(1999) 04 NCDRC CK 0056

In the National Consumer Disputes Redressal Commission

BHUSHAN TYRE HOUSE — APPELLANT

Vs

HEM KUNT GASES PVT.LTD. — RESPONDENT

Date of Decision : 28-04-1999

Acts Referred:

Citation : 1999 0 CTJ 765 : 1999 2 CLT 37 : 1999 2 CPC 141 : 2000 2 CPJ 49

Hon'ble Judges : A.L.Bahri , Jasbir Singh , Davinder Kaur Bhamrahs J.

Final Decision : Appeal dismissed

Judgement

1. THE District Forum, Bathinda on April 28, 1998 allowed the complaint filed by M/s. Hem Kunt Gases Pvt. Ltd. with the direction to the opposite parties to refund the amount of Rs. 2,460/- alongwith Rs. 1,000/- as compensation and another sum of Rs. 1,000/- towards costs to the complainant, hence this appeal by the opposite parties, the dealer as well as the manufacturer of CEAT Tyres.

2. THE complainant, a Company, is having fleet of cars for use by staff members. On July 18, 1997 the Company purchased four radial tyres from the dealer M/s. Bhushan Tyre House, Bathinda for a sum of Rs. 9,840/- against the bill (Annexure C-2). Within a week of fixing of tyres, one of the tyres deflated causing loss to the tube as well. THE matter was immediately reported to the dealer who forwarded the complaint and the defective tyre to the manufacturer, the Ceat Limited. THE claim having been repudiated on the ground that there was defect in the fitting of the tyre. District Forum was approached. THE opposite parties took up the plea as stated above that there was defect in the matter of fixing of the tyre otherwise there was no manufacturing defect. THE plea of the complainant prevailed with the District Forum, hence the impugned order was passed. Learned Counsel for the appellants has disputed the locus standi of the complainant to file the complaint as the Company could not be treated as a consumer as defined who has purchased the tyres for fleet of cars being used for commercial purposes. Prima facie, the argument appears to be fancy, however, on close scrutiny of the documents produced, we find that there was guarantee attached to the contract of sale of such goods as contained in the bill (Ex. C-2).

It reads as under : "Guarantee for any manufacturing defect is liable as per Company''s specifications. No counter claim will be accepted."

Since it is not a simple case of sale of goods that the element of commercial activity for which the goods were purchased could be considered relevant that the Company cannot be treated as a consumer. The guarantee or warrantee attached to such a contract makes such a contract a compact contract of sale of goods and for hiring services. In this context, reference be made to the decision of this Commission in New Bhandari Hospital v. Logicstat International Pvt. Ltd., 1998 CCJ 1065. The ratio of the decision of the National Commission in Amtrex Ambience Ltd. v. Alpha Radios, I (1996) CPJ 324 (NC)=1997 CCJ 649 (NC), as above was relied upon. The purpose of giving guarantee is to replace the defective goods within the period as specified. Such being the position, the complainant would be a consumer as defined under Section 2(1)(d)(ii) of the Consumer Protection Act for which the element of commercial activity is irrelevant.

3. THE further question for consideration is as to whether there was any manufacturing defect in the tyre for which compensation has been granted. No doubt, the opposite parties in their letter Annexure C-4 as referred to above reported fitment damage, however, on that account the tyre would not have deflated as is the case of the complainant in the complaint and its tube would not have damaged. Thus, it is held that there was manufacturing defect in the tyre while affirming the finding of the District Forum in this respect. THE grant of compensation is just which does no call for interference in the appeal. For the reasons stated above, this appeal is dismissed with costs of Rs. 500/-. Appeal dismissed.