

(2012) 07 NCDRC CK 0056

In the National Consumer Disputes Redressal Commission

Gold Mohur Foods And Feeds Ltd

APPELLANT

Vs

E.B. Suresh

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 820 : 2012 3 CPJ 595

Hon'ble Judges : R.C.JAIN , S.K.NAIK J.

Final Decision : Petition partly allowed

Judgement

1. AGGRIEVED by the order passed by the Kerala State Consumer Disputes Redressal Commission (for short "the State Commission ") in Appeal No. 235/2007, the opposite party in the original complaint, has filed the present petition purportedly under Section 21(b) of the Consumer Protection Act, 1986. The appeal before the State Commission was filed against an order dated 4.7.2006 passed by the District Consumer Disputes Redressal Forum, Ernakulam in complaint No. 290/2006 filed by the respondent herewith, by which order, the claim of the complainant was partly allowed and the opposite party was directed to pay a sum of Rs. 1,27,320 (Rupees one lakh twenty-seven thousand three hundred and twenty only) along with interest @ 9% p.a. from the date of the complaint besides a sum of Rs. 2,000 as cost of the proceedings. In the appeal the State Commission though, upheld the finding of defect in the feed supplied by the petitioner herewith but modified the order with regard to the quantum of the compensation and reduced it to Rs. 1 lakh, all other stipulations remaining unchanged, with the further stipulation that the amount as per the order passed by the District Forum shall be paid within three months from the date of receipt of the order failing which the rate of interest shall enhanced to 12% p.a. w.e.f. 11.2.2011, i.e., date of the order passed by the State Commission. Still not contended, the opposite parties have filed this petition. The facts and circumstances, which led to filing of the complaint are amply noted in the orders passed by the Fora below and need no repetition at our end.

2. WE have heard Ms. Surekha Raman, Counsel appearing for the petitioner but

had not the advantage of hearing the say of the respondent/complainant despite Rs. 7,000 having been remitted to him and notice of the proceedings having been issued to him repeatedly. Ms. Surekha Raman, would assail the findings of the Fora below primarily on the ground that the same are not based on correct and proper appreciation of the facts and circumstances of the case and the evidence and material produced on record in taking the view they have taken in dealing with the defect in goods supplied to the complainant. She submitted that although the complainant alleged purchase of the feed on three occasions and obtained ante dated Bills, but in fact he purchased the feed only once on 1.9.2005. It is pleaded that it is not conclusively and cogently shown that disease was caused and chicks died due to the defects in feed supplied by the petitioner. We have considered the submissions only to be rejected because voluminous evidence including the examination by a Veterinary Surgeon and post-mortem examination by a pathologist were produced on record. We do not understand why complainant would have filed a complaint against the petitioner if he had not suffered on account of the defects in the said feed. She additionally submits that no cogent evidence was led on record to establish the extent of loss and injury suffered by the complainant and, therefore, both the Fora below have quantified the compensation simply on conjectures and surmises. There appears force in this contention. The State Commission had reduced the amount of compensation from Rs. 1,27,320 to Rs. 1,00,000 only without giving any reason though the said finding is in favour of the petitioner but still the quantification of compensation should be commensurate with the loss and injury suffered by the Consumer Forum.

3. UNDER the directions of this Commission, the petitioner has deposited a sum of Rs. 74,277 before the District Forum as half of the awarded amount. In our view having regard to the entirety of the facts and circumstances of the case and that no cogent evidence was led to the exact loss and injury suffered by the complainant, we would restrict the compensation to the amount already deposited by the petitioner before the District Forum in terms of the directions of this Commission. The revision petition is partly allowed. The order of the State Commission shall stand modified to the above terms. The District Forum is directed to disburse the deposited amount in favour of the respondent No. 1/ complainant. Revision Petition partly allowed.