
(2007) 01 NCDRC CK 0036

In the National Consumer Disputes Redressal Commission

TNSETC LTD.

APPELLANT

Vs

R. KADARKARAI

RESPONDENT

Date of Decision : 12-01-2007

Acts Referred:

Citation : 2007 2 CPR 343 : 2007 3 CPJ 288 : 2007 3 UC 1933

Hon'ble Judges : K.S.Gupta , Rajyalakshmi Rao J.

Final Decision : Revision Petition dismissed

Judgement

1. -IN this revision, challenge is to the order dated 10.3.2006 of Consumer Disputes Redressal Commission Tamil Nadu, Chennai dismissing appeal against the order dated 16.8.2001 of a District Forum whereby petitioner was directed to pay compensation of Rs. 3 lakh and cost, to the respondent.

2. RESPONDENT/complainant was a permanent factory worker of Harrisons Malayalam Limited in Koney Estate in Kerala State. On 27.2.2000 he was travelling in petitioner/opposite party's bus from Chennai to Tiruchendur via Tuticorin and sitting on the last seat. When the bus was crossing Tuticorin 3rd Railway gate on 28.2.2000 in the morning, the driver who drove the bus in rash and negligent manner with over speed, applied sudden brake as a result whereof respondent fell down from the seat and sustained grievous injuries in the spinal cord. The driver and conductor of the bus instead of providing first aid asked the respondent to get down and take the treatment. It was alleged that the respondent took auto and reached Tuticorin Government Hospital where he remained admitted as in-patient from 28.2.2000 to 9.3.2000 . RESPONDENT was thereafter taken for treatment to Trivandrum Government Hospital where he remained admitted as indoor patient from 9.3.2000 to 14.7.2000. He underwent two spinal cord operations in Trivandrum Hospital. RESPONDENT stated that he has suffered total loss of movement of his hand and leg. He got a legal notice issued to the petitioner on 25.1.2001. He sent copy of the bus ticket to the petitioner on 19.2.2001. Petitioner sent reply on 13.3.2001 denying the liability to pay any compensation to the respondent. Petitioner did not file any written

version nor produce any evidence before the District Forum. Relying on the affidavit and other documents produced by the respondent the District Forum allowed the complaint in the manner noticed above. Relying on the judgment in Chairman, Thiruvalluvar Transport Corporation v. Consumer Protection Council, (1995) 2 SCC 749, the submission advanced by the learned Counsel of the petitioner is that the complaint itself was not maintainable under the Consumer Protection Act, 1986. Moreover, there was no negligence on the part of the driver of the bus and the Fora below had acted with material irregularity in passing the award. In the said decision one K. Kumar was travelling from Kombakonam to Thanjavur on the night between 2.6.1990 and 3.6.1990 in an omnibus owned by appellant and when the bus driver was in the process of over-taking a bullock cart, the bullock got panicky whereupon the driver swerved the bus to the left and it ran into the branches of a tree on the roadside resulting in damage to the bus. As a result of suddenly applying the brakes by the driver said K. Kumar who was sitting in the centre of the rear seat, was thrown in front and hit against the iron side bar sustaining serious head injury. Subsequently he succumbed to that injury. One of the pleas raised by the appellant in the complaint filed by the legal representatives of the deceased was that the complaint was not maintainable under the Act. In appeal against the award of compensation passed by this Commission, the question which arose before the Supreme Court was whether this Commission had jurisdiction to entertain the complaint and award compensation in respect of the accident involving the death of K. Kumar. Though appeal was allowed holding that this Commission did not have jurisdiction to decide the complaint but the observations made by the Apex Court which are material, are reproduced below : "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 an iron handle of the seat in front of him."

To be noted that the fatal injury sustained by K. Kumar was held to be not relatable to the service provided/availed of by him as it was a direct result of the accident. In the present case the injury sustained in spinal cord by the respondent was not due to the accident but sudden applying of the brake by the driver. Thiruvalluvar's case (supra) is, thus, distinguishable on facts. At the cost of repetition it may be mentioned that the petitioner did not contest the complaint by filing written statement and/or adducing evidence before the District Forum which has returned finding that the injury sustained by the respondent was due to negligence of the driver which amounts to deficiency in service. We find absolutely no ground to interfere with this finding of the District Forum. There is no illegality or jurisdictional error in the orders passed by Fora below warranting interference in revisional jurisdiction under Section 21(b) of C.P. Act. Accordingly, revision is dismissed. Revision Petition dismissed.