

Amal Kumar Ghosh Vs. the General Manager Eastern Railway and Others

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Court : West Bengal State Consumer Disputes Redressal Commission SCDRC
Kolkata

Decided On : Sep-19-2011

Judge : P.K. Samanta, President, the Honourable Mrs. S. Majumder, Member
& the Honourable Mr. S. Coari, Member

Appeal No. : S. C. Case No. FA/653 of 2010

Appellant : Amal Kumar Ghosh

Respondent : The General Manager Eastern Railway and Others

Judgement :

S. Coari, Ld. Member:

1. The present Appeal has been directed against the judgment and order dt. 30.9.10 passed by District Consumer Disputes Redressal Forum, Kolkata, Unit-II, in Case No. CDF/Unit-II/C.C.No. 405 of 2009 wherein the Ld. District Forum dismissed the petition of complaint on contest without any order as to cost.

2. The case of the Appellant/Complainant before the Ld. District Forum, in brief, was that on 21.10.08 the complainant being accompanied by his wife was returning from Varanasi by availing 2334-Dn Bibhuti Express. The complainant was the bonafide passenger having purchased valid tickets for the journey. According to the complainant, after boarding the train the complainant put his suitcase containing valuables including SBI ATM card belonging to his wife with

the help of an iron chain underneath the berth occupied by them. It was the further case of the complainant that in the following morning it came to the notice of the complainant that the suitcase containing the valuables etc. as mentioned, was missing as the same was taken away by some miscreants and/or unauthorized persons after breaking the iron chain. Later on it also came to the knowledge of the complainant that some miscreants after using the SBI ATM card so lost during the train journey had siphoned off a substantial amount from the same. According to the complainant, during the aforesaid train journey he noticed that there was no proper security arrangement and attending guards in the compartment in question which, according to the complainant, tantamount to gross negligence and deficiency in service on the part of the railway administration, for which the complainant has suffered huge amount of financial loss and hence, the petition of complaint.

3. The Respondent/Railways contested the case by filing written version thereby denying all the material averments of the petition of complaint contending inter alia that the petition of complaint does not come within the purview of the Consumer Protection Act, 1986. In the absence of any deficiency in service at the instance of the railway administration the case was not maintainable. According to the Railways, the complainant has not produced any cogent and reliable evidence in support of his allegation that during transit of railway journey the theft/misappropriation of the articles of the complainant was committed and that the articles so alleged to have been stolen were actually in the possession of the complainant and that the petition of complaint having been filed after lapse of a considerable period the same is not believable and/or acceptable and that the petition of complaint was liable to be dismissed with cost.

4. The Ld. District Forum while disposing of the petition of complaint has observed that the complainant has failed to substantiate his allegation by adducing cogent and reliable evidence and that in the absence of any positive material in support of the complainants allegation to the effect that the alleged theft was actually committed during the railway journey undertaken by the complainant, question of holding the railway administration responsible and/or alleging deficiency in service at the instance of the Railways does not arise at all and accordingly dismissed the

petition of complaint as mentioned above.

5. The only moot question that revolves round the present Appeal is as to whether the Ld. District Forum was justified enough in disposing of the petition of complaint in the manner as discussed above.

Decision With Reasons

6. At the time of hearing it has been submitted on behalf of the Complainant/Appellant that the Ld. District Forum having utterly failed to appreciate the actual state of affairs has arrived at a wrong and improper decision which is not at all sustainable under the law. According to the Ld. Advocate for the Appellant, when it is an admitted position that the complainant did undertake railway journey being accompanied by his wife having valid tickets for the same and that too within a reasonable period and the complainant having lodged a complaint for the loss of his suitcase during the course of the aforesaid railway journey, which contained a number of valuable articles including SBI ATM card belonging to his wife and which has subsequently been unauthorisedly utilized for siphoning off the huge amount of money thereby putting the complainant into a great financial loss, question of disbelieving the case of the complainant as made out in the petition of complaint does not arise at all. While criticizing the impugned judgment the Ld. Advocate for the Appellant has submitted before us that in this case the Ld. District Forum has taken an oblique and one-sided view and has totally failed to appreciate the actual state of affairs and as such, has arrived at a wrong and improper decision and that on this score alone the impugned judgment is liable to be set aside. While concluding his submissions the Ld. Advocate for the Appellant has urged before us that the Appellant being a responsible person namely a practising advocate of the Honble High Court at Calcutta, has got no business to institute a false and fictitious case and that in the absence of positive denial of the allegation so put forward by the complainant at the instance of the Railways, the Appeal should be allowed and the impugned judgment should be set aside and the petition of complaint be allowed accordingly.

7. We have duly considered the submissions so put forward on behalf of the Appellant and have also gone through the materials on record including the

impugned judgment and find that in this case the Appellant has put forward a case to the effect that during the course of his railway journey being accompanied by his wife, his suitcase containing valuables including SBI ATM card was stolen by some miscreants and that subsequently the SBI ATM card was utilized by the miscreants and in the process a huge amount of money has been siphoned off to the detriment of interest of the complainant. The complainant also alleged improper security arrangement and lack of supervision at the instance of the railway administration during the aforesaid railway journey undertaken by the complainant and accordingly prayed for compensation from the railway administration for their deficiency in service. The railway administration, on the other hand, has tried to put up a case to the effect that the complainant having utterly failed to substantiate his allegation so far as it relates to the stealing of his suitcase containing valuables having not been substantiating by adducing cogent and reliable evidence, question of putting finger of accusation against the railway administration for the same does not arise at all and that in the absence of any deficiency in service the railway administration is not responsible to compensate the complainant in any manner whatsoever and that the petition of complaint was liable to be dismissed.

8. After careful perusal of the impugned judgment we find that the Ld. District Forum has really appreciated the pros and cons of the respective parties cases and in arriving at a just and proper decision has practically left no stone unturned. When the complainant has not been able to substantiate his allegation as regards stealing of his suitcase containing valuable articles during the course of the railway journey undertaken by him we find that the Ld. District Forum was quite justified in not accepting the case of the complainant. In this regard, we also find much substance in the finding of the Ld. District Forum wherein it has been observed that in the absence of any cogent and reliable evidence in support of the complainants case to the effect that during the course of railway journey undertaken by the complainant the valuable articles were stolen question of holding the railway administration responsible for the same does not arise at all. Having considered the present Appeal in the light of above discussion we find no merit in the present Appeal and accordingly we are not inclined to interfere with the finding of the Ld. District Forum, which stands confirmed. In the result, the

Appeal fails.

9. Hence, it is ordered that the Appeal stands dismissed on contest without any order as to cost. The impugned judgment stands confirmed.

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