

(2006) 10 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

VIJAYANAND TRAVELS

APPELLANT

Vs

RAGHU G.S

RESPONDENT

Date of Decision : 11-10-2006

Acts Referred:

Citation : 2006 0 NCDRC 37 : 2006 3 CPR 248 : 2006 4 CPJ 346

Hon'ble Judges : K.S.GUPTA , P.D.SHENOY J.

Advocate : RANVIR SINGH , HEMANT SHARMA

Judgement

1. IN revision, challenge is to the Order dated 10.7.2006 of Karnataka State Consumer Disputes Redressal Commission, Bangalore partly allowing Appeal No. 497/05 against the Order dated 11.2.2005 of a District Forum and deleting award of compensation and expenses of the total amount to Rs. 50,000. The District Forum had allowed the complaint with direction to the petitioner/opposite party to pay Rs. 60,000 towards loss of goods, Rs. 25,000 towards mental agony and Rs. 25,000 towards expenses.

2. COMPLAINT was filed by Ms. Soundarya, complainant No. 1 and Ramesh, complainant No. 2. Complainant No.1 died during the pendency of complaint and her legal heirs were permitted to be substituted in her place. In the complaint it was alleged that on 19.8.2001, complainant No. 2 boarded at Sagar in the bus of M/s. Vijayanand Travels, petitioner/ opposite party. Complainant No. 2 was carrying two suitcases of complainant No. 1 to be handed over to her at Bangalore. Complainant No. 2 handed over the suit cases and other luggage to the authorised representative/owner of the bus. Bus left Sagar at about 10.30 p.m. and on the way it halted for coffee/tea at two places. When the bus halted at Tumkur at about 5.00 a.m. on 20.8.2001 the driver and cleaner of the bus informed the passengers that luggage cabin lock has been opened and they should check and verify their luggage. On checking, complainant No. 2 learnt that two Samsonite suitcases were missing from the luggage cabin. Driver/cleaner/owner failed to trace out the missing suitcases which belonged to complainant No. 1. Suitcases contained valuable Sarees worth Rs. 20,000,

valuable dresses worth Rs. 20,000 and cash of Rs. 20,000. On complaint being lodged with police on 20.8.2001 by complainant No. 2 case FIR No. 659/01 was registered at P.S. Upparpet. Alleging deficiency in service, complaint was filed which was contested by the petitioner. Order of State Commission notices that two empty suitcases in question which were stolen from dicky of the bus, were recovered by the police. Order of State Commission would show that the argument advanced before it on behalf of petitioner was that the respondents/complainants have not produced any cogent evidence to show that the suitcases contained sarees worth Rs. 20,000, dresses of Rs. 20,000 and cash of Rs. 20,000 and the District Forum was not justified on passing award of Rs. 1,10,000. The State Commission quantified the loss of Sarees, dresses and cash at Rs. 50,000.

3. MAIN thrust of argument advanced by Mr. Ranvir Singh for petitioner is that Ms. Soundarya was not a consumer within the meaning of Consumer Protection Act, 1986 (for short the "Act") and after the death of Ms. Soundarya the right to suit for damages did not survive to her L.Rs. Reliance is placed on the decision in *M. Veerappa v. Evelyn Sequeira*, (1988) 1 SCC 557. Definition of consumer as given in Section 2(i)(d) of the Act is in two parts. The later part which is relevant, runs as under: "(d) "Consumer" means any person who (i) (ii) Hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the service for consideration paid or promised, or partly paid and partly promised or under any system of deferred payment when such services are available of with the approval of the first mentioned person but does not include a person who avails of such service for any commercial purpose".

4. AS may be seen from the complaint at the time of boarding the bus of petitioner the complainant No. 2 had handed over two suitcases for transportation to the authorised representative/owner of the bus for consideration which fact is not denied by the petitioner. To initiate action under the Act for compensation for loss of Sarees/dresses/cash from the two suitcases only the hiring of service and not the ownership of the lost articles is to be considered and, therefore, it was immaterial that the suitcases did not belong to complainant No. 2. Complainant No. 1/her legal heirs seem to have been impleaded as party by way of abundant precaution in the complaint. Award passed against the petitioner cannot be validly assailed on the ground referred to above. Said decision has no applicability to the facts of this case. Revision petition, therefore, deserves to be dismissed being without any merit. Dismissed as such.