(1998) 08 NCDRC CK 0048

In the National Consumer Disputes Redressal Commission

HEMALATHA SAPTHARISHI APPELLANT

Vs

Indian Oil Corporation Ltd. RESPONDENT

Date of Decision : 12-08-1998

Acts Referred:

Citation : 1998 3 CPJ 533 : 1999 1 CPR 392 : 1999 2 CLT 97

Hon'ble Judges : E.J.Bellie , Pulavar V.S.Kandasamy , Angel Arulraj J.

Final Decision : Appeal No. 743 allowed. Appeal No. 545 dismissed

Judgement

1. THESE two appeals arise out of one order passed in O.P. No. 167/94 on the file of the District Forum, Madras-South. Hence they can be disposed of in one order here.

2. A.P. No. 545/96 has been filed by the complainants and A.P. No. 743/96 has been filed by the 2nd opposite party against whom an award has been passed by the District Forum. The complainants 2 and 3 are brother and sister and complainants 4 and 5 are minor children of one M. Saptharishi (deceased). The said Saptharishi was a registered consumer of LPG cylinder. He had LPC cylinder connection with double cylinder facility. The case of the complainants is that on 25.2.1992 at about 8 a.m. it was noticed that the cylinder in use then had run out of gas, and therefore the said Saptharishi attempted to replace that cylinder with the unused additional cylinder. When he tried to lock the regular in the cylinder valve there was heavy gushing out of gas which got ignited possibly when it came into contact with the hot stove and this resulted in fatal burn injuries to the said M. Saptharishi. He was admitted in Kilpauk Medical College Hospital on the same day and later in KJ Hospital for intensive care. Inspite of best treatment he succumbed to the bums on 1.3.1993. The cause of the accident was due to faulty cylinder with defective valve supplied by the 1st opposite party-Indian Oil Corporation. The 2nd opposite party-M/s. South Madras Gas Agency is the Agency which supplied the cylinder. The 3rd opposite party is the Insurance Company. The complainant wrote to the officials of the opposite parties 1 and 2 about the accident and asked for compensation but it was of no

use. According to the complainants, the deceased Saptharishi was 53 years and he was hale and hearty at the time of the accident and he would have lived for more than 70 years if he had not died due to the accident. His children viz., 4th and 5th complainants were aged 13 and 14 years respectively when he died. The deceased was employed in Larsen & Toubro Limited as a supervisory staff and was drawing a salary of Rs. 6,500/- per month and was also getting an annual bonus of Rs. 10,000/-. Though the complainants have received from the company where the deceased was employed, compensation amount, for the loss of earnings and hospitalisation expenses, the opposite parties are liable to compensate the complainants for the incidental expenses like transport, communication, etc., incurred by the complainant during the course of the treatment given to the deceased and also compensation for loss of expectation and pain and suffering undergone by the deceased. The 2nd complainant is a handicapped brother and the 3rd complainant is an unmarried sister of the deceased who was being taken care by him. On these allegations the complainants have prayed for grant of compensation under different heads totalling to Rs. 4,57,700/-. The 1st opposite party inter alia contended that it was the 2nd opposite party who was the Distributor of the gas cylinder to the consumers and as such there was no privity of contract between the 1st opposite party and the consumers and hence the 1st opposite party were not liable to pay any compensation. At the time of supply of the cylinder the 2nd opposite party was duty bound to test the same. There was no defect in the cylinder as alleged and the claim has been made only as an after thought. There was no fault on the part of the cylinder at all and the deceased might have meddled with the cylinder in an improper way and that would have caused the leakage of gas. The officials who inspected the place immediately after the accident have found evidence for such improper handling. As such the 1st opposite party was not liable to pay any compensation.

The 2nd opposite party filed written version in the same manner as that of the 1st opposite party.

3. THE 3rd opposite party Insurance Company in its written version contended that as regards the fatal accident in respect of each customer, an insurance policy had been taken for Rs. 15,000/- and when this amount was offered by them the complainants said that they were not prepared to receive it. THErefore there was no deficiency in service on their part. The District Forum on consideration of the evidence held that the accident happened due to defect in the cylinder and that would have been the result of the deficiency in service on the part of the 2nd opposite party LPG supplier. It then found that the complainants , 4 & 5 would be entitled to compensation for pain and suffering, loss of expectation of life and loss of consortium, love and affection. For this it awarded a sum of Rs. 50,000/-. It then ordered that out of the said sum of Rs. 50,000/- the 3rd opposite party Insurance Company shall pay a sum of Rs. 15,000/- and the balance amount of Rs. 35,000/- shall be paid by the 2nd opposite party.

4. AS against this order, the 2nd opposite party has filed A.P. No. 743/96 contending that the award passed by the District Forum against them is not sustainable in law, and the complainants have filed A.P. No. 545/96 pleading that the District Forum has erred in not awarding any compensation for the complainants 2 & 3 and failed to properly appreciate the evidence regarding the incidental expenses incurred by the complainants for the treatment of the deceased. One important question that arises for consideration is whether the complaint filed by the legal representatives of a consumer of services of the opposite parties 1 & 2 who died as a result of the alleged deficiency in service, is maintainable. Section 12 of the Consumer Protection Act deals with the manner in which a complaint shall be made. This section reads as follows: "12. Manner in which complaint shall be made.-A complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or an service provided or agreed to be provided may be filed with a District Forum, by- (a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided; (b) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not; (c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or (d) the Central or the State Government".

Clause (b) enables a recognised Consumer Association to file a complaint and Clause (c) enables the numerous consumers to file a complaint through one or more consumers with the permission of the Court, and Clause (d) enables the Central or the State Governments to file a complaint. We are not concerned with these clauses. A close reading of Clause (a) clearly shows that the complaint can be filed by a consumer to whom the goods are sold or delivered or agreed to be sold or delivered or service is provided or agreed to be provided. Manifestly, the right to file a complaint under Clause (a) is confined to a consumer to whom the goods are sold or delivered or agreed to be sold or delivered or services provided or agreed to be provided. That being the case, can anybody else apart from the consumer mentioned in Clause (a) file a complaint. The answer will be, obviously, in the negative. When the law says who can file a complaint, only that or those persons can file a complaint and not anybody else. From this it is apparent that apart from the consumer mentioned in Clause (a), no other person, be he a beneficiary of the goods or services or legal representatives of the consumers, can file a complaint. To say otherwise would mean doing violence to the clear language in the section. It is a well established principle of statutory construction that where the words of the statute are clear and unambiguous, they have to be given their full effect and their ambit cannot be cut down by reference to the preamble to the Act or by any other reason. On behalf of the complainants, an order of the Andhra Pradesh State Consumer Disputes Redressal Commission rendered in Gulam Abdul Hussain v. Dr. Katta Pullaiah Choudary, (1991) I CPR

499, was cited wherein it has been held that a legal representative of the consumer can file a complaint. But on going through this order, we are unable to agree with the reasoning given therein. We do not find any point in stating that when a consumer can file a complaint for the injury sustained by him why not his legal representative file a complaint after his death. The legal representatives are not consumers as the consumer himself. Then a question is posed stating that can it be said that the legal representative cannot continue the proceedings when the consumer died who instituted the complaint. There is no provision in the Act which is a self contained Code, enabling a legal representative to continue the proceedings when the consumer dies after filing of the complaint. It must be borne in mind that the Consumer Protection Act is intended for cheap and quick remedy and therefore the Parliament possibly thought it wiser to restrict the right to file the complaint to the consumer who has actually purchased the goods or agreed to purchase the goods for a consideration or hired or availed of the services for consideration. As per Section 3 of the Consumer Protection Act, this Act is in addition to and not in derogation of the provisions of any other law. The legal representative may have a right to seek legal remedies under any other law, but that does not mean that they have such remedy under the Consumer Protection Act also. Then an order of the National Commission was also cited on the complainants'' side which was rendered in M/s. Cosmopolitant Hospital and Anr. v. Smt. Vasantha P. Nair & Ors., (1992) I CPR 820, in which it has been held that the legal representatives of a deceased consumer are competent to maintain the complaint. But on a careful perusal of this order, we find that Section 12 of the Consumer Protection Act had not been brought to the notice of the National Commission and therefore the Commission has not referred to that specific provision of law. It appears to us that if Section 12 had been read out during the arguments before the National Commission, the Commission would have taken a different view. Thus considering, we are quite convinced that in the face of Section 12 of the Consumer Protection Act, the legal representatives of the deceased consumer cannot maintain a complaint under the Consumer Protection Act. It follows therefore that the order of award passed by the District Forum cannot be sustained as correct.

5. IN the result, therefore, we allow the appeal A.P. No. 743/96 filed by the 2nd opposite party, set aside the order of the District Forum and dismiss the complaint. IN view of our order passed in this appeal, A.P. No. 545/96 filed by the complainants is dismissed. There will be no order as to costs in both the appeals. Appeal No. 743 allowed. Appeal No. 545 dismissed.

