

CASE NO.: Appeal (civil) 2252 of 1999

PETITIONER:

SUMATIDEVI M. DHANWATAY

RESPONDENT:

UNION OF INDIA AND ORS.

DATE OF JUDGMENT: 06/04/2004

BENCH:

SHIVARAJ V. PAUL & D.M. DHARMADHIKARI

JUDGMENT:

JUDGMENT

2004(3) SCR 928

The following Judgment of the Court was delivered

The appellant travelled by 1st Class Air conditioned berth from Nagpur to Bombay by Howrah-Bombay Mail. She was carrying her luggage which included gold, pearl, silver and diamond jewellery and other valuables valued at Rs. 1,11,756. While she was travelling, she was assaulted by some unauthorised passengers and her gold, silver, pearl, diamond and other valuables were taken away forcibly. This incident occurred on 4.12.1991. Thousands of persons entered into the compartment and assaulted the passengers, including the appellant. The said crowd was so violent that they broke the doors, window bars, glass panels, seating berths and toilets etc. This apart, the crowd committed so many other illegal acts of assaulting the bonafide passengers. They molested the women and even raped the young girl passengers. The appellant pulled the alarm chain three times, as a result

of which, the train stopped at Igatpuri Station. She, alongwith other bonafide passengers got down at that station. She approached the Railway Authorities for protection, but, without any assistance. On reaching Bombay, she lodged a complaint with the police about the incident. The appellant approached the Consumer Disputes Redressal Commission, Maharashtra State (hereinafter referred to as 'the State Commission', for short) by filing a complaint claiming compensation of Rs. 9,32,256. The State Commission, after considering the material that was placed before it and on considering the rival contentions, allowed the claim of the appellant partly awarding total compensation of Rs. 1,41,756. The Railway administration, aggrieved by and not satisfied with the said order, filed an appeal before the National Consumer Disputes Redressal Commission (hereinafter referred to as 'the National Commission', for short). The National Commission, by the order under challenge in this appeal, set aside the order made by the State Commission. Hence this appeal.

The learned counsel for the appellant strongly contended that the National Commission was not right and justified on facts as well as in law in upsetting the order passed by the State Commission; the National Commission has set aside the order made by the State Commission without dislodging the reasons given by the State Commission in allowing the claim made by the appellant; the National Commission has set aside the order of the State Commission simply stating that the State Commission was not right in upholding that there has been a deficiency in service on the part of the Railway administration. The learned counsel added that having regard to the facts found, the State Commission was fully justified in ordering the compensation.

In opposition, the learned counsel for the respondent Nos. 1 to 4 submitted that the order impugned in this appeal is just and supportable order.

According to her, the State Commission had no jurisdiction to entertain the complaint made by the appellant; there was no deficiency in service on the part of the Railway administration; when an unruly mob entered into the railway compartment and caused damage on the person and property of the passengers, the Railway administration was helpless. In such a situation, no complaint could be entertained by the State Commission under the Consumer Protection Act, 1986.

We have considered the respective submissions made on behalf of the parties. As is evident from the order of the State Commission that opposite parties Nos.. 1, 3, 5 & 6, i.e., Union of India, Chief Security Commissioner, Secretary, Home Department and Inspector General of Police, remained absent. No written version was filed by any of the parties on the date given. The complaint was posted for final hearing on 14.9.1993, on which date the Union of India and the General Manager, Central Railway filed written version jointly. The averment made in the complaint that the appellant travelled by train on that day when the incident happened, is admitted. However, the Railway administration denied its responsibility as to the theft of luggage of the appellant and the injuries suffered by her. The only contention of the Railway administration was that it was not responsible for the loss of luggage and injuries caused to the appellant. The State Commission, on consideration of the facts and circumstances, has recorded that having regard to the past experience, the Railway administration did not take reasonable steps to avoid such incident. It is also recorded in the order of the State Commission that the allegations of injuries suffered by the appellant and the loss caused to her luggage, the

Railway administration had not been able to controvert effectively. It was submitted on behalf of the Railway administration before the State Commission that the claim as to the loss of ornaments urged by the appellant, was exaggerated. As regards loss of the Bank Draft, it was contended that intimation could be given to the concerned Bank. An argument was also advanced that the complaint was not maintainable under the provisions of Sections 100 and 103 of the Indian Railways Act, 1989. The State Commission has categorically recorded a finding that there was deficiency in service on the part of the Railway administration on the date of incident. It is also noticed in the order of the State Commission that the incident did not take place all of a sudden. The Railway administration was well aware of the impending contingency that would happen (as it was a yearly experience for them). The State Commission has also recorded that the Railway administration failed to take precaution and preventive measures. Their negligence was compounded in the case of the appellant being old and sickly lady. The appellant suffered injury and no protection or support was given to her. The Railway administration in spite of their prior knowledge had not made any efforts or devised measures to curb lawlessness indulged in by the ticketless travellers. The State Commission was not satisfied with the explanation given on behalf of the Railway administration, when it came forward to state that they had taken sufficient precautions. Having recorded such finding, the compensation was awarded to the appellant. However, strangely, the National Commission, without noticing the facts of the case, without dislodging the reasons recorded by the State Commission and without giving reasons, upset the order of the State Commission simply stating that the finding of the State Commission could not be upheld that there was a deficiency in service on the part of the Railway administration. It may be added that the National

Commission itself has observed in the impugned order:

"However we cannot part with this order without expressing our concern about the total absence of any steps having taken by the concerned Railway Administration to mobilise adequate police force sufficiently before hand when the occurrences of such mob-violence on stations enroute Nagpur to Bombay on Ambedkar Day has been a recording phenomenon every year."

This observation of the National Commission also supports the position that there has been negligence on the part of the Railway administration. The argument of the learned counsel for the respondents that the Railway administration is not liable for the loss suffered by the appellant, cannot be accepted in the light of the decision of this Court in the case of P. A. Narayanan v. Union of India and Ors., [1998] 3 SCC 67. Paragraph 10 of the said judgment reads thus;

"Mr. Goswami, learned counsel appearing for the Railway administration, does not dispute that under the new Act, there is statutory liability on the Railways but submits that the 1989 Act does not have any retrospective operation. We do not wish to go into that question in this case and leave that issue open. We are resting our case on the breach of common law duty of reasonable care, which lies upon all carriers including the Railways. The standard of care is high and strict. It is not a case where the omission on the part of the railway officials can be said to be wholly unforeseen or beyond their control. Here there has been a complete dereliction of duty which resulted in a precious life being taken away, rendering the guarantee under Article 21 of the Constitution illusory. Had the deceased not pulled the alarm chain with a view to stop the train, the

position might have been different. Liability in this case is fault based. Such a liability is not inconsistent with the scheme of the Railways Act of 1890 either (refer Section 80 with advantage). The proof of a fault in this case is strong and Mr. Goswami has not rightly challenged it either. To relegate the appellant to approach the Railway Claims Tribunal or the Civil Court, as suggested by Mr. Goswami, does not appear to us to be proper. More than 17 years have already gone by since the occurrence and, therefore, it appears appropriate to us to give a quietus to this litigation now."

This apart, under Section 124A of the Railways Act, 1989, the Railway administration cannot escape the liability having regard to the facts and circumstances of the case and in the light of the incident that had taken place. As to the deficiency of service on the part of the Railway administration, no such plea was raised before the State Commission. The Railway administration also did not raise any issue as to the maintainability of the complaint or jurisdiction of the State Commission to deal with the complaint. Even otherwise, under Section 3 of the Consumer Protection Act, 1986, the complaint could be entertained by the State Commission in the absence of any such plea taken by the Railway administration as to the jurisdiction to entertain the complaint. This being the position, in our view, the impugned order passed by the National Commission cannot be sustained. No good reason was given by the National Commission to upset the order passed by the State Commission, as already observed. Under the circumstances, the appeal is entitled to succeed. Accordingly, it is allowed and the impugned order is set aside. The respondent-Railways shall pay Rs. 5000 to the appellant towards cost.