

(1999) 08 NCDRC CK 0040

In the National Consumer Disputes Redressal Commission

V.S.NALLUSAMY

APPELLANT

Vs

KANNABIRAN TRANSPORTS

RESPONDENT

Date of Decision : 21-08-1999

Acts Referred:

Citation : 2001 3 CPJ 255

Hon'ble Judges : E.Padmanabhan , M.K.Sayekumari J.

Final Decision : Appeal partly allowed with costs

Judgement

1. THE unsuccessful complainant in Complaint No. 147 of 1998 on the file of the Consumer Disputes Redressal Forum at Pondicherry has preferred this appeal being aggrieved by the order dated 8th June, 1998 passed in Complaint No. 147 of 1997.

2. WITH the consent of the appellant, who had appeared in person and the Counsel for the second respondent Mr. R. Balaraman, Government Pleader, the appeal itself was taken up for final disposal. None appeared for the first respondent but written representations submitted by the first respondent had been considered. For convenience, the parties to this appeal will be referred as arrayed before the District Forum.

According to the complainant the complainant travelled by Kannabiran Transport Bus from Kottucherry to Thalatheru, a distance of two kilometres, that the Conductor of the bus had collected Rs. 1.50 as bus fare instead of the fixed fare of Re. 1, that the complainant raised objections and questioned the Conductor of his conduct, that the Conductor replied that the Bus fare had been increased, that it is asserted that the fare is Re. 1 only and the Government had not revised the fares till date, that the complainant wrote to the opposite party No. 1 on 24.9.1997 demanding a refund of 50 paise, that there was no response from the opposite party No. 1, that collection of excess fare is being prevalent and it is highly illegal, that collection of excess fare would amount to deficiency in service under Section 2(o) read with Section 12 of the Consumer Protection Act, 1986 and hence the complaint.

3. THE complainant prayed for (i) refund of 50 paise; (ii) to direct the opposite party No. 1 to pay Rs. 50,000/- as compensation to Consumer Protection Association at Kottucherry; (iii) to pay the cost of the complaint. Per contra, the opposite party No. 1 while denying the charges of alleged excess collection for the travel from Kottucherry to Thalatheru contended that the place of starting journey and destination of the journey will not be mentioned in the tickets as there is no approved provision and no column has been provided for that purpose besides contending that it is not possible to write all those details while the bus is on the move.

4. THE opposite party No. 1 further pleaded that the complainant on the date and time asked for a ticket to go to Thirunallar from Kottucherry and, therefore, he was issued a ticket charging Rs. 1.50. But the complainant got down at Thalatheru, that the demand for refund is not acceptable and that neither the Conductor of the bus nor the opposite party No. 1 is liable to refund. It is further contended that there was no deficiency of service and that the allegation to the contra are denied. THE opposite party No. 1 also contended that it is not liable to refund any amount and it is not liable to pay Rs. 50,000/- as compensation. Opposite party No. 2 contended that it is not a necessary party, that the complaint is bad for misjoinder of parties, that after receipt of complaint opposite party No. 2 has directed the Motor Vehicles Inspector, Karaikkal to enquire and submit a report and according to the report, opposite party No. 1 had collected the correct fare as notified by the State and all the averments to the contra are denied as false by opposite party No. 2. The District Forum framed the following four points for consideration : (i) Whether the opposite party No. 1 has collected a sum of 50 paise in excess of the prescribed charge of Re. 1 as alleged by the complainant and whether there is any deficiency of service on the part of the opposite party No. 1 in this regard ? (ii) Whether the opposite party No. 2 is a necessary party in this case ? (iii) Whether the complainant is entitled to any compensation as claimed by him ? (iv) To what other relief or reliefs the parties are entitled to ?

5. ON the first point framed for consideration the District Forum merely based upon the statement had chosen to answer the point against the complainant. ON the second point, the District Consumer Forum held that the opposite party No. 2 is neither a proper party, nor a necessary party. ON the third point the District Forum once again proceeded on identical basis as was done with respect to point No. 1 and proceeded on the assumption that the complainant had purchased a ticket for the journey from Kottucherry to Thirunallar and that the complainant had not substantiated his claim for compensation or damages and an astronomical figure of Rs. 50,000/- has been claimed without any basis. Ultimately, on the 4th point, the District Forum dismissed the complaint and held that the complainant is not entitled to any of the reliefs sought for in the complaint.

6. THE complainant is the Secretary of the Kottucherry Padhukappu Kuzhu. It is

to be pointed out that it makes no difference once the complainant has described himself as the Secretary of the said Council and certain amount of latitude to be shown in these matters as to its description when the Consumer Council from a far off locality comes forward with a complaint while describing itself either in the individual capacity or on behalf of the Consumer Protection Council. THE complaint has to be treated one as if it has been made for and on behalf of the Consumer Protection Council at Kottucherry, though the complainant had described himself in his individual name and shown him as the Secretary of the Council. The points that arise for consideration in this appeal are : (i) Whether excess fare had been collected by the Conductor engaged by the first opposite party as complained ? (ii) Whether the collection of excess fare is illegal and unauthorised ? (iii) Whether the complainant is entitled for refund of the excess fare ? (iv) Whether the compensation has to be awarded against the opposite party No. 1 for alleged deficiency and if so, what is the quantum of compensation ? (v) Whether the opposite party No. 2, Transport Commissioner is an unnecessary party ?

The Transport Commissioner who supervises the operation of the Public Carriers in the Union Territory of Pondicherry to whom a complaint has been made had been impleaded as opposite party No. 2 in the complaint. It is true that no relief has been sought for against the opposite party, but it is the duty of the opposite party No. 2 to effectively implement the provisions of the Motor Vehicles Act as well as Taxation Act. It is also admitted that it is for the opposite party No. 2 and his subordinates to effectively check as to whether opposite party No. 1 or any other operator collects fare in excess of fares notified. Though no relief has been sought for against the opposite party No. 2, it cannot be held that opposite party No. 2 is not a necessary party as the opposite party No. 2 is the Controlling Authority of all the transport carriers who are authorised to transport passengers in all routes. It is incumbent on the part of the opposite party No. 2 who exercises the quasi judicial function also to place the file before the Forum whenever called for and in case if he fails to control over the operators of various routes though he is a statutory authority he could also be impleaded for alleviating the grievance of passengers.

7. AS already pointed out opposite party No. 2 though it may not be a necessary party, but it is a proper party as at any time the Forum could call upon the opposite party No. 2 to produce the file or notifications or other materials to satisfy itself with respect to the complaint and the grievances. Therefore, in the circumstances, the last of the point is answered in favour of the appellant and the finding arrived at by the District Forum in this respect on this point is reversed. The points 1 and 2 are taken up together for consideration. It is the assertion of the complainant that he boarded at the bus to go to Thalatheru from Kottucherry and the complainant had demanded ticket for the said trip alone and not up to Thirunallar and for the said trip the rate notified being Re. 1, while the Conductor of the bus had issued a ticket for Rs. 1.50. This issue of ticket for Rs. 1.50 is admitted by opposite party. Though it is a xerox of the ticket that has

been produced by the complainant, nothing prevented the opposite party No. 1 to produce the duplicate of the ticket maintained by it in the usual course. In the light of admitted collection of Rs. 1.50, it is rather too puerile and too vague to contend that the conductor is unable to issue a ticket indicating the starting point and the destination. In all the tickets as per the rules in mofussil busses the point of boarding and the point to which the passenger has to get down or commences to travel are to be indicated.

8. THE approach of the District Forum in this respect cannot be sustained as it has proceeded on a misconception. When the complainant himself is the passenger and when he demanded the ticket for a particular journey from Kottucherry to Thalatheru, the Conductor cannot assume that the complainant had proposed to undertake a journey from Kottucherry to Thirunallar. THE conductor had not been examined in this respect, nor any supporting material in this respect has been produced by the opposite party No. 1 except its assertions. In case of such counter assertions, the Forum below should have called upon the opposite party to substantiate its version by examining the Conductor. The opposite party had not adduced any evidence excepting asserting itself while the complainant was present and he would have been cross-examined at least by the opposite party No. 1 when he challenges the version given by the complainant. The complainant had appeared in person and asserted the averments set out in the complaint. The complainant is the Secretary of the Consumer Protection Council and admittedly he has no axe to grind against the opposite party No. 1, nor even against the Conductor and no such suggestion even finds a place in the counter statement filed by the opposite party No. 1. There is no reason at all to disbelieve the version of the complainant as against the stand taken by the opposite party No. 1. Obviously the opposite party No. 1 had not produced the best evidence namely examining the Conductor or any other passenger to depose or even the Ticket Book to hold that the complainant is not speaking truth. It is not necessary for the complainant to examine any other passenger as he had himself travelled and it is his personal statement that he demanded ticket for the trip from Kottucherry to Thalatheru and he did not demand ticket to go beyond Thalatheru. This claim of the complainant deserves to be accepted on the facts of the case.

9. THE rejection of the complainant's case by the District Forum cannot be appreciated and countenanced as the complainant should have been given credence as against the opposite party No. 1 who had just denied the version and had not chosen to place any acceptable material evidence. It is not necessary for the complainant to come out with a false case for a claim of 50 paise against the opposite party No. 1. THE xerox of ticket is sufficient proof. This State Commission also questioned the complainant during the hearing of the appeal with respect to the journey undertaken by him, the collection of fare of Rs. 1.50 and this Commission is satisfied that the complainant is speaking truth and there is no reason at all to disbelieve the complainant.

10. THE District Forum had proceeded as if the Motor Vehicles Inspector had after enquiry reported that the complaint is not true. It is to be pointed out that the report of the Motor Vehicles Inspector had not been placed and the entire investigation by the Motor Vehicles Inspector either it was behind the back of the local Consumer Protection Council or the complainant and at any rate, the said report had not been furnished to the complainant. When the complainant comes forward with a specific case and he is the aggrieved party, he is the witness for the complaint who had come forward to substantiate and there is nothing against him and when he has no personal grievance or animosity against the opposite parties, there is every justification for the Forum to have accepted the case of the complainant as against the opposite party No. 1. In the circumstances, on a consideration of the entire material, the findings of the District Forum in respect of these two points are liable to be set aside and accordingly set aside. We accept the case of the complainant as speaking truth as against the opposite party No. 1 who had not placed any acceptable material to discredit the complainant. The opposite party No. 1 had also not placed the best material or evidence which was at its disposal. In the circumstances while reversing the findings of the District Forum we hold that the Conductor of the bus in question on the relevant date and time for the trip Kottucherry to Thalatheru had collected 50 paise more as against the prescribed fare of Re. 1.

During the hearing the complainant as the Secretary of the local Consumer Protection Council had expressed that since the Government had not revised the fares from time to time, the Bus Operators are extracting more money than the prescribed or notified fare and this has to be taken note of by this Commission. With respect to this unless a specific complaint is made the Consumer Forum or this Commission will not be justified, in drawing an adverse inference against the Bus Operators.

11. ON the facts of the present complaint the Commission holds that the Conductor employed by the opposite party No. 1 had collected 50 paise over and above the fare fixed and the complainant had substantiated his case. This Commission on a consideration of the entire facts deems it fit to accept the complainant's case as true and the complaint is a bona fide one. In the circumstances there will be a direction to refund of 50 paise to the complainant by the opposite party No. 1. As regards the compensation of Rs. 50,000/- prayed for by the complainant against opposite party No. 1, we are to point out that the complainant had not made out any legal or factual basis for such an astronomical claim. But as already pointed out the deficiency has been made out and the complaint is true and it is a bona fide action. There is no basis at all to award such a huge amount as compensation on the facts of the present case. It may be that the complainant as the Secretary of the Kottucherry Consumer Protection Council could agitate the matter by separate action, but on the facts of the case nominal compensation alone deserves to be awarded.

12. TAKING into consideration of the fact that the complainant had taken pains

to come before the District Forum and also this State Commission, as well as the activities, we hold that it would be fit and proper to award Rs. 1,000/- against the opposite party No. 1 as compensation payable to the Kottucherry Nugarvor Padhukappu Kuzhu and such payment of Rs. 1,000/- shall be paid within eight weeks from today. The complainant had substantiated his case. Though the refund is 50 paise to sustain the same and bona fides of the claim the complainant has to undertake number of trips and also to come to Pondicherry to prefer the appeal as well as to argue the case. It is a fit case where the opposite party No. 1 should be mulcted with a cost of Rs. 500/-. In the light of the above discussions we answer all the points in favour of the complainant/appellant in this appeal.

13. IN the result- (i) The appeal is allowed and the order of the District Forum is set aside. (ii) The opposite party No. 1 is directed to refund 50 paise to the complainant within four weeks. (iii) The opposite party No. 1 is directed to pay Rs. 1,000/- as compensation to the Kottucherry Nugarvor Padhukappu Kuzhu within eight weeks. (iv) The opposite party No. 1 shall pay a cost of Rs. 500/- as cost before the District Forum as well as this Commission.

Appeal partly allowed with costs.