
(1991) 05 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

BILLA MALI

APPELLANT

Vs

SECRETARY, R.S.E.B, JAIPUR

RESPONDENT

Date of Decision : 31-05-1991

Acts Referred:

Citation : 1991 2 CPJ 495 : 1991 2 CPR 563

Hon'ble Judges : S.K.Mal Lodha , Damodar Thanvi , Saria Khan J.

Final Decision : Appeal dismissed

Judgement

1. THE unsuccessful complainant has filed this appeal under Section 15 of the Consumer Protection Act, 1986 ("the Act") against the order of the dismissal of the complaint dated 17.10.1990 passed by the District Forum, Jaipur in Complaint Case No. 22/90.

2. FACTS leading to this appeal lie in a narrow compass. The husband of the complainant was late Shri Birdha Mali. She is his widow. On her farm there is an electrified tube well. Electricity is supplied by AEN, RSEB, Vishkarma Jaipur. Her account No. is 21 -B 128 FR in her late husband Sedu Birdha Mali's name. One Murrah she-buffalo belonging to the complainant is said to have died on 15.5.1988 at 10 A.M. due to electrocution. It is said that this has happened due to defective electric installation. It will be relevant to quote para 2 of the complaint which is as under : "That the loss of Buffalo has been caused due to negligence on the part of R.S.E.B. as mandatory safety precautions as per Indian Electricity Rules, 1956, were not taken in maintaining the electric installation at my farm."

The incident was reported by depositing Form No. 44 A duly filled with the Chief Electrical Inspector. No report is said to have been received from the Chief Electrical Inspector to the Government of Rajasthan. The complainant has alleged that the she buffalo was a source of her livelihood. She has claimed the cost of the she-buffalo and other consequential loss which have been assessed as Rs. 17,000/-. Notice for compensation was given but nothing was done. The complainant has prayed that compensation may be awarded and defective

installation be ordered to be rectified immediately. The complaint was filed on 4.1.1990. No documents were produced with the complaint.

The opposite party-respondent resisted the complaint. It was averred that on account of electricity no loss to the she-buffalo was caused on 15.5.88 at 10 A.M. The allegations of carelessness and negligence on the part of the employees of the opposite party were denied. There was complete denial in the version of the case. In support of the version of the case affidavit of Shri Ramesh Chand Mehdiratta, AEN, RSEB was filed. Thereafter, affidavit of the complainant which was varified on 5.9.1990 was submitted. The affidavits filed by the parties are in support of their respective pleadings.

3. THE District Forum heard the arguments on 11.10.1990 and passed the impugned order on 17.10.1990 dismissing the complaint. It held that the complainant has failed to substantiate the allegations made in the complaint. Hence this appeal. The complainant-appellant has filed her affidavit in support of the appeal, on 13.3.1991 an application with a photograph was submitted by the learned counsel for the appellant. This application contains by and large arguments in support of the appeal.

4. WE have heard Mr. Sanjiv Pandey learned counsel for the appellant and Mr. G.C. Garg, learned counsel for the respondent and considered the record and the order appealed against in the light of the submissions made by the learned counsel for the parties. Mr. Sanjiv Pandey, learned counsel for the appellant has urged : 1. that the burden of proof was on the opposite party-respondent to prove that there was no defect in the electric line and that it was laid down in accordance with Rule 90(2) of the Indian Electricity Rules, 1966 ("Rules"). In other words he submitted that there was violation of Rule 90 of the Rules. The respondent has failed to prove that installation was safe. The District Forum went wrong when it observed that the complainant has failed to substantiate the allegations made in the complaint. 2. that the photo which he has presented before the State Commission with the application shows that the ill-fated pole at the farm did not have the safety device due to which she-buffalo of the complainant was electrocuted. He placed reliance on (1987) 1 S.C. 395 and submitted that the District Forum should have awarded. Compensation cost etc. as the complainant was entitled. Mr. G.C. Garg, learned counsel for the opposite party-respondent supported the order under appeal. We have carefully read the complaint filed by the complainant. Para 2 of the complaint has already been extracted above. It was stated in the complaint that the complainant has taken photo of the defective installation and has strong evidence to prove the criminal negligence on the part of the RSEB due to which the complainant has suffered loss. As stated above the complainant did not produce any evidence before the District Forum. She merely submitted her affidavit in support of the complaint. After the filing of the affidavit of the officer in charge of the opposite party. The District Forum was of the opinion that there is oath against oath and so the complainant has failed to prove the allegations made against the opposite party.

The photo was not produced before the District Forum. After the filing of the version of the case, under Section. 13(2)(b) the District Forum has to decide the consumer dispute on the basis of the evidence brought to its notice by the parties where the opposite party denied or disputes the allegations contained in the complaint. As stated above, the complainant did not produce any independent evidence in support of the complaint when the opposite party has denied the allegations made in the complaint on oath. In the original complaint what has been stated is that loss of the she buffalo was caused on account of negligence on the part of the RSEB as mandatory safety precautions as per the Rules were not observed in maintaining the electric installation at the farm. Our attention was invited to Rule 90 of the Rules, which deals with earthing. It reads as follows : "(1) All metal supports and all reinforced and prestressed cement concrete supports of overhead lines and metallic fittings attached thereto, shall be permanently and efficiently earthed. For this purpose a continuous earth wire shall be provided and securely fastened to each pole and connected with earth ordinarily at three points in every km. the spacing between the points being as nearly equidistant as possible. Alternatively, each support and the metallic fitting attached thereto shall be efficiently earthed. (1-A) Metallic bearer wire used for supporting insulated wires of low and medium voltage/overhead/service lines shall be efficiently earthed or insulated. (2) Each stay-wire shall be similarly earthed unless an insulator has been placed in it at a height not less than 3.0 metres from the ground."

5. THE grievance as has been made by the complainant-appellant in the appeal is that there was contravention of Rule 90(2) of the Indian Electricity Rules, 1956 namely, that stay wire has to be similarly earthed unless an insulator has been placed in it at a height not less than 3.0 metres from the grounds. No material has been placed by the complainant on the record to show that the stay wire was not earthed and that there was violation of Rule 90(2) of the Rules. What was the defect in the electric installation or line or stay wire has not been pointed out by the complainant in the complaint. Even before us no defect as such was pointed out.

6. UNDER Section. 13(2)(b) the complaint has to be decided on the basis of the evidence produced by the parties. The District Forum after considering the affidavits of the parties did not rely on the affidavit of the complainant in regard to violation of the conditions laid down in rule 90(2) of the Rules. Even that affidavit is also silent on the point regarding breach of R. 90(2) in this case. The District Forum did not believe the affidavit of the complainant and rejected the complaint for want of proof. Initially the burden of proof about the defective installation or violation of Rule 90(2) of the Rules was on the complainant which she failed to discharge and, therefore, there was nothing wrong when the District Forum dismissed the complaint. So far as (1987) 1 SCC 395 is concerned, it deals with the Rule of strict liability in matters of torts. The District Forum was right in dismissing the complaint on the ground that the allegations made in the complaint have not been proved by the complainant.

It may also be observed that the complainant has not substantiated her claim in regard to the award of compensation. Compensation can only be awarded on the basis of well recognised principles in regard to the award of compensation. Learned counsel for the appellant rest contented by citing the above authority.

7. WE may however, observe that safety measure in regard to the laying down of the electric lines should be observed by the Electric Department. The complainant has filled Form No. 44 A and submitted it to the Chief Electric Inspector reporting the incident but nothing was done in the matter. The complainant's well is electrified. The electric energy is supplied to the complainant from one pole. Statutory duties are cast on the Board to comply with the conditions laid down in Rule 90 of the Rules and the Board is bound to follow them. It is hoped that the defects pointed out by the complainant more particularly mentioned in ground No. 3 of the memo of appeal should be rectified and the necessary safety precautions should be observed and the defect installation if any, should be rectified. If any request is made by the complainant to the Chairman, R.S.E.B., Jaipur to compensate her on account of the death of her she-buffalo, it is hoped that it will sympathetically be considered by him.

8. THERE is no force in this appeal. It is consequently dismissed. Parties shall bear their own costs. Appeal dismissed.