

(1997) 07 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

Godrej Agrovat Ltd.

APPELLANT

Vs

V.J.THOMAS

RESPONDENT

Date of Decision : 28-07-1997

Acts Referred:

Citation : 1997 3 CPJ 623 : 1998 1 CPR 491

Hon'ble Judges : P.K.Shamsuddin , K.Balakrishnan Nair , K.M.Latha J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is directed against the order passed by the District Forum, Kozhikode, in O.P. No. 13 / 96. The first and second opposite parties are the appellants.

2. SHORTLY stated, the allegations in the complaint are as follows:- The complainant is the owner of a dairy farm with 28 jersy cows. On 4.3.1995 the complainant had purchased 40 bags of Bypro manufactured by opposite parties 1 and 2 from opposite party No. 3. When the feed was given the cows slowly developed reduced intake of feed which subsequently resulted in reduction in the milk yield. On 12.3.1995 one cow died and postmortem examination was conducted on its body by the Veterinary Surgeon. This was followed by the death of another cow on 15.3.1995 and the 3rd cow died on 16.3.1995. Post-mortem examination was conducted in respect of those cows also. The Surgeon gave the opinion that death was caused due to liver damage and consequent liver failure. The Veterinary Surgeon had taken samples of the cattle feed and had sent the same to the Agricultural University, Mannuthy. The University informed the Veterinary Surgeon that the Bypro contained Aflatoxin at 60 PPB. It was alleged that the cow died because of the feed Bypro which contained toxic elements. It is further alleged subsequently another cow which was also seriously ill, died and other cows recovered because of the treatment and withdrawal of Bypro feed as advised by the doctor. There was reduction in the milk yield of the other cows to the extent of 100 litres per day. Therefore, he is entitled to compensation of Rs. 48,000/- as the price of 4 cows. The complainant is also entitled to get

compensation for the reduction in the milkyield. The complainant had purchased the Bypro feed for Rs. 14.490/-. When the death was reported the opposite party No. 3 came to the farm and took back 23 bags of feed. The complainant sent two notices and the opposite party No. 2 stated in their reply that Aflatoxin contents upto 2300 PPB is not harmful and the feed which contained only 60 PPB could not have caused death of the cows. The allegations in the reply notice are not correct. It is also alleged that the farm and its premises are kept neat and in tidy condition. The feeds are stocked in good hygienic condition and the cows died only because of the defects of the feed. On these allegation, the complaint was filed. The opposite parties 1 and 2 filed version but since the version was filed belatedly, an application to condone the delay in filing the version was filed but was rejected. The third opposite party raised the contention saying that the complainant is not the owner of the dairy farm by name Kakkayam Dairy Farm and the complainant is not a consumer. The third opposite party also raised the contention that the Aflatoxin content upto 233 PPB is permissible in dairy cattle feed and in this feed the aflatoxin content was only 60 PPB and, therefore, the feed could not cause the death of the cows.

Cw 2 was Professor of Pathology of Kerala Agricultural University. He stated that he was conducting research in this matter for the last 10 years and that Aflatoxin level of 60 PPB will lead to death of dairy cattle. On the basis of this evidence the District Forum found that the cattle died on account of the defects in the feed and in that view passed an order directing the opposite parties to pay Rs. 68,000/- to the complainant.

3. FEELING aggrieved by the said order this appeal has been preferred. Learned Counsel for the appellant invited our attention to "the Publication Tropical Products Institute, London", regarding Aflatoxin level. At page 148 where the safe level of Aflatoxin B in diet for dairy cattle which resulted in liver lesions is shown as 2300 PPB and the safe level of Aflatoxin B in diet which resulted in liver lesions for chicken is shown as 500 PPB. He also placed before us a report on the research project published by the National Dairy Research Institutes. That indicated for calfs the safe Aflatoxin level was shown as 2.26 PPM that is equivalent to 226 PPB. He also invited our attention to another authority namely, the Pathology by Hilton Atmore Smith D.V.M. 4th Edition. At page 891 it is stated as follows: "The following animals are listed in approximate order of decreasing susceptibility, duckling, rabbit, turkey, chicken, neonatal rat, cat, pig, dog, trout, guinea pig, rhesus monkey, adult rat, cattle and sheep."

We had occasion to consider the safe level of Aflatoxin in respect of chicken in PPB Nos. 209, 210, 211, 212/92. We found that safe Aflatoxin level of chicken is 500 PPB, based on the standard prescribed by Bureau of Indian Standards. It is seen from authorities that resisting power of cattle is much higher than chicken. In the particular case the Aflatoxin content was only 60 PPB. In these circumstances the finding entered by the District Forum that the death of the cows was due to the higher level of Aflatoxin content of the feed manufactured

by opposite parties 1 and 2 cannot be upheld. We, therefore, allow the appeal, set aside the order of the District Forum and dismiss the complaint. In the circumstances of the case, we direct the parties to bear their costs. Appeal allowed.