

(2013) 07 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

Union Of India Through Its General Manager North Eastern
Railway Gorakhpur

APPELLANT

Vs

Shobha Agarwal

RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

Citation : 2013 0 NCDRC 537 : 2013 3 CPJ 469

Hon'ble Judges : AJIT BHARIHOKE , SURESH CHANDRA J.

Advocate : RAJESHWAR SINGH , Ajit Sharam

Judgement

1. THIS revision petition is directed against the order dated 9.11.2012 passed by the U.P. State Consumer Disputes Redressal Commission, Lucknow in appeal No.1460 of 2011 by which the State Commission upheld the order dated 14.7.2011 passed by the District Forum, Gorakhpur in complaint case No.612 of 1997 and dismissed the appeal filed by the petitioner. The petitioner was the OP before the District Forum and the respondent was the original complainant.

2. THE factual matrix of this case are that on 10.10.1996 the complainant/respondent along with her daughter was travelling in a AC second class sleeper with reserved berth Nos.35 & 36 from Gorakhpur to Beena by 1016 UP Kushinagar Express. It is alleged that there was lot of disarrangement in the reserved AC coach and some suspected person was seen snooping here and there about which a complaint was made to the ticket checker but no action was taken by him. The same suspected person was again seen in reserved coach at about 2 "O clock in the night. When the complainant woke up at 7 "O clock in the morning, she found that her grey colour suitcase which had been tied under the berth with the help of chain and lock, was missing from there. As per the allegation in the complaint, the said suitcase had been stolen by cutting the chain and lock. Information about the said incident was given to the ticket checker who after some initial reluctance received the same after being forced to do so by certain co-passengers but the ticket checker refused to receive the list of the articles. The complainant brought the incident to the notice of the Railway

Department and Railway Minister by writing letters to the authorities and it appears that after about one year, the railways lodged an FIR in regard to this incident sometime in the year 1987. Alleging negligence on the part of the OP, the complainant lodged a consumer complaint before the District Forum praying for compensation of Rs.1.5 lakhs along with interest @ 12% w.e.f. 10.10.1996, i.e., the date of loss of the valuables along with Rs.30,000/- by way of compensation on account of mental agony. On notice, the complaint was resisted by the OP and in the written statement filed by the OP, it denied any negligence on its part and also submitted that railway administration is not liable for the goods which were not booked with them. It also raised the question of jurisdiction of the District Forum in the matter. On hearing the parties and appreciating the evidence placed before it, the District Forum allowed the complaint vide its order dated 14.7.2011 in terms of the following directions:- "The present of the complainant is accepted against the opposite party. It has been directed to the respondent to pay Rs.1,50,000/- along with interest to the complainant from the date of filing of the application / complaint from the date of filing of the application/complaint till its realization. Besides this, the opposite party to pay Rs.50,000/- towards the compensation account of mental and physical agony and Rs.1000/- towards the costs of the litigation and the said amount is to be given in the shape of demand draft before this forum which could be given to the complainant within one month from the date of passing of the said order. In case the opposite party failed to pay the same within stipulated period of one month, then the same will be recovered from the opposite party as per the law."

3. AGGRIEVED by the aforesaid order of the District Forum, the petitioner carried the same before the State Commission by filing an appeal against it but the same was dismissed by the State Commission vide its impugned order which is now under challenge through the present revision petition.

4. WE have heard learned counsel Mr. Rajeshwar Singh, Advocate for the petitioner and learned Mr. Ajit Sharma, Advocate for the respondent. Learned counsel for the petitioner has submitted that there was no negligence on the part of the railway administration and unless the goods in question are booked with the railways, the railway administration under the provisions of Railway Act are not liable to pay the compensation. He further submitted that the luggage in question being carried on by the complainant along with her daughter, it was under her custody and it was for her to take care of that. The onus of proof regarding negligence on the part of the railway staff lies on the complainant which she has failed to discharge. Learned counsel has also relied on the provisions of sections 97 and 100 of the Railways Act, 1989 under which the railways cannot be held liable for compensation in this case and the State Commission erred in wrongly appreciating these provisions. Another contention raised by learned counsel was that section 15 of the Railway Claims Tribunal Act, 1987 bars the jurisdiction of the consumer Fora to deal with this case. In view of these aspects, learned counsel submitted that orders of the Fora below cannot be

sustained in the eye of law and are liable to be set aside. On the other hand, learned counsel for the respondent submitted that the impugned order is a well-reasoned order passed in accordance with the provisions of law and the same deserved to be maintained and the revision petition be dismissed.

5. WE have given our anxious thought to the submissions made by the parties. We may note that the broad facts of this case not being under dispute, the two Fora below have returned their concurrent finding in respect of the allegation of negligence on the part of the petitioner based on the facts placed before them. The order of the State Commission is in line with the judgements of this Commission in similar cases including those of Union of India & Ors. Vs. J.S. Kunwar [1 2010 CPJ 90 (NC)] and Union of India & Ors. Vs. Sanjiv Dilsukhraj Dave & Anr. [2003 CTJ 196 (CP) (NCDRC) and Mrs. Kanthimathi & Anr. Vs. Govt. of India where the liability of the railways in such cases has already been examined established in such cases in the light of the provisions of sections 97 and 100 of the Railways Act. We do not wish to reiterate here the details of these cases except to refer to the observations of this Commission in the case of SanjivDilsukhraj Dave & Anr. (supra) and the same are reproduced thus:- "A major responsibility cast on the TTE in addition to examining the tickets is that of ensuring that no intruders enter the reserved compartments This is certainly a gross dereliction of duty which resulted in deficiency in service to the Respondents. The price difference between the unreserved ticket and a reserved ticket is quite high and the traveling public who buy a reserved ticket would expect that they can enjoy the train journey with a certain minimum amount of security and safety. One has to presume that passenger would take reasonable care of his luggage. But, he cannot be expected to take measures against intruders getting easily into reserved compartments and running away with goods, when the railway administration is charged with the responsibility to prevent such unauthorized entry. We have entered the 21st century and we cannot carry on our daily life in the same age old fashion with bearing brunt of indifferent service provided by public authorities like Railways. People expect in the 21st century a modicum of efficient and reliable service, which provides at least safety of person and property while traveling in reserved compartments ".

6. UNDISPUTEDLY , the complainant and her daughter were travelling in a reserved coach and it was the duty of the TTE to ensure that no intruders entered the reserved compartment. Since apparently there was a failure on the part of the TTE to prevent entry of unauthorized person in the coach during the night, the Fora below were right in holding the petitioner liable for deficiency in service to the respondent in this regard. So far as the applicability of section 15 of the Railway Claims Tribunal Act, 1987 is concerned, we cannot agree with the contention of learned counsel because this section bars jurisdiction of the other courts only "in relation to the matters referred to in sub-sections (1) and (1A) of section 13 ". Section 13 is reproduced thus:- "13. Jurisdiction, powers and authority of Claims Tribunal - (1) The Claims Tribunal shall exercise, on and from

the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any Civil Court or a Claims Commissioner appointed under the provisions of Railway Act,- (a) relating to the responsibility of the railway administrations as carriers under Chapter VII of the Railways Act in respect of claims for- (i) compensation for loss, destruction, damages, deterioration or non-delivery of animals or good entrusted to a railway administration for carriage by railway ; (ii) compensation payable under Sec. 82-A of the Railways Act or the rules made thereunder; and (b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway. [(1-A) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of Sec.124-A of the Railways Act, 1989 (24 of 1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any Civil Court in respect of claims for compensation now payable by the Railway Administration under Sec. 124-A of the said Act or the Rules made thereunder.] (2) The provision of the [Railways Act, 1989] and the rules made thereunder shall, so far as may be, be applicable for inquiring into or determining any claims by the Claims Tribunal under this Act."

Plain reading of section 13 indicates that the case of the respondent does not fall under any of the categories mentioned in the section. In view of this, the jurisdiction of the Consumer Fora cannot be barred by virtue of the provisions of section 15.

7. IN view of the foregoing discussion, we do not find any infirmity or jurisdictional error with the concurrent finding of the Fora below which could justify our intervention under section 21(b) of the Consumer Protection Act, 1986. The scope of powers of this Commission while exercising its revisional jurisdiction under section 21(b) of the Consumer Protection Act, 1986 being very limited, we do not find any justification to interfere with the impugned order. We, therefore, dismiss the revision petition in limine with no order as to costs.