
(1991) 10 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

CHAMAN SINGH FAUJDAR

APPELLANT

Vs

GERMAN REMEDIES LTD

RESPONDENT

Date of Decision : 10-10-1991

Acts Referred:

Citation : 1992 1 CPR 603 : 1992 2 CPJ 915

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

Final Decision : Complaint partly allowed

Judgement

1. SHRI Chaman Singh Faujdar and his mother (complainants) have filed this complaint under Section 17(a)(i) of the Consumer Protection Act, 1986 ("the Act" herein) before the State Commission on 3.8.1990. Opposite Party no. 1 is the German Remedies Ltd., Shivsagar Estate, A-Block, Dr. Anibesent Road, Bombay (manufacturer and opposite party no. 2 is SHRI Medicos, Gangapur City (Sub-Dealer). The complainants have prayed that the opposite parties may be directed to pay a sum of Rs. 2,00,001.62 for the negligence, carelessness and unreliable medicine and also to punish them and the project of opposite party no. 1 may be ordered to be closed. Facts leading to this complaint, briefly put, are these:-

2. COMPLAINT no. 2 is the mother of complainant No. 1. Her age as stated in the complaint is 55 years. It has been alleged that complainant No. 1 purchased one ampoule of Deriphyllin injection which is manufacture by opposite party No. 1 from opposite party No. 2 vide cash memo No. 2090 dated 2-10-1989. Three other medicines were also purchased vide that cash memo. The cost paid by the complainant No. 1 for the ampoule of the injection was Rs. 1.62. The injection is said to have been purchased for the use of complainant No.2 by complainant No. 1 and so according to the complainant No. 2 is also a consumer. The injection was sold by opposite party No. 2 (Sub-dealer) to complainant No. 1. Complainant No. 2 was suffering from ailment for the last 12 months from the date of the filing of the complaint. Dr. R.C. Totuka (Retd.) wrote on a slip four medicines including the injection. Photo stat copy of the prescription of the Dr. R.C. Totuka has been produced by the complainants with the complaint. The injection was to be given

intravenous. After the purchase of the injection which is of Batch No. 414 expiry date being 5/94. The doctor made preparation for injection but he saw some black pieces in the ampoule and told and complainants that there is some foreign material in the ampoule. It is said that as the injection was to be given intravenous there was positively danger to life. The mother of complainant No. 1 as soon as she heard about this from the doctor she became unconscious and after several hours she recovered consciousness. She lost her mental balance. To use the words from the complaint - "DOCTOR DWARA IS PRAKAR KI VASTAVIK STITHI KO SUNTE HI PRARATHI KI MA SHRIMATI CHOTI PRARATHI SANKHYA 2 BEHOSH HO HAYEE AUR KAYEE GHANTO TAK UNHE HOSH NAHE AAYA KYONKI UNKE DIL KO BHAYANKAR AAGHAT PAHUNCHA TATHA MANSIK SANTULAN VICHLIT HO GAYA BHAVISHYA KE SAMBHAVIT KHATRE KE BHAYA SE KAMPTI UNKI AAWAZ LADKHADANE LAGI AUR YAHA SAB APRARATHI DWARA NIRMIT ** DOSHPURN AVAM GHATIYA KISM KE NIRMAN KE KARAN HUA JISKE LIYE APRARATHI COMPANY PURN RUPEN JIMMEDAR HAI." The doctor sealed the ampoule and gave a certificate to the complainant dated 1-10-1969 mentioning that injection Deriphyllin Batch No. 414 date of manufacture 6/89, expiry dated 5/94 has a foreign material and as such unfit for human consumption. It was also stated by him that the ampoule has been sealed by him. The complainants have filed the complaint alleging that the ampoule containing the liquid for injection was defective and dangerous to human life and as complainant No. 2 had a shock after hearing about the foreign material in the ampoule, the complainants filed the complaint claiming Rs. 2,00,000/- as compensation and refund of Rs. 1.62. No version of the case was filed on behalf of opposite party No. 1. However, learned Counsel for opposite party No. 1 submitted a letter dated 7.12.1990 on behalf of opposite party No. 1 in which it is stated that there is no case to answer because no damage has been done and that the quality assurance Department of opposite party No. 1 has analysed the ampoule from the control batch in respect of Batch No. 414 and has given clearance about the contents of Deriphyllin injection ampoule from Batch No. 414 that is Batch which has been referred to. Opposite party No. 2 submitted a version of the case on 10-1-1991. It was stated that it has sold the ampoule in question to the complainant but it is not liable for the simple reason that the ampoules were manufactured by opposite party No. 1. and if there is any defect in it, opposite party No. 1 is liable. No compensation can be awarded against it.

In support of the complaint, complainant No. 1 submitted this affidavit dated 19.2.1991. The contents of the affidavit are similar to the averments made in the complaint by the complainants. Hanumant Singh son of Chaman Singh Faujdar submitted the affidavit in support of the version of the case filed on behalf of opposite party No. 2. Parties did not submit any other evidence except the affidavits referred to hereinabove. They closed the evidence on 3-6-1991. We heard Mr. V.K. Gupta, Advocate for the complainant and Mr. S.D. Bansal Advocate for opposite party No. 2. Nobody appeared on behalf of opposite party No. 1.

3. DURING the course of arguments learned Counsel for the complainant invited

our attention to Section 13(1)(e) and submitted that if the Commission thinks fit the contents may be got examined by a Public Analyst. After consideration the request made by the learned Counsel for the complainant, the complaint was adjourned. On 25.9.1991 the sealed envelopes containing the ampoule was opened for the perusal of the Commission. It was noticed that the ampoule contained some foreign material. Thereafter the opened sealed envelope together with the ampoule in the packet were placed in the envelope and the envelope was sealed. The questions crop up for our consideration in this complaint:- 1. Whether the ampoule purchased by complainant No. 1 for the use of complainant No. 2 from opposite party No. 2 vide bill No. 2090 dated 2.10.1989 was defective? 2. If so to what compensation the complainants are entitled?

Defect has been defined in Section 2(1)(f) of the Act as under :- "Defect" means any fault, imperfection or shortcoming in the quality, quantity, purity or standard which is required to be maintained by or under any law for the time being in force or as is claimed by the trader in any manner whatsoever in relation to any goods." It appears from the definition that the clear intent was to give the widest amplitude to the word "defect" pertaining to goods for the purpose of this Statute. The word "defect" is not to be interpreted by any narrow or technical limitations. It is couched in the widest horizon of there being any kind of fault, imperfection or shortcoming. To our mind it appears that the legislature in employing the three words was potently casting its net to wide as to bring within its import every deviation from the requirement spelt out in the latter part of the definition. Again, each one of these faults, imperfection or shortcoming may be individually related to either of the four things specified namely the quality, quantity, potency, purity or standard of the goods. From the definition it is abundantly clear that it has to be construed liberally. There are two aspects regarding quality, quantity, potency, purity or standard as mentioned in the definition. Firstly the same may either be required to be maintained by any law or rules for the time being in force. Secondly, where there is no such statutory mandate, then in the alternative these requirements are to be tested on the anvil of what is claimed by the trader in any manner whatsoever in relation to any goods. This obviously means that such claim may be either express or implied. Having carefully examined the definition of the defect, it is with regard to the standard required to be maintained by law or in the alternative as claimed by the trader expressly or impliedly in any manner whatsoever. They are to be read disjunctively. It can obviously be so where there is no specific prescription of statute, but the deviation is from a standard, which is claimed by the trader in any manner whatsoever.

4. THE doctor in his certificate which has been produced by the complainant has clearly stated that injection Deriphyllin Batch No. 414 manufactured on 6/89 expiry date being 5/94 has a foreign material and as such it is unfit for human consumption. Complainant No. 1 Chaman Singh has supported the certificate of the doctor. We have ourselves seen the ampoule and we find that the certificate

issued by the doctor to complainant No. 1 that the ampoule contains some foreign material is correct, for, some foreign material is clearly visible in the ampoule in question when observed by a naked eye. Thus, it cannot be said that the ampoule was of standard which was expected and claimed by the trader. There was deviation from the standard. Section 16(2) of the Sale of Goods Act, 1930 deals with implied conditions as to quality or fitness including the merchantability of the goods sold. It is trite learning of the Sale of Goods Act based and modelled on the earlier English Sale of Goods Act, 1886 and in substantial parts is so with the later English Sale of Goods Act with regard to the implied conditions as to the quality the fitness and merchantability of the goods. In *Wormell v. RHM Agriculture "(East) Ltd.*, 1986 (Vol. 1) All England Law Reports 769 the learned Judge after exhaustive discussion observed as under : "I have, therefore, come to the conclusion that one can only give a sensible meaning to the word "goods" in a case such as the present if one takes "goods" to mean the package of the chemical with its instructions. All of those, it seems to me, are part of the goods. One must look at all of them as a whole to see if they are of merchantable quality, and in particular whether they are reasonably fit for the purpose for which they are sold."

Thus the ampoule in question sold to complainant No. 1 suffered from a defect within the ambit of Section 2(1)(f) of the Act, for, it was unfit as intravenous injection inasmuch as there was a foreign material in it. The first question formulated by us hereinabove is answered in the affirmative. The second question is with regard to award of compensation to the complainants. Section 14(1)(d) of the Act provides that if on account of the negligence of the opposite party if a consumer suffers injury or loss reasonable compensation may be awarded. Let us analyse the averments made in the complaint in this regard. It has been stated by the complainant in para 2 that as soon as the doctor told that there were some black pieces floating in the ampoule and that it is unfit for intravenous injection complainant No. 2 who is mother of complainant No. 1 became unconscious and she did not recover her consciousness for hours. She received a severe blow and lost the mental balance. According to the complainants all this caused mental harassment, torture and agony to the complainants for which they have assessed loss to the tune of Rs. 2 lakhs. No evidence whatsoever has been led by the complainants except that of the affidavit of Chaman Singh. The affidavit of complainant No. 2 was not submitted. Dr. R.C. Totuka was not examined as witness. His affidavit was also not filed. The affidavits of complainant No. 2 and of Dr. R.C. Totuka would have thrown considerable light in regard to the averments made in paras 7, 8, 9 and 10 of the complaint. There are certain well recognised principles for the award of compensation and its quantification. The assessment of compensation has to be made on the basis of the material on record that may be in the shape of direct or circumstantial evidence. The age of complainant No. 2 is 55 years. Derriphyllin injection was not given intravenous to complainant No. 2 as merely after looking at the ampoule the doctor observed that there were some black pieces floating in

it. Even the ampoule was not opened and it was put in the sealed envelope. A plea to the effect that having come to know about the real position complainant No. 2 became unconscious and she did not recover consciousness for hours together and left mental balance could also be best supported by Dr. R.C. Totuka who was present at that time. He has merely stated in the certificate that there is a foreign material in the ampoule and as such it is unfit for human consumption. Having considered the facts and circumstances of the case and the principles laid down by the National Commission in catena of cases under Section 14(1)(d) of the Act we are of opinion that it would be reasonable, just and fair to award a sum of Rs. 500/- as compensation to the complainants for the defective Deriphyllin ampoule which was purchased at the price of Rs. 1.62. The complainants have also claimed the refund of price of the ampoule. After considering bill No. 2090 dated 2-10-1989 and the affidavit of Chaman Singh Faujdar (complainant No. 1). as the ampoule was defective, we give a direction under Section 14(1)(c) of the Act to refund its price amounting to Rs. 1.62. Thus in all the complainants are entitled to Rs. 501.62 from the manufacturer-opposite party No. 1.

5. THE ampoule was manufactured by opposite party No. 1. Opposite party No. 2 as Sub-dealer has merely sold it and therefore, no liability can be fastened on opposite party No. 2.

6. BEFORE parting with the case it may be stated that the averment in the letter dated 7-12-1990 that the Quality Assurance Deptt. of opposite party No. 1 has analysed the ampoule from the control batch in respect of Batch No. 414 and had given clearance about the contents of the Deriphyllin injection from Batch No. 414 will not help opposite party No. 1 at all because the question which arose for determination was whether the ampoule of Batch No. 414 manufactured by opposite party No. 1 contained the foreign material in it as alleged by the complainants to which we have already recorded a finding that it contains a foreign material in the shape of small black pieces floating in the liquid of Deriphyllin. The result is that opposite party No. 1 is directed to pay a sum of Rs. 501.62 to the complainants within one month from the date of the receipt of the order failing which resort will be made to Section 27 of the Act. The complaint against Opposite Party No.2. is dismissed. Rest of the claim made by the complainants is also dismissed. There will be no order as to costs. Complaint partly allowed.