
(2015) 07 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

Fakhre Alam And Ors.

APPELLANT

Vs

Amity Business School, Noida And Ors.

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Citation : (2015) 07 NCDRC CK 0006

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

Judgement

1. THE complainants are the legal representatives of five students namely (i) Javed Iqbal, (ii) Atharv Shah, (iii) Hitesh Chandiramani, (iv) Sourabh Charan and (v) Agraj Maheshwari, who were studying in Amity Business School and had gone to Goa along with several other students, on a study tour/excursion allegedly organized by the said school. They reached Goa by train on 25 -08 -2003 and were put up in Highland Beach Resort at Candolim in Goa. The said hotel is stated to be situated in the close vicinity of Candolim Sea Beach. It is alleged by the complainants that a number of drowning incidents have taken place, in the past, at Candolim beach. According to the complainants, at about 3:00 P.M. on 25 -08 -2003 the students were told by their teachers to go and enjoy at the beach and reassemble in the hotel at 7:00 P.M. A group of about 200 students went to Candolim beach where five of them were swept away by a strong wave, when they stood in the sea water at about 4:00 P.M. Though an alarm was immediately raised, no rescue operation could be undertaken immediately as no coast guard was present at the beach. The case of the complainants is that the aforesaid incident happened due to negligence of the opposite parties since the students were allowed to go to the beach without being accompanied by the faculty persons and without taking adequate safety measures such as persons of the coastal guards at the time of their visit to the beach. Being aggrieved from the death of their wards due to alleged negligence and insensitivity of the opposite parties, the complainants are before this Commission, seeking compensation amounting to Rs. 1,00,00,000/- each along with damages for Rs. 20,00,000/- each for the mental torture, pain and agony and punitive damages as well as cost of litigation quantified at Rs. 5,00,000/- each.

2. THE complaint has been contested by the opposite parties on several grounds, including that the complainants are not a "consumer" within the meaning of Section 2(1)(d) of the Consumer Protection Act. It is stated in the reply that the students themselves had collected money to be spent on travel, accommodation and meals and their own representative had incurred expenditure as per the requirement of the students, the role of the school being only to advise them about the hotel and train facilities and helping them in making reservation without charging any amount from them. The school, however, paid the expenses of the teachers who were to deliver lectures during the tour. It is further stated that as per the schedule circulated to the students, those who wanted to go to the beach were permitted to do so with clear instructions not to go deep into the beach, but, without paying any heed to the said instructions, some of the students ventured into the sea. When information in this regard was received by opposite parties Nos. 4 to 7 at about 5:00 P.M. all of them ran to the place of incident and on seeing one boy in the sea they immediately made a human chain and arranged a rope to rescue him, but despite best efforts, life of the students could not be saved. Later opposite parties Nos. 4 to 7 were informed that some other students were also missing. The Police Control Room immediately informed the coastal guards and search operations were undertaken even during night. Opposite party No. 3, Dr. A.K. Chauhan personally contacted the senior functionaries including the Hon'ble Governor and Chief Minister of Goa and sought their help. The opposite parties have emphatically denied any negligence on their part and have also claimed that there were no rains on the fateful day. According to them irrespective of the season, if someone ventures deep into the sea, there is always risk of mishaps taking place. It is an admitted position that all the deceased students were major, they being more than 18 years old, on the date they went to Goa. This is not the case of the complainants that the teachers had asked or even permitted them to swim in the sea, the allegation being that they were asked to go and enjoy at the beach. Thus, assuming the allegations to be correct, the question which arises for our consideration is whether permitting or even asking the adult students, without accompanying them, to go to the Beach amounts to any negligence or breach of duty on the part of the teachers, accompanying them to the trip.

3. A Beach is a place frequented not only by the residents but also by the visitors including tourists. Visiting Beach, per se cannot be said to be a dangerous or risky activity, so long as one does not go deep in to sea water or doesn't try to swim therein. No Government prohibits or even regulates the visit to the Beaches. Therefore, even if the teachers had permitted or even advised these adult students to go and enjoy at the Beach that in my view does not constitute an act of negligence or dereliction of duty on the part of the teachers. The deceased being adults, the teachers were not obliged to accompany them to the Beach. Of course, the position could have been altogether different, had the students been minor. We find no merit in the plea that the opposite parties should have arranged Life Guards or inform the authorities such as Coast Guards

before permitting the students to visit the beach. Since they were adult students, the teachers accompanying them could not have suspected that they would not be concerned about their personal safety and would either swim or venture into the sea water. Therefore, neither they were required to arrange Life Guards to accompany them nor were they required to inform the local authorities about their proposed visit to the beach. It has come in the evidence that no Coast Guards or Life Guards were posted at the beach when the incident of drowning took place. The duty to post Coast Guards or Life Guards on a public beach would be of the concerned local authorities and not of the teachers accompanying the students on a study tour/excursion. Hence, the opposite parties cannot be held responsible for neither any Coast Guard nor any Life Guard being available on the beach at the time the unfortunate incident took place.

4. THE following view taken by the US Court of Appeals in *Bradshaw Vs. Bruce D Rawlings* 612 F. 2d135 is relevant as regards the responsibility of an educational institution, with respect to the adult students who are more than 18 years old. "Our beginning point is a recognition that the modern American college is not an insurer of the safety of its students. Whatever may have been its responsibility in an earlier era, the authoritarian role of today's college administrations has been notably diluted in recent decades..... College students today are no longer minors; they are now regarded as adults in almost every phase of community life. For example except for purposes of purchasing alcoholic beverages, eighteen year old persons are considered adults by the Commonwealth of Pennsylvania. They may vote, marry, make a will, qualify as a personal representative, serve as a guardian of the estate of a minor, wager at racetracks, register as a public accountant, practice veterinary medicine, qualify as a practical nurse, drive trucks, ambulances and other official fire vehicles, perform general fire -fighting duties and qualify as a private detective. Pennsylvania has set eighteen as the age at which criminal acts are no longer treated as those of a juvenile..... As a result of these and other similar developments in our society, eighteen year old students are now identified with an expansive bundle of individual and social interests and possess discrete rights not held by college students from decades past..... Thus for purposes of examining fundamental relationships that underlie tort liability, the competing interests of the student and of the institution of higher learning are much different today than they were in the past. At the risk of oversimplification, the change has occurred because society considers the modern college student an adult, not a child of tender years. It could be argued, although we need not decide here, that an educational institution possesses a different pattern of rights and responsibilities and retains more of the traditional custodial responsibilities when its students are all minors, as in an elementary school, or mostly minors, as in a high school..... But here, because the circumstances show that the students have reached the age of majority and are capable of protecting their own self interests, we believe that the rule would be different."

A reference can also be made to the following observation made by the Hon'ble

Supreme Court in Salil Bali Vs. Union of India, : (2013) 7 SCC 705.

"In this regard, one of the other considerations which weighed with the legislation in fixing the age of understanding at eighteen years is on account of the scientific data that indicates that the brain continues to develop and the growth of a child continues till he reaches at least the age of eighteen years and that it is at that point of time that he can be held fully responsible for his actions."

A perusal of the final report submitted by the police to the concerned Sub Divisional Magistrate would show that as many as five students namely Mr. Bilal Ahmed, Mr. Shekhar, Mr. Sachin, Mr. Awadhesh Singh and Mr. Sanjay Negi told the police that though the hotel management had informed the students not to go to sea as the weather was rough, a group of junior students went to the beach and started swimming in the sea. Suddenly due to strong water current, five students from amongst them got accidentally drowned and died due to drowning in water. After making an inquiry, the Investigating Officer came to the conclusion that the students had died due to accidental drowning in the sea water, while swimming. The autopsy report prepared by the Department of Forensic Medicines & Toxicology, Goa Medical College, Government of Goa in respect of one of the deceased student shows that he and his friends were swimming in sea water at the beach. The same narration was recorded in the autopsy report in respect of students namely Javed Iqbal and Saurabh Charan.

5. IN his statement one of the students namely, Bilal Ahmed told the police that at about 4:30 P.M. he along with 39 students came to the Beach for site -seeing. At about 5:30 P.M. some students went to swim in the sea. He further stated that Javed Iqbal, Saurabh Charan, Hitesh Chandi, Atharv Shah and Agraj Maheshwari, who were swimming in the sea, were accidentally pulled in by a high tide wave and they drowned in the sea. He further stated that they and the locals tried to save them but unfortunately could not save them. Another student namely, Sachin told the police that on being informed that some junior students were swimming in the sea water at the Beach he, along with another student Awadhesh, went to the Beach and repeatedly requested those junior students swimming in the water to come out as it was very dangerous to swim in the water. Many of them listened to them and came out of the water. He further stated that they were those students who were swimming in groups. Some students came running towards him and other friends and told them that some students had drowned in the water and had been washed away in the sea. He along with other friends went to the spot where they noticed that five junior students were struggling in water and were being washed inside. The statement of this student was corroborated by another student namely Sachin.

6. THE complainants have filed affidavit of only one eyewitness namely Shri Amitrajit Sandhu. In his affidavit he has inter alia stated that a group of about 200 students including the deceased persons who went to Candolim beach were swept away by a large wave as they stood near the sea. He has further stated that he tried to call the fishermen who were on the beach but they refused to

help, saying that they would not venture into the sea being aware of its dangers. The opposite parties have assailed the credibility of this witness on the ground that neither he was produced before the police nor was he named in the complaint. An application to examine him as a witness was filed after about 11 years of this incident. It is alleged that he was inimical to the opposite parties on account of his having been refused re-admission in the school, after he had withdrawn from the course in which he was studying, on account of his poor performance. Though this witness does not say that the deceased students were swimming in the sea, the statement made by other students including Mr. Bilal Ahmed and Mr. Shekhar Tyagi to the police clearly shows that in fact the deceased students were swimming at the time when they were swept away by strong currents of the sea water. Swimming in the sea is per se a risky activity, particularly when the person undertaking the activity is not an ace swimmer. The students, therefore, should have controlled their urge to swim and should have sat or stood at a safe place on the Beach. If the adult students who are supposed to be aware of the perils of swimming in the sea, choose to indulge into such an activity, they consciously take a risk, for which they have only themselves to blame. Even if they were just standing at the Beach and were not swimming in the sea, as is contended by the complainants, they must be standing either in the sea water or very near to it. Being adults, they knew that it could be risky to stand in or close to sea-water since a sudden and strong wave/tide coming from the sea may just sweep them away with it, giving them no chance to reach the shore. Therefore, they ought to have refrained from taking such a risk.

It was contended by the learned counsel for the complainants that had the teachers accompanied the students to the Beach, they would have remained disciplined and would not have gone near the sea water. We do agree that the presence of the teachers could probably have deterred the students from swimming or going deep in the sea, but since they were adults, no obligation was cast upon the teachers to accompany them to the Beach, and they ought to have imposed self discipline on themselves, by refraining from swimming in or going too close to the sea-water.

7. THE case of the opposite parties is that the parents of the deceased students were aware of the visit to Goa, they having paid for the visit, and if they so wanted they could have stopped their wards from joining the said trip. Reliance in this regard is placed on the affidavit of Fakhre Alam and the undertakings alleged to have been executed by some of the students. In his affidavit, Mr. Fakhre Alam, father of deceased Javed Iqbal inter alia stated that he was informed by the school authorities, at the time of payment of fee, that in the third week of August 2003 the students would be taken for a compulsory tour to Goa and a fee of Rs. 4,500/- will have to be paid for the said trip, which he could send through his son. Accordingly, he sent Rs. 4,500/- for the study tour to Goa. In the Rules & Guidelines for the port visit containing the undertakings purported to be signed by Saurabh Charan and Javed Iqbal, two of the deceased students, it was clearly stated that "the students are strictly directed not to go

deep in the Beach and adhere to the trip schedule". The contention of the opposite parties is that similarly all the students going on Goa trip were expressly instructed not to go deep in the Beach and since they chose to go deep into the sea water in defiance of the aforesaid Guidelines, the opposite parties cannot be held responsible for the unfortunate incident in which they lost their lives. However, I need not go into this aspect of the matter since in my view, being adult persons these students were supposed to possess the requisite knowledge in this regard and were not expected either to swim in the sea or to go deep into the sea water.

8. THE learned counsel for the complainant, during the course of her arguments relied upon the decision of this Commission in *Madan Lal Arora Vs. M.C.L.S.B.M.S.S.S. & Ors.*, : II (2013) CPJ 450 (NC). A perusal of the aforesaid decision would show that in the said case, the son of the complainant who was a minor was sent to take bath in Saryu river, without the teachers accompanying him. He slipped because of the high current of river water and when he shouted for help no teacher came to his rescue. Granting compensation to the father of the deceased child, this Commission inter alia held as under: "We have perused the tour itinerary which is place on record. There is no programme for "Saryu" river bath. When it was known to the OPs that the students did not know how to swim, why did they allow them to take a dip in the "Saryu" river. This is the main negligence on the part of the teachers. Only two teachers knew how to swim. The plea set up by the OPs that all the teachers had encircled the children is not true. The children were asked not to go deep into the water. Yet the deceased went into the deep waters and was drowned. The parents should have been informed that the students will be allowed to take a "dip" in the "Saryu" river. Had the parents knew about it, they would not have allowed the children to enter into the "Saryu" river. It is also noteworthy that without seeking the help from divers, boatmen and swimmers, the children were allowed entry into the "Saryu" river. No precaution was taken. Had the teachers remained present in the river or on the banks of the river, the question of Nitin Arora's drowning would not have arisen. It clearly means that the students were put in the river without any aid. The story that teachers were sipping tea near the river, assumes importance."

The aforesaid decision, in my view, would not apply the present cases since the deceased students were not minors and there is no evidence of the teachers having asked them to swim or even go deep inside the sea -water.

The learned counsel for the complainants has also referred to *Budhist Mission Dental College & Hospital Vs. Bhupesh Khurana & Ors.*, : (2009) 4 SCC 473; *Registrar of Manipal University & Anr. Vs. Sushith (Dr.)*, : I (2013) CPJ 260 (NC); *FIIT JEE Ltd. Vs. Dr. Minathi Rath*, : I (2012) CPJ 194 (NC); *Registrar, Shanmuga Arts, S.T. and R.A.D.U. Vs. Consumer Protection Council & Ors.*, : II (2015) CPJ 301 (NC); *Dr. Merchant & Ors. Vs. Shrinath Chaturvedi*, : III (2002) CPJ 8 (SC); *Donoghue Vs. Stevenson*, (1932) A.C. 562 (H.L.); *Mark Stannard (t/a Wyvern Tyres) Vs. Robert Raymond Harvey Gore*, (2012) EWCA Civ 1248; *M.S. Grewal &*

Anr. Vs. Deep Chand Sood & Ors. - Appeal (Civil) 9738/1996 and Rattan Lal Mehta Vs. Rajinder Kapoor, : 1996 ACJ 372. However, none of these judgments would apply to the factual situation prevailing in these cases where the students who were adult persons at the relevant time chose to either swim or go deep into the sea -water and were swept away by a strong wave of water coming from the sea.

9. FOR the reasons stated hereinabove, I am of the considered view that even if it is held that the deceased students were consumers of the opposite parties within the meaning of Section 2(1)(d) of the Consumer Protection Act, no case of deficiency on their part in rendering service to the said students is made out. The complaints are accordingly dismissed. However, considering that the deceased persons were students of Amity Business School which claims to be a reputed school being managed by a large organization running a number of institutions, I would recommend to the opposite parties Nos. 1 to 3 to consider granting an appropriate compensation to the legal heirs of the deceased students, on compassionate grounds and as a gesture of goodwill and good governance of their institutions. No order as to costs.