

(2017) 05 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

Case No : 230-231 of 2011

EASTERN POWER DISTRIBUTION CO. OF ANDHRA PRADESH
LTD. (EPDCL)

APPELLANT

Vs

SUNITHA KUMARI DHANAWAT & ORS.

RESPONDENT

Date of Decision : 09-05-2017

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 19](#) of the Act, [Section 21\(a\)\(2\)](#) - Appeals - Jurisdiction of the National Commission

Citation : 2017 2 CPR 595

Hon'ble Judges : B.C. Gupta, S.M. Kantikar

Advocate : Sunil Kumar Ojha, K. Maruthi Rao

Judgement

1. These four appeals as detailed in the heading above have been filed under section 19 read with section 21(a)(ii) of the Consumer Protection Act, 1986 and arise out of a common order dated 17.01.2011, passed by the Andhra Pradesh State Consumer Disputes Redressal Commission (hereinafter referred to as "the State Commission") in consumer complaints No. 35/2009 and 36/2009, vide which, the said complaints were allowed.

2. The facts involved in these cases are that the municipal authorities and other authorities of Vizianagaram town proposed to widen the existing road, passing in front of the house of the complainants to 60 ft. width from Three Lanterers to Ambati Satram Junction. They made markings on the houses and directed the residents of the said localities to demolish their respective buildings up to the said markings. The road-widening work started on 13.07.2007. The general public in that locality was informed that electric supply will be cut-off during the widening of the roads. It is stated in the consumer complaints that the power supply in the locality was stopped including the power supply to the buildings of the complainants. The family of the complainants had a small shop room in the front portion, while they used to reside in the back portion of the said house. On the fateful day, i.e., 15.07.2007, in the morning hours, the complainant Sunitha

Kumar Dhanawat and her brother Ajay Kumar took the help of another person Zamir Khan with a view to remove small display board in the front portion of the shop room situated at the top of the ground floor portion, i.e., upto first floor. They tagged the said display board with thick ropes, but all of a sudden, one side rope fell on the electrical wires, due to which live electricity passed from the wires and flames came out. In the said incident Zamir Khan died on the spot, while Sunitha Kumar Dhanawat and her brother Ajay Kumar were rushed to the hospital where Ajay Kumar died on the same day. Sunitha Kumar Dhanawat received injuries over right hand, both legs, foot palm and other parts of the body. It is stated that the fingers of her both legs were removed and that she was not able to do any work with her both hands or legs. She was unable to move even. Skin grafting was also done and she was discharged from hospital on 23.09.2007. It is stated that the complainants spent more than 3 lakhs for treatment which was still continuing. She also lost her job and became disabled. It is also stated that an FIR was lodged with the local police station under section 174 IPC as CR No. 175/2007. The inquiries made by the Police also revealed that Ajay Kumar died due to electrocution. Alleging negligence on the part of the OP EPDCL, Sunitha Kumar Dhanawat filed consumer complaint No. 35/2008 against the OP EPDCL claiming compensation of 50 lakh and litigation cost of 5 lakh. Another complaint CC No. 36/2009 was filed by four complainants, in which complainant No. 3 is Sunitha Kumar Dhanawat, complainant No. 1 & 2 are her parents and complaint No. 4 is her sister. A direction was sought to the OPs in this complaint for compensation of 65,20,000/- for the death of Ajay Kumar and the litigation cost of 5 lakh.

3. In the written version filed by EPDCL, it was alleged that the incident was caused due to the negligence of the complainants. The general public in the locality had been informed that the electrical supply would be stopped during widening of roads on 13.07.2007. The electricity service meters to the respective connection were removed and taken away by the OPs. The OPs also made arrangements to provide flood lights with effect from 14.07.2007 by providing generators on the road. The OP stated that as per the decision taken, the power supply was to remain cut-off till sunset only. At the end of the day's work, the power supply was to be restored to all the buildings. It was also decided that the road-widening work was to be resumed on 15.07.2007 from 10AM onwards and the power supply to the buildings was to be provided till that time. The residents of the locality were thus advised by way of announcement by the municipality, not to make any demolition or removal of structure in the locality from 8:30PM on 14.07.2007 till 10PM on 15.07.2007. There was, therefore, negligence on the part of the complainants in trying to remove the display board during the period, the electricity supply was switched on. In their reply to consumer complaint No. 36/2009 also, the OPs stated similar facts and alleged negligence on the part of the complainants and the deceased.

4. The State Commission vide impugned order dated 17.01.2011 allowed both the consumer complaints in question. In CC No. 35/2009, they allowed payment

of a sum of 12,18,000/- together with a cost of 5,000/- to the complainant Sunitha Kumar Dhanawat. For computing the said amount, they took into account her qualifications, presumptive salary and the extent of disability suffered by her. The amount allowed vide this order included a sum of 3 lakh incurred on medical expenses. The State Commission also allowed consumer complaint No. 36/2009, giving directions to the OP to pay a total sum of 6,40,000/- alongwith cost of 5,000/-, out of which, 3 lakh was to be paid to complainant No. 1, i.e., mother of the deceased, 2 lakh to complainant No. 2, i.e., father of the deceased and the balance amount of 1,40,000/- was to be distributed equally among complainants No. 3 & 4, who are the sisters of the deceased.

5. While computing the amount payable as compensation in both the cases, the State Commission observed that this was a case of contributory negligence on the part of the complainants as well and hence, they allowed only 50% of the amount computed as compensation to the complainants.

6. Being aggrieved against the orders of the State Commission, the OP EPDCL filed FA No. 230-231/ 2011 seeking dismissal of the two consumer complaints in question. However, the complainants in both the cases also challenged the impugned order of the State Commission by way of two appeals, FA No. 489/2011 and FA No. 490/2011, seeking enhancement of amount as demanded through the consumer complaints.

7. During hearing before us, the learned counsel for the OP EPDCL argued that the complainants did not come under the definition of consumer, as the incident took place due to electricity passing through wires outside their buildings and that they were not making any payment for the said electricity supply. The learned counsel further stated that due announcement had been made about the stoppage and restoration of the electricity supply on loudspeakers. There was, therefore, negligence on the part of the complainants in trying to remove the display board etc. The State Commission had also observed in the impugned order that there was negligence on the part of the complainants.

8. Per contra, the learned counsel for the complainants denied that there was any negligence on the part of the complainants in the said matter. The complainants stated that there had not been any announcement made by the authorities regarding the restoration of electricity supply. The complainants filed the appeals for enhancement of the compensation granted to them as they had lost one important member of their family. Moreover, the complainant Sunitha Kumar Dhanawat had become disabled and also lost her job.

9. We have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us.

10. The first issue that merits consideration in the matter is whether the plea of the appellant that the complainants do not fall under the category of "consumer" is correct or not. The facts of the case make it very clear that the accident and

the consequential damage had taken place because of the electric current passing through the wires near the premises of complainant. The electric supply to the premises of the complainants was made through the same wires and then the payment was made by them as per the consumption made as per the meter reading. It is very clear therefore that the complainants/respondents are consumers of the appellants which are the Distributors of electricity to the residents of the area. Therefore, there is no force in the contention of the appellants that the complainants/respondents do not fall under the category of consumer.

11. The main issue for consideration in the matter is whether the impugned order of the State Commission awarding compensation to the complainants for the damage suffered by their family is in accordance with law or not. The facts of the case make it clear that one Zamir Khan died on the spot as a result of electrocution. The brother of the complainant Sunita Kumari Dhanawat, i.e., Ajay Kumar who was a young man of 22 years also died as a result of electrocution. The complainant Sunita Kumari Dhanawat suffered lot of damage to her limbs and she became disabled. It is evident from the material on record that the road widening work was going on in the area, as a result of which, the appellants announced plans to switch off the power supply at specific intervals. It is the case of the complainants that the power supply was switched off on the morning of 14.07.2007, but it was restored in the evening on that day. The road-widening work was to be resumed on 15.07.2007 from 10:00AM onwards and probably the electricity supply was to be switched off again. It is, however, clear that the accident has taken place due to electrocution and the appellants cannot escape their responsibility from compensating the complainants for the damage suffered by them for the loss of the life of a young member of their family.

12. Vide impugned order, the State Commission while calculating the compensation payable to Ajay Kumar deceased, considered his monthly income as 10,000/- only. The State Commission observed that the complainants had not provided any evidence to substantiate their version that the deceased Ajay Kumar was going to complete his MBA course, after which he was likely to get 50,000/- to 80,000/- per month. After deducting one-third of the amount as his personal expenses and applying a multiplier of 15, the State Commission calculated the amount payable as 12 lakh. However, the State Commission observed that this was a case of contributory negligence on the part of the complainants as well and they decided to pay only 50% of the amount so calculated and hence found the deceased to be eligible for the grant of 6 lakh only, alongwith 40,000/- as compensation for the loss of life and affection etc.

13. While computing the compensation payable to Sunita Kumari Dhanawat, the State Commission presumed her salary to be 15,000/- per month, considering that she had a post-graduate M.Sc. qualification. The annual salary was thus computed to be 1,80,000/-. The State Commission applied a multiplier of 17 and calculated the amount as $1,80,000 \times 17 = 30,60,000/-$. Considering further that

she was disabled to the extent of 60%, the compensation of 18,36,000/- as 60% of the amount of 30,60,000/- was calculated. The State Commission deducted 50% of this amount towards contributory negligence and held that Sunita Kumari Dhanawat was liable to be paid 9,18,000/- as compensation. To this amount, a sum of 3,00,000/- was also added towards medical expenses, making a total sum of 12,18,000/- awarded to her.

14. Considering the overall facts and circumstances of the case, we observe that the conclusion of the State Commission to deduct 50% of the compensation, saying that the complainants were guilty of contributory negligence is not based on any sound or firm logical reasoning. The damage has occurred due to electrocution, when the road-widening work had already been taken in hand. The complainants simply wanted to shift one display board from one place to another when a part of the rope fell on the live wire, resulting in their electrocution. At that time, the complainants were definitely under the impression that the electrical supply to the area had been switched off due to the road-widening work. It would, therefore, be unreasonable to deduct 50% from the amount of compensation payable to them. In our opinion, the complainant should not be made to forego an amount more than 20% of the compensation payable and the balance 80% should be paid by the OP/appellant, which are a major company dealing with the distribution of electricity in the area.

15. From the foregoing discussion, the FAs No. 230-231/2011 filed by the OP/appellant are ordered to be dismissed. However, the other two appeals, i.e., FA No. 489/2011 and FA No. 490/2011 filed by the complainants are partly allowed to say that the order passed by the State Commission shall stand modified to the extent that the amounts calculated by the State Commission shall stand reduced by 20% and not by 50% for the alleged contributory negligence exhibited by the complainants. In the case of Ajay Kumar Dhanawat, i.e., FA No. 490/2011, a sum of 12,00,000/- minus 20% of 12,00,000 ($12,00,000 - 2,40,000$) = 9,60,000/- shall be payable to him alongwith 40,000/- as compensation. The OP is, therefore, directed to pay a sum of 10,00,000/- together with cost computed at 5,000/- to the family of Ajay Kumar. Out of this amount, a sum of 7 lakh shall be payable to the parents of the deceased Ajay Kumar and the balance of 3 lakh shall be payable to complainants No. 3 & 4, i.e., 1,50,000/- each. In the case of Sunitha Kumari Dhanawat, i.e., FA No. 489/2011, a sum of 18,36,000 minus 20% of 18,36,000 = 14,68,800/- shall be payable alongwith 3 lakh towards medical expenses. Thus, a total sum of 17,68,800/- shall be payable to the complainant, Sunitha Kumari Dhanawat. The appeals, FA/230-231/2011 are, therefore, dismissed and the appeals, FA/489/2011 and FA/490/2011 are partly allowed and the order of the State Commission stands modified as explained above. There shall be no order as to costs.