

(2003) 12 NCDRC CK 0110

In the National Consumer Disputes Redressal Commission

KANWAR RANI SMT. SUNITA DEVI

APPELLANT

Vs

SHANTI TRADERS

RESPONDENT

Date of Decision : 08-12-2003

Acts Referred:

Citation : 2004 1 CPJ 384 : 2004 1 CPR 686

Hon'ble Judges : K.K.Srivastava , Devinderjit Dhatt , MajGenS.P.Kapoor J.

Final Decision : Complaint returned

Judgement

1. AFTER filing the Complaint Case No. 38 of 2003 on 2.11.2003, the Legal Representative of the complainants Mr. M. Bhatnagar appeared before the State Commission on 17.11.2003 and sought a short adjournment as he wanted to amend the complaint. The complaint case was adjourned for today i.e. 5.12.2003 for filing the amended complaint. The office had reported in its report on the original complaint that only one respondent was shown whereas in the body of the complaint, there was reference of respondent No. 2. In the amended complaint, the form of parties particularly as the "defendants" remains the same and it reads as also in the original complaint as under : "Shanti Traders, SCO 12-A, Sector 7C (Back Side) Madhya Marg, Chandigarh & Others."

2. EVEN Shanti Traders has not been impleaded through some competent person to represent it and the complaint also does not show whether Shanti Traders is a firm duly registered or is a Company duly incorporated. In case, it is a firm then it is to be impleaded through one of the partners of the firm, or if, it is a sole proprietorship firm, then through the sole proprietor for service of notice on behalf of the firm on the competent person. In case it is a Company incorporated under the Indian Companies Act, 1956, then an averment has to be made in that regard and the Company should be represented through either the Managing Director or the Company Secretary, as the case may be, so that notice is duly served on such a Company. Apart from this, the expression "& Others" is quite vague and does not disclose the number of respondents intended to be impleaded as respondents. When this fact was brought to the notice of Mr. M.

Bhatnagar, he contended that he has impleaded the respondent as he wanted to implead and as per the information which could be collected by him. He was not willing to either delete "& Others" or to implead the respondent Shanti Traders through a competent person on whom the service of notice could be made.

The complainant has claimed compensation under Clause (iii) as Rs. 2 Lacs for injury, suffering, trauma, pain and inconvenience vide Sub-clause (aa). Further sum of Rs. 2 Lacs have been claimed for disability and loss of vital organ vide Sub-clause (ab). A further sum of Rs. 5 Lacs for denial of boon of normal life otherwise granted by God and future risk and constant threat of loss of complete vision in uninjured eye have been claimed vide Sub-clause (ac). A sum of Rs. 19 Lacs for loss of position, marital prospects and opportunities in life have been claimed vide Sub-clause (ad). In Sub-clause (ae), the complainants have claimed Rs. 15 Lacs for appropriate cosmetic treatment or for loss of an organ having cosmetic value for the face of a lady - only in case prayer in Para A(i) and (ii) above are not granted. In Clause (B), a direction has been sought against the defendants to stop marketing goods which are hazardous to life and property. In Clause (C), it has been prayed that defendants may be proceeded against for marketing goods which are hazardous to life and property in accordance with law. Clause (D) is general in nature.

3. UNDER relief A(i), a sum of Rs. 3 Lacs have been claimed on account of all costs of diagnosis, clinical examination, seeking cost estimate of fixing an eye with cosmetic value and coordinated movement vis-a-vis uninjured eye and plastic surgery of eye ball which has sunk due to shrinkage of injured eye, eye ball, and socket including costs of travelling to USA and stay with one attendant/companion. In Clause A(ii), all costs as per estimates so obtained as per Para (i) above of fixing eye with cosmetic value and coordinated movement vis-a-vis uninjured eye and plastic surgery of eye ball which has sunk due to shrinkage of injured eye, eye ball, and socket including costs of travelling to USA and stay with one attendant/companion, estimated to Rs.12 Lacs or to be paid at actuals on supply of receipts of payments, bills and expenses, have been claimed. A perusal of Clause A(i) and (ii) will go to show that relief regarding the costs of travelling to USA and stay with one attendant/companion has been claimed twice for the purpose of treatment. The reliefs which have been claimed particularly under Clauses A(i), A(ii), (iii)(ad) and (iii)(ae) require a regular full-dressed trial before a Civil Court of competent jurisdiction and the same cannot appropriately be considered by this Commission in the summary jurisdiction given to it under the C.P. Act. After taking out these reliefs, the remaining reliefs are valued at Rs. 9 Lacs which are well below Rs. 20 lacs and the complaint would lie before the District Consumer Disputes Redressal Forum.

4. THE complaint is thus ordered to be returned to the complainant for being filed before the appropriate and competent District Forum for adjudication according to law. Copies of this order be sent to the parties free of charge. Complaint returned.