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Court : Kerala State Consumer Disputes Redressal Commission SCDRC
Thiruvananthapuram

Decided On : Apr-26-2010

Judge : K.R. Udayabhanu President & the Honourable Mr. M.K. Abdulla Sona

Appeal No. : First Appeal No. A/08/200 (Arisen out of order dated 16/08/2008 in Case No. OP 419/2002 of District Thiruvananthapuram)

Appellant : SumA. S. and Others

Respondent : Union of India, Represented by the General Manager, South Central Railway and Another

Judgement :

SHRI. M.K. ABDULLA SONA: MEMBER

This appeal prefers from the order passed by the CDRF, Thiruvananthapuram in OP No. 419/2002 dated 16-08-2008. The appellants are the complainants in the above OP under the order to dismiss the complaint by the Forum below.

2. In short, the first complainant is the wife of the deceased and the other complainants are the parents and brother of the deceased. The allegation raised in the complaint are as follows: The deceased person who was a Soldier in the

Indian Army, was travelling in the sleeper class along with his wife from Thiruvananthapuram Central Railway Station to Hawrah in Train No. 6357. The deceased was on his way to join duty after leave. They boarded the train on 10-03-2002 from the Thiruvananthapuram Central Railway Station, when the train reached Vijayawada the deceased felt uneasiness and the deceased and his wife contacted the TTE for medical aid but in vain. After passing this station his condition became worst and the opposite parties did not provide any medical facility and other help. His wife Suma pulled the alarm chain, but the train did not stop. Later on Santhosh Kumar died inside the train at about 6 pm due to non-availability of medical aid. The postmortem was conducted on 12-03-2002. The opposite parties are legally bound to provide medical aid and their failure and neglect to provide medical aid caused death of Santhosh Kumar. Therefore the opposite parties are liable to compensate the complainants for the death of Santhosh Kumar and for the hardships and mental agony caused to the deceased and to the complainants due to their deficiency in service. The opposite parties are jointly and severally liable to compensate the complainants. Hence this complaint claiming compensation from the opposite parties along with costs.

3. The Divisional Commercial Manager, South Central Railway filed version for himself and on behalf of other opposite parties. They contended that the complaint is not maintainable and the Forum below has no jurisdiction to entertain the complaint. According to Section 50, 123 and 124 of the Railway Act 1989 bars the jurisdiction of this Forum. The complainants are not consumers as envisaged in the CP Act, 1986. The deceased passenger was not medically fit to travel for long distance. The opposite parties are not liable for the death of the passenger and were unaware of the physical condition of the deceased passenger. The pulling of alarm chain and non-stop of the train are absolutely false. The contention of the complainants that the opposite parties failed to provide medical help to the deceased passenger is not tenable. The complainant cannot be expect comprehensive medical aid in the running train and or at in the mid-section. The complainants are not entitled for any relief from the opposite parties. It is submitted that the Railways offered transportation subject to certain terms and conditions enumerated under the Railway Act 1989 and had never guaranteed medical assistance while selling tickets. It is upto the passengers to arrange their own

medical assistance in case they were suffering from any ailments. It is pertinent to mention here that the railways has every right to refuse passengers suffering from infectious or contagious diseases u/s 56 of the Railway Act 1989. Hence prays for dismissal of the complaint with costs.

4. In the evidence PW1 is examined and Exts. P1 to P6 were marked, DW1 and DW2 were examined for the opposite parties and marked Ext.D1 on their part. The Forum below raised 3 issues for consideration. They are:

1. Whether all the complainants come under the definition of complainants for filing this complaint under Consumer Protection Act?

2. Whether there is deficiency in service on the part of the opposite parties?

3. Whether the complainants are entitled for reliefs claimed for?

5. The Forum below answered all the issues on the strength of the evidence and reached in a conclusion that the deceased was attended by a doctor at Elura station, which is the next major station after Vijayawada. This would show that the TTE had informed the authorities for making proper arrangements for providing medical aid immediately as the train reaches the next station. DW1, TTE has deposed that when he was informed with regard to the illness he had checked the name chart to find out any doctor is available in the train. The complainants have no case that there were doctors available in the said train and their service were not made available to the deceased passenger. The complainants have not produced any evidence also to prove that there is negligence from the part of the opposite parties is not providing medical aid. The complainants have failed to establish deficiency in rendering service on the part of opposite parties or proof of any negligent act from the opposite parties in the matter of providing medical aid. In the result, the Forum below dismissed the complaint. The appellant prefers this appeal from the above impugned order passed by the Forum below.

6. On this day this appeal came before this Commission for final hearing both the Counsel for the appellants and respondent were present. The Counsel for the appellant argued on the basis of the grounds of appeal memorandum that the

Forum below did not peruse the fact and circumstance and evidence of the case. Then the Counsel submitted that the order passed by the Forum below is illegal and not accordance with the provisions of law and evidence. But the Counsel for the respondent vehemently argued that the Railway was not in a position to give any assurance for the medical aid in the similar cases. The TTE concerned would do as per provisions of law. He also submitted that TTE tried maximum to provide immediate medical aid to the deceased person.

7. Heard in detail and perused the entire case records available in this appeal. It is seeing that the approach of the TTE is only as per the provisions of law. Here a human being is in the brim of death due to a sudden health problem. He is a traveler from Thiruvananthapuram to Hawrah. During this long distance anybody can expect very same contingency. But the respondent/opposite parties have no solid defense about the allegations raised by the complainant in the complaint. At least the TTE can stop the train in the nearest station and intimate the authorities for the immediate medical attention. He has no case that he was not even contact with the guard of the train. The deceased person is a Soldier also. He served his life to safeguard the Mother India, our country. The defense taken by the railway is that there is no guaranty of medical aid given in the ticket, is a very silly defense. Anybody remains that such a medical casualty problem may be incidented to any person including Loco Pilot, TTE and the Guard of the train including VIPs and VVIPs. As per the evidence adduced by the complainant and the opposite parties, it is clearly seeing that the opposite parties committed deficiency in service. In the flights there are facilities to give medical attention in the similar circumstance. In other words, in a long running trains if any such an emergency problems will be araised this will be the same faith of all the passengers. It is not a fair to a reputed organization like Indian Railway. The defense taken by the opposite parties in their written version that the Forum is not having no jurisdiction to entertain such a case is incorrect. After the amendment of the Consumer Protection Act, 2003 Section 3 is providing ample power to the Fora to entertain such a case under the head of any additional remedy. Any Life is Valuable and nobody can be substituted this than the God.

8. We are seeing that the Forum below passed the order not accordance with the spirit of the Consumer Protection Act. We find that the CDRF is having legal jurisdiction to entertain this case and as per the evidence adduced by both sides, it is a fit case of deficiency of service committed by the opposite parties. There are sufficient reasons to interfere in the order passed by the Forum below. Commissions and Fora established as per the provisions of the Consumer Protection Act is to ensure speedy justice to the consumers without hyper technicality. It is far from a Civil Court.

In the result, this appeal is allowed and set aside the order passed by the Forum below. The opposite parties are directed to pay a sum of Rs. 1,00,000/- to the complainants within one month after the receipt of the copy of this order, failure of the payment the opposite parties are liable to pay 12% interest for the amount from the date of the order received by them. Both parties are directed to suffer their respective costs.

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