

(2011) 03 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

Bio-Med Pvt Ltd

APPELLANT

Vs

Rumi Saikia

RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Citation : 2011 3 CPJ 402

Hon'ble Judges : R.K.Batta , Vinay Kumar J.

Final Decision : Revision dismissed.

Judgement

1. HEARD Counsel for the Petitioners on admission. No notice was issued in this matter to the Respondent nor she has filed any caveat. Counsel for the Petitioners submitted before us that the Petitioners had filed detailed written statement which was not considered by the District Forum while deciding the matter on merits; that the transaction in question was commercial transaction and no expert opinion has been filed by the Complainant. He further submitted that the State Commission dismissed the appeal on the ground that copy of the impugned order was received by the Petitioners on 23.2.2009 and unduly very long time was taken in filing the appeal. According to learned Counsel for the Petitioner the copy of the order of the District Forum which was annexed along with appeal had been received by the Petitioner along with execution application filed by the Complainant and the said copy had not been applied by the Petitioners. He, therefore, contends that the order of the Fora below is required to be set aside. On the question of delay he has placed reliance judgment of the Apex Court in Housing Board, Haryana v. Housing Board Welfare Association and Others, III (1995) CPJ 28 (SC).

2. THE complaint was filed on 25.11.2005. The case of the Complainant is that the Complainant is self employed and was running piggery farm. The Complainant had purchased 13 vials of swine fever vaccine from the Opposite Party Nos. 3, 4, 5 and 6, which were manufactured by Opposite Party Nos. 1 and 2, for a sum of Rs. 1,255. The said vaccine was given to 65 pigs. However, in spite of vaccination, the pigs died due to swine fever resulting in loss of Rs.

4,98,000 being the price of the said pigs. All the Respondents had filed written statements, but after that none of them contested the proceedings any more. The Complainant filed affidavit evidence dated 23.3.2006. Thereafter, the Complainant filed affidavit evidence of Dr. Raju Kalita, Dr. Bhupen Das, Dr. Pranjit Baruah and Dr. Dilip Sarma. The Petitioner also filed the post-mortem report of the pigs.

3. RELYING upon the affidavit evidence filed by the Complainant, the District Forum ordered payment of compensation of Rs. 4,98,000 for loss due to death of pigs, besides, Rs. 5,000 towards cost of litigation. The District Forum held that the vaccine, in question, has been manufactured by Opposite Party Nos. 1 and 2. The District Forum after going through the evidence of veterinary expert came to the conclusion that the vaccine manufactured by Opposite Party Nos. 1 and 2 was ineffective which caused the death of the pigs. The District Forum also relied upon the examination of the kidney and spleen samples of the dead animals.

4. THE State Commission dismissed the appeal on the ground of limitation as also that no case was made out on merits of the matter.

5. INSOFAR as the submission of learned Counsel for the Petitioners relating to condonation is concerned, it appears that certified copy of the judgment which was enclosed with the appeal had been received by the Petitioners along with execution application. It further transpires that the said copy have been applied for by the Complainant and in fact on query being made by this Commission with the District Forum it has been informed that the certified copy of the order was issued to the Complainant. Therefore, we find that the dismissal of the appeal on the ground of condonation of delay in filing the appeal cannot be sustained. In fact, Counsel for the Appellants had argued before the State Commission that the matter should be considered on merits and the State Commission should look into the merits of the matter as well. The State Commission noticed that the appellants after filing written statement did not appear before the District Forum and the ex parte order of the District Forum was passed upon material on record.

6. WE have to bear in mind that the proceedings before Consumer Fora are in the nature of summary proceedings and are required to be disposed of within the given time frame. The aim of the Consumer Protection Act, 1986 is to provide speedy and inexpensive remedy to the consumers. In view of this, we have examined the submission of the Counsel for the Petitioner that the District Forum did not consider the evidence on record. According to learned Counsel for the Petitioner, the Petitioner had filed written statement duly supported by affidavit which was not considered by the District Forum or by the State Commission.

7. WE have already pointed that after filing written statement on 2.2.2006, the Petitioner did not bother to appear before the District Forum to contest the matter on merits. The written statement even though supported by affidavit cannot be considered as evidence since no affidavit evidence as required was filed by the Petitioners. On the other hand, Complainant had examined herself

and a number of witnesses to prove her case. The Complainant with her evidence has established that she was self employed; 13 vials of swine fever vaccine were purchased from Respondent Nos. 3 to 6 for Rs. 1,255.32 which had been manufactured and marketed by Opposite Party Nos. 1 and 2, namely, the Petitioners; the said vaccine was given to all the pigs; sample of kidney and spleen of affected died pigs was sent to Department of Microbiology, Guwahati. The Complainant has also produced the post-mortem reports besides evidence of Dr. Raju Kalita, Dr. Bhupen Das, Dr. Pranjit Baruah and Dr. Dilip Sarma.

8. DR. Raju Kalita corroborates the version of the Complainant. He states that Dr. Pranjit Baruah was called for treatment who had also conducted post-mortem of the pigs. He also states that the sample of kidney and spleen of the affected died pigs was sent to Dept. of Micro-Biology, Guwahati and report was received from Dr. D.K. Sharma which proved that the pigs expired due to swine fever. Affidavit evidence of Dr. Dilip Sarma has also been filed who has stated that he has examined the samples of kidney and spleen and found the same positive for swine fever virus antigen. Affidavit of Dr. Pranjit Baruah was also filed who has stated that he had conducted post-mortem of the pigs and according to him the death was due to "Septicaemic Disease" which was later confirmed as "Swine Fever Disease". He has stated in his affidavit that he has conducted post-mortem of 65 pigs who had died.

9. THE Complainant had also examined Dr. Bhupen Das who has also stated that he had visited the Piggery Farm for the purpose of treatment and he along with Dr. Raju Kalita , Dr. Pranjit Baruah had given symptomatic treatment to the affected pigs.

10. THUS, the evidence produced by the Complainant established beyond any doubt that the vaccine, in question, was ineffective and in spite of vaccination of the pigs, the pigs died due to swine fever. The evidence led by the Complainant was, thus, sufficient to allow the claim of the Complainant. The Petitioners had full opportunity to participate in proceedings before the Fora below after filing of the written statement on 2.2.2006 till the matter was finally decided by the District Forum on 22.2.2009. The Petitioner did not appear before the District Forum and the evidence led by the Complainant stood unchallenged. The written statement though verified by an affidavit, obviously cannot be considered as affidavit evidence for the purpose of decision of the matter.

11. IN view of the above, we do not find any force in the submissions of learned Counsel for the Petitioners, insofar as merits of the matter is concerned and in our opinion no case is made out for interference since the findings are based upon material evidence on record. In view of this, the revision is hereby summarily dismissed with no order as to costs.

12. THE sum of Rs. 5,03,200 which has been deposited by the Petitioner before this Commission in terms of order dated 13.9.2010, which was ordered to be deposited in fixed deposit, be paid to the Complainant after the maturity of the

said deposit, if the same has been invested in fixed deposit, or even prior to maturity if the Complainant so desires. Revision dismissed.