has filed an application for condonation of this delay. The grounds set out in this application show that the management of TTCL took-over three months to decide if it wanted to file an appeal against the impugned order of the State Commission. After the draft of the memorandum of appeal and the accompanying affidavits were sent to TTCL, the management again took nearly one month to return the signed papers. Thereafter, the appeal papers were mis-placed in the office of the Advocate for the TTCL. The reasons have been recounted here mainly to show the entirely casual approach of the appellant in dealing with this appeal, which, under section 19 of the Consumer Protection Act, 1986, should have been filed within 30 days from 04.04.2005, i.e., the date on which, the appellant received certified copy of the impugned order. By no stretch of imagination can these

grounds be considered sufficient and valid in explaining such a prolonged delay. The appeal, therefore, is liable to be dismissed on this count alone, following the ratio of the judgment of the Apex Court in State Bank of India vs. B.S. Agricultural (I) Industries [(2009) ... SCC ...] Even then we have examined the merits of the appeal. In that context, it is useful to briefly review the facts and see how the State Commission has dealt with them and the evidence. 4(i) The facts of the case leading to the complaint have been narrated and discussed in detail in the impugned order. Suffice it to note that the complainants, who had recently returned to Chennai after working in the Sultanate of Oman for five years, travelled with all their belongings from Chennai to Karaikkudi on 26.10.1997 by a bus run by the appellant. They had excess baggage weighing 140 kgs, which, according to the complainants, complaint goods of various description including gold, representing their hard-earnings in the Sultanate of Oman. The baggage could not be carried inside the bus or in the enclosed space earmarked for carrying passenger baggage and had to be tied on top of the bus with ropes. When the bus stopped one of the intermediate stations (Vikravandi), the complainants checked and found the baggage intact. However, the baggage was found missing when the bus reached Thozhudur and stopped at the TTCL service station for refuelling. Because the baggage could not be traced and returned to the complainants despite their requests to this effect to the management of TTCL, the complaint in question was filed.

(ii) In its detailed order, the State Commission has discussed the evidence and material at length. The State Commission has first concluded, on the basis of the evidence on record, that the baggage was found missing when the bus was plying between Vikravandi to Thozhudur. Also on the basis of documents on record, the State Commission has noted that the value of the baggage, as claimed by the complainants, was not disputed by TTCL in its written version resisting the complaint and, therefore, concluded that the baggage contained articles worth Rs.2.5 lakh. In this context, the State Commission noted that the prices of the articles claimed by the complainants to have been purchased in the Sultanate of Oman and packed in the baggage, were supported by purchase bills/ receipts. As regards the contention of TTCL that the complainants had evaded customs duty, the State Commission found that the complainants had paid custom duty of Rs.275/- on the used TV set that they had brought from Sultanate of Oman and thus the goods had been duly cleared by the customs at the Chennai International Airport. The complainants had also paid Rs.150/- as the additional charges for the baggage to TTCL.

(iii) On the point about the liability of TTCL, as an operator of buses carrying passengers, for the lost baggage of such passengers, State Commission has observed as under: The fact that there is a provision to carry luggage or parcels when a passenger goes with them on payment of necessary charges by the passenger would itself show to that extent the 1st opposite party acts as a carrier of goods. By merely printing the clause that they are not liable for any loss or damage, they cannot get away from their moral and legal liability. Here, in this case, they have not established that they have taken all necessary steps to trace the luggage. Even from their version, it is clear that the driver of a bus belonging to the 1st Opposite party Corporation which was bound for Trivandrum saw a parcel falling down from the bus near Veppur. It is further stated that the parcel was picked up by transport people who crossed the way. It is also stated that the AE at Thozhudur took steps to contact the people by wireless. What are the steps he took and what was the result, nothing is stated in the version. Neither the 2nd opposite party nor the 3rd opposite party, namely, the driver and conductor, have chosen to file any version of their own. Further, the said AE has not filed any affidavit. There is nothing to show that when they noted the missing of the parcel, they took any action to trace out the same and help the passengers in that regard. Therefore, the contention that the complainants were not willing to accompany them to give police complaint is falsified. At least, there is no reason why the AE or the driver or conductor of the bus had not given a complaint to the police. Therefore, there is definitely negligence and deficiency in service on the part of the opposite parties. The luggage was lost not on account of any direct act of the complainants. Even according to the opposite parties, the complainant themselves leaded the luggage on the top of the bus and secured it with ropes. In spite of it, the luggage has been found missing. It is not the case of the opposite parties that the luggage was not properly secured and therefore it slipped down from the top of the bus while the bus was running at a speed. (iv) On the valuation of the articles claimed by the complainants, the State Commission, after considering the averments of the parties, observed as under: But, here what we find is that the complainants have returned to India from Sultanate of Oman on 26/10/97. On the very same day, they had booked tickets for their journey from Chennai to Karaikkudi. Only Marimuthu and Veerasekaran came from Sultanate of Oman while Sevugan joined them at Chennai. Sevugan had purchased the ticket in advance on 25th for travel by 26th night. They left Chennai by the bus operated by the 1st opposite party. We have no record to show that when the flight from the Sultanate of Oman landed at Chennai. Therefore, considering the fact that the complainants left Chennai on the very same day of arrival from Sultanate of Oman, it is not strange that they have packed all their things including jewels into a luggage. They may not have had any time to reopen the parcel at Chennai and separate the jewels so as to carry them in person. Considering the background of facts, which we have mentioned above, it would be obvious that there is nothing odd about the same. Further, the complainants have given the value of the articles kept in the parcel. They have also mentioned that they brought 45 sovereigns of gold jewellery. This has not been replied to by the opposite parties. In the complaint given to the police, they have mentioned it giving the details of items. The bills produced by them also prove the purchase of those items. Therefore, nothing much turns upon this peculiar aspect of the case.

(v) In view of the detailed discussion referred to above, the State Commission found TTCL guilty of deficiency in service and passed the order already noted.

We have heard Mr. T. Harish Kumar, learned counsel for the appellant and Mr. P. Govindrajan, learned counsel for the respondents/complainants. In the memorandum of appeal or during the submissions before us, no additional point of any merit has been made. The emphasis of the learned counsel for the appellant is on the same, i.e., the liability of TTCL to recompense a passenger for the loss of his baggage while in transit from one point to another on a bus run by the appellant. For this, the learned counsel for the appellant once again relies on the condition printed on the baggage ticket/slip. This point has already been considered and analysed in detail by the State Commission in its impugned order as noted above, and we find no reason to disagree with that view. Mr. Govindrajan, on the other hand, supports the impugned order.

3. AFTER carefully considering the pleadings, evidence and material brought on record, we find no good ground to interfere with the well-reasoned order passed by the State Commission, which has dealt with each aspect of the case in detail on the basis of logical analysis and appreciation of the evidence and material brought on record. Therefore, the appeal fails and is accordingly dismissed, with costs of Rs.10,000.00 payable by the appellant to the complainant within four weeks from the date of this order.