
(2007) 01 GAU CK 0074
In the Gauhati High Court

Deputy Commissioner-cum-District Magistrate	APPELLANT
Vs	
District Consumer Forum and Another	RESPONDENT

Date of Decision : 30-01-2007

Acts Referred:

Consumer Protection Act, 1986 — Section 12, 2
Motor Vehicles Act, 1988 — Section 165

Citation : AIR 2007 Guw 94

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.H. Saikia, J.—Heard learned Counsel for the parties.

2. By means of this writ petition, the petitioner has challenged the order dated 30-8-2001 passed by the District Consumer Forum, Darrang, Mangaldoi in CPA No. 3(DM-2) 99 by which an award to the tune of Rs. 1,80,000/- was granted in favour of the claimant/respondent No. 2 due to his sufferance for the damage caused to the vehicle owned by him having been requisitioned by the Govt. of Assam through the Deputy Commissioner, Darrang for transporting the under trials from the District Jail, Mangaldoi to Guwahati for medical treatment when the vehicle involved in an vehicular accident that took place at Changsari, on 15-8-1998 and when the same vehicle was immediately released on the next day i.e. 16-8-1998. at 4.00 p.m. to the claimant/owner in damaged condition.

3. Being aggrieved by the damage caused to his vehicle, the claimant/respondent No. 2 approached the District Consumer Forum, Mangaldoi (for short "the Forum") seeking relief u/s 12 of the Consumer Protection Act, 1986 (for short, "the Act") for compensation due to such damage caused to the vehicle owned by him. The learned Forum after consideration of the materials available on record including the oral and documentary evidence so adduced came to the finding that the claimant was entitled to get the compensation and accordingly accepted his claim not fully but to the extent of the amount as indicated above.

4. Dissatisfied with such award of the Forum, this writ petition has been brought by the State Govt. before this Court primarily challenging the jurisdiction of the Forum to try the case of such nature where a requisitioned vehicle is involved in an accident. Their clear and only stand is that the Forum lacks total jurisdiction to try this type of case where a vehicle is involved in motor accident under the Motor Vehicles Act, 1988 (for short, "the Act").

5. In a case of Chairman, thiruvalluvar Transport Corporation Vs. Consumer Protection Council, the Supreme Court in paragraph 6 has held as under:

6. The question which then arises for consideration is whether the National Commission has jurisdiction to entertain the claim application and award compensation in respect of an accident involving the death of Shri K. Kumar caused by the use of a motor vehicle. Clearly the Claims Tribunal constituted for the area in question, had jurisdiction to entertain any claim for compensation arising out of the fatal accident since such a claim application would clearly fall within the ambit of Section 165 of the 1988 Act. The 1988 Act can be said to be a special Act in relation to claims of compensation arising out of the use of a motor vehicle. The 1986 Act being a law dealing with the question of extending protection to consumers in general, could, therefore, be said to be a general law in relation to the specific provisions concerning accidents arising out of the use of motor vehicles found in Chapter XII of the 1988 Act. Ordinarily the general law must yield to the special law. Besides, the complaint in question cannot be said to be in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided to the deceased. The expression "service" as defined by the 1986 Act means service of any description which is made available to potential users and includes the provision of facilities inter alia in connection with transport. The accident that occurred had nothing to do with service provided to the deceased. This becomes obvious when one reads the provision along with the definition of complaint in Section 2(1)(c) and service in Section 2(1)(o) of the 1986 Act. Complaint according to Section 2(1)(c) means any application in writing in relation to an unfair trade practice or as a restrictive trade practice adopted by any trader or in relation to goods bought by him or agreed to be bought by him. Both these clauses have no application whatsoever. The third clause relates to the services hired or availed of or agreed to be hired or availed of by a consumer. Therefore, at best it can be said the complaint in question related to the service hired or availed of by the deceased. The complaint in the instant case cannot be said to be in relation to any service hired or availed of by the consumer because the injury sustained by the consumer had nothing to do with the service provided or availed of by him but the fatal injury was the direct result of the accident on account of which he was thrown out of his seat and dashed against an iron handle of the seat in front of him. We have, therefore, no manner of doubt that this case squarely fell within the ambit of Section 165 of the 1988 Act and the Claims Tribunal constituted thereunder for the area in question had jurisdiction to entertain the same. As pointed out earlier, 1988 Act and, in particular the provisions in Chapter XII thereof creates a forum

before which the claim can be laid if it arises out of an accident caused by the use of a motor vehicle. That being a special law would prevail over the relevant general law such as the 1986 Act but in the instant case even that question does not arise for the simple reason that the dispute in question did not attract the jurisdiction of the National Commission, whatsoever and the National Commission has not shown how it had jurisdiction. The issue was pointedly raised and for reasons best known to the National Commission it failed to come to grip with it. Surprisingly there is no discussion whatsoever in the order of the National Commission in this behalf. We are, therefore, of the opinion that the National Commission did not have jurisdiction and, as counsel for the appellant put it, this was a case of unwarranted exercise of jurisdiction.

6. In the above cited case, the Supreme Court had the occasion to deal exhaustively the question of jurisdiction of the National Commission under the Act to adjudicate upon the claim of compensation arising out of Motor Vehicle Accidents. In the above cited case, it was decided in clear term that the National Consumer Commission had no jurisdiction to entertain the claim of damage involving the vehicular accident for which the Act being a special legislation was available.

7. Applying the ratio of above cited case as elucidated in paragraph 6, this Court is of the firm view that the Forum has no jurisdiction to entertain such petition.

8. In view of what has been discussed and observed, the impugned order is hereby set aside and quashed.

9. In the result, this writ petition succeeds and stands allowed.