

(1998) 01 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

CHIEF SUPERINTENDENT OF TELEGRAPH OFFICES

APPELLANT

Vs

SMN CONSUMER PROTECTION COUNCIL

RESPONDENT

Date of Decision : 21-01-1998

Acts Referred:

Citation : 1998 2 CPC 477 : 1998 2 CPJ 159 : 1998 3 CPR 56

Hon'ble Judges : E.J.Bellie , Pulavar V.S.Kandasamy , Angel Arulraj J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is by the opposite party Chief Superintendent of Telegraph Offices, Central Telegraph Office, Chennai, against whom an award has been passed by the District Forum. The 2nd complainant (1st complainant is SMN Consumer Protection Council) sent a telegram on 19.5.1995 from Avadi to one Mrs. Uma Bharathan at No. 4, III Cross, Kamaraj Colony, Hosur. The case of the complainant is that the telegram has been returned undelivered stating that the addressee has left without leaving the address "though she was very much available in that address. The telegram was a "Wedding Greetings". The complainant and four of his family members went all the way from Madras to Hosur to personally greet the addressee. On account of the conduct of the opposite party the complainant sustained financial loss and also mental agony. On these grounds the complaint was filed.

2. THE opposite party contended that the telegram was taken by the telegraph messenger at Hosur three times to the address mentioned in the telegram, but the addressee was not available and therefore it had to be returned. It was further contended that in any event, the opposite party is not liable to pay compensation in view of Section 9 of the Indian Telegraph Act and Rule 5 of the Indian Telegraph Rules. THEREfore, the complaint is liable to be dismissed. The District Forum, on consideration of the evidence, upheld the case of the complainant that there was deficiency in service on the part of the opposite party, and that Section 9 of the Indian Telegraph Act and Rule 5 of the Indian Telegraph Rules were not applicable to this case. Then it held that considering

the circumstances of the case, it would be proper to fix the compensation at Rs. 500/-. Accordingly it passed an award with a cost of Rs. 250/-.

Now in the appeal, it is contended that the order of the District Forum is against the evidence and the probabilities of the case and is also against the law, and hence it is not sustainable as correct. The learned Counsel appearing for the appellant/ opposite party has brought to our notice an order of the National Commission reported in *Union of India & Anr v. Tej Bhan. I* (1996) CPJ 237 (NC)=1996 (1) CPR 88, wherein it has been held to the effect that under Section 9 of the Indian Telegraph Act, for the non-delivery of the telegram the Government cannot be held liable unless it is proved that there was mischievous act or mala fides on the part of the Department. In the present case, there is no allegation that there was any mischievous act or mala fides on the part of the Department. Further, Rule 5 of the Indian Telegraph Act reads as follows: "5. The accuracy of telegrams is not guaranteed, and all telegrams shall be deemed to be sent subject to acceptance by the sender of all risks arising from non- delivery, errors or delay."

From this rule, it is clear that the telegram sent shall be deemed to have been sent subject to the acceptance of the sender of all risks arising from non-delivery, errors or delay. So long as this rule is there, we do not think that in a case like the present one, we can order the opposite party to pay any compensation. We find that in law, apart from the merits of the case, the complaint cannot be maintained.

3. IN this view of the matter, we allow the appeal, set aside the order of the District Forum and dismiss the complaint. However, there will be no order as to costs. Appeal allowed.