
(2015) 04 NCDRC CK 0201

In the National Consumer Disputes Redressal Commission

Case No : 89 of 2006

Deepti Singh

APPELLANT

Vs

Director Deptt Of Tourism Park

RESPONDENT

Date of Decision : 28-04-2015

Acts Referred:

Citation : (2015) 04 NCDRC CK 0201

Hon'ble Judges : V.K.JAIN J.

Advocate : GAURAV MITRA , Varun Arora , DEEPALI DWIVEDI , M.GIREESH KUMAR

Final Decision : Consumer complaint allowed.

Judgement

1. LATE Shri Satyendra Pratap Singh, husband of complainant No.1 and Father of complainant Nos. 2 and 3 arrived at Hotel Samudra, Kovalam, owned by the opposite party, on 21.3.2006. He entered the swimming pool of the aforesaid hotel and got drowned in the said pool between 6.30 P.M. to 7.00 P.M. on that day. According to the complainants, the deceased lost his life on account of negligence on the part of the opposite party, since no lifeguard was present at the swimming pool, at the time Mr. Satyendra Pratap Singh got drowned, though a number of tourists, including children used to frequent the said pool. According to them, had a lifeguard present at the pool at the relevant time, late Shri Satyendra Pratap Singh would have been rescued and would have been alive. It is also alleged in the complaint that the deceased was brought out of the pool by a foreign tourist and not by the officials of the hotel. Alleging negligence on the part of the opposite party, the complainants are claiming compensation to the extent of Rs.2,20,00,000/- . This is also their case that the deceased was earning Rs.1,56,000/- per annum on an average in addition to the income of about Rs.39,000/- per annum from agricultural activities.

2. THE complaint has been resisted by the opposite party primarily on the ground that the deceased did not die due to any negligence on their part. It is alleged in the reply that a lifeguard is always put on duty at the swimming pool, who also

functions as a bar attendant. It is further alleged that on the date of this incident, the deceased, along with his family members and kids went to the pool at about 6.30 P.M. and all of them were in the pool. Two persons were on duty in the pool bar and outside, out of whom one was acting as lifeguard. The deceased, while swimming suddenly became unconscious and sank into water. Initially, it appeared as if he was diving but a foreigner who was swimming on that side found him sinking and immediately jumped into the pool, before the lifeguard could reach near the deceased the foreigner pulled him and the deceased was taken out from the water jointly by the lifeguard and the foreigner. The deceased was taken to the hospital where he was declared dead at about 9.30 P.M.

3. IN her affidavit by way of evidence, complainant No.1 Mrs. Deepti Singh stated that at the time of tragedy there was no lifeguard at the pool and the body of the deceased was brought out of the water by a foreign tourist and not by any official of the hotel. The opposite party has filed the affidavit of its Managing Director Mr. Ali Asgar Pasha by way of evidence. In his affidavit, Mr. Pasha stated that a lifeguard has always put on duty, who also functions as bar attendant. He has also stated that while in the pool, late Shri Satyendra Pratap Singh became unconscious but a foreigner who was swimming on that side found him sinking and immediately a lifeguard jumped into pool. According to Mr. Pasha, before the lifeguard could reach near the deceased, the foreigner pulled him and he was taken out of the water jointly by the lifeguard as well as the foreigner.

4. IT is not in dispute that the opposite party was mandatorily required to deploy a lifeguard at the swimming pool. The complainant has placed on record Safety Norms for Swimming Pools issued by National Institute of Water Sports, Ministry of Tourism, Government of India. To the extent the said norms / regulation are relevant they read as under: "Section:4

Lifeguarding

Pool Lifeguard

Scope : The regulations contained below are applicable for lifeguarding at swimming pool, Water Park and Lake -front. The stipulations are being framed to ensure that the people/participants enjoy swimming/water -borne activities and are free from fear of safety and security.

Life Guarding Instructions:

Duties should not exceed 4 hours at a time

Area under observation should not exceed 50 meters. More than one observation post must be provided for longer/bigger swimming pools or water parks

Lifeguard on active duty should not be distracted while on duty. No other job shall be assigned to while they are on pool duty.

Lifeguard should be familiar with standard communication signals.

An emergency Action Plan (EAP) should be drawn up covering all types of emergencies, which inter alia specify the role of each member of the Pool Management. It should be recast periodically by incorporating necessary additions/modifications.

5. IT would thus be seen that in terms of the aforesaid regulation, no other job can be assigned to the lifeguard who is on pool duty, the purpose being to ensure that he does not get distracted while on duty and is able to keep an uninterrupted and constant watch on those who are using the swimming pool. Such users comprise not only male adults but also females and children. If a person posted at the swimming pool of a hotel is given dual charge, one of working as a lifeguard and other of a bar tender, it will not be possible for him to concentrate on the movements of the persons using the swimming pool at a given time. While attending the duties of a bar tender, such a person has necessarily to go to the bar as well as to the tables of the guests, on a regular basis. During the aforesaid time, he would not even know who are using the swimming pool and whether anyone requires help from him or not. Since at the time he is working as a bar tender, he cannot keep a close watch on the swimmers, it is not possible for him to respond instantly in case help is required by a swimmer, and by the time he enters the pool to rescue a swimmer in need, it may be too late.

6. IF the lifeguard is not entrusted with any other duty and his attention is constantly engaged towards swimming pool, he would be able to notice immediately, if a swimmer sinks all of a sudden and is not noticed coming out, even if such a swimmer does not raise an alarm and seek help from the lifeguard. We need to keep in mind that the lifeguard is not an ordinary swimmer. As per the norms laid down in the above referred regulation, he should be able to swim 100 meter in two minutes without resting, by way of crawl or breast stroke; he should be able to dive 08 inch deep and bring up a 5 Kg. weight to the poolside/bank and he should be able to tread without moving the legs for minimum 01 minute. The person who get appointed as a lifeguard needs to possess a valid Lifesaving Technique Certification from the agencies like National Pool and Water Parks and Association and Safety Council. Such certification is granted after a two day Revalidation course to confirm that he meets the stipulated physical fitness and rescue standards.

7. IT is an admitted case that it was a foreigner who noticed the deceased sinking and pulled him. Had the lifeguard not been entrusted with the duty of a bar tender, his attention would have been constantly drawn towards the swimming pool and the moment deceased Satyendra Pratap Singh went down, he would have noticed the sinking and immediately jumped to his rescue. Though, the foreign tourist did pull the deceased, It is not known, what was the time lag between the deceased becoming unconscious and his being pulled by the said tourist. I cannot lose sight of the fact that the tourist would be

concentrating primarily on his swimming and attention would not be on the other swimmers in the pool. It is only the lifeguard who is expected to keep all the swimmers under his constant watch so that he can go to their rescue if and when required by them.

8. A perusal of the post-mortem report of the deceased would show that he died on account of drowning. Neither he had any external injury on his body nor did he die due to any internal reason such as cardiac arrest or heart failure. If I proceed on the assumption that on account of some internal problem, the deceased fainted and therefore went down, there would always be a time lag between his fainting and dying, since it will take time for the water in the swimming pool to enter his body to the extent that it causes his death. Had the lifeguard not been assigned any other duty and his attention been drawn constantly and uninterruptedly to the swimming pool, he would have noticed the deceased sinking and would have been able to jump to his rescue and take him out of the pool before the water entered his body to an extent that it caused his death, on account of drowning.

9. THE case of the complainant is that the deceased was taken out of the pool only by a foreign tourist, whereas the case of the opposite party is that though initially the deceased was pulled by the tourist, he was taken out of the swimming pool jointly by the tourist as well as the lifeguards posted there. However, the opposite party, for the reasons best known to it, has not examined the aforesaid lifeguard to prove that he had jumped into the swimming pool though late and had taken the deceased out of the pool jointly with the foreign tourist. As noted earlier, the Managing Director of the opposite party is the only witness whose affidavit has been filed by the said party by way of evidence. It is not the case of the opposite party that its Managing Director Mr. Ali Asgar Pasha was present at the swimming pool of the hotel, at the time the aforesaid incident took place. Therefore, his deposition as regards the manner in which this incident took place would be hearsay only. Had the opposite party filed affidavit of lifeguard or some other official of the hotel present at the swimming pool, it would have been possible for this Commission to have a first-hand account of what really transpired at that time and how the deceased lost his life in the swimming pool of the hotel. This is more so, when the case of the opposite party is that not only the lifeguard but another official of the hotel was also on duty at the pool when this incident took place. No explanation has been given by the opposite party for not examining either the lifeguard or any other official of the hotel present at the swimming pool. Therefore, an adverse inference needs to be drawn against the opposite party that had the aforesaid officials been produced they would not have supported the case set out by it in the reply.

10. FOR the reasons stated hereinabove, I am satisfied that the opposite party was negligent in rendering services to late Shri Satyendra Pratap Singh and that had the lifeguard whom the opposite party claims to have posted at the swimming pool not been assigned the duty of a bar tender, it would have been

possible for him to jump in the swimming pool, as soon as the deceased went down and take him out well in time before he died.

11. COMING to the compensation payable to the complainants, the deceased at the time he died was about 35 years old as would be seen from his post-mortem report dated 22.3.2006. The income tax return of the deceased for the assessment year 2005 -06 would show that he had earned gross income of Rs.1,91,016/- in the aforesaid year.

12. IN *Balram Prasad Vs. Kunal Saha*, 2014 1 SCC 384, the Hon'ble Supreme Court awarded compensation based upon the income of the deceased coupled with 30% addition for future prospects, on the assumption that a healthy person would have lived upto the age of 70 years. 1/3rd of the income so computed was deducted on account of personal expenses of the deceased. Taking the income of the deceased at Rs.1,91,000/- per year, he would have earned Rs.66,85,000/- till the date of 70 years. On addition of 30% towards future prospects, the income of the deceased till attaining the age of 70 years comes to Rs.86,90,500/-. After deducting 1/3rd of the aforesaid amount towards his personal expenses the balance amount comes to Rs.57,93,667/-. The complainants therefore are entitled to a lump sum amount of Rs.57.00 lacs towards pecuniary damages. I also award compensation amounting to Rs.5.00 lacs to the complainants for their mental sufferings and agony and Rs.50,000/- towards loss of consortium. I also grant Rs. 20,000/- as the cost of litigation to the complainants.

13. FOR the reasons stated hereinabove, the opposite party is directed to pay a total sum of Rs.62,50,000/- to the complainants as compensation within six weeks from today, failing which the aforesaid amount shall carry interest @ 9% per annum with effect from six weeks from today, till the date of payment. The opposite party is also directed to pay a sum of Rs.20,000/- as the cost of litigation to the complainants.