
(1993) 08 NCDRC CK 0055

In the National Consumer Disputes Redressal Commission

KARTHIK AGENCIES , BHARAT PETROLEUM CORPORATION
LTD

APPELLANT

Vs

K. RAJKUMARI

RESPONDENT

Date of Decision : 19-08-1993

Acts Referred:

Citation : 1993 0 CPC 831 : 1993 3 CPJ 278 : 1995 2 CLT 276

Hon'ble Judges : V.Balakrishna Eradi , A.S.Vijayakar , Y.Krishan , B.S.Yadav J.

Final Decision : Appeal allowed

Judgement

1. THESE are two first appeals against the order passed by the State Commission, Tamil Nadu in complaint No. 198 of 1991.

2. THE complaint was with regard to a fire accident alleged to be caused by a leak in the valve of a gas cylinder at the residence of the complainant on 3.11.1988, and the compensation claimed was Rs. 3,09,822.40. The facts of the case as found by the State Commission are:- The first complainant/respondent is the wife and the second complainant/respondent is her husband. The second complainant is a registered consumer of Liquid Petroleum Gas (LPG) manufactured by the first Opposite Party M/s. Bharat Petroleum Corporation and distributed by the second Opposite Party, M/s. Kartik Agencies at Krishnagiri, Dharmapuri District. The second complainant is the beneficiary of the service conduction standing in the name of the second complainant. On 3.11.1988 at about 12.15 p.m. when the first complainant was in the kitchen the cooking gas in the cylinder then in use was exhausted. She switched off the stove and the regulator, removed the cylinder and connected the regulator with the second cylinder. When she switched on the stove and lighted the burner, there was fire in the cylinder and in the entire kitchen. When the complainant tried to put off the regulator, she suffered bum injuries on the hands and legs and face and the neck. The flames were so severe that they were leaping out of the kitchen chimney and neighbors rushed into her house and took her to St. Louis Hospital, Krishnagiri, where she was admitted immediately and from where she was

discharged on 25.12.1988. The first complainant then came to Madras and took treatment. She wrote to the chairman, Bharat Petroleum Corporation, Bombay and to the second Opposite Party claiming damages, but did not get any response. To her registered letter, a reply was received from M/s. Bharat Petroleum Corporation, Bombay to the effect that there was no accident in the premises on 3.11.1988. The complainants, therefore, came forward with the complaint claiming compensation on various heads to the total of Rs. 3,09,822.40.

After considering various points and objections raised by the respondents, the State Commission came to the conclusion that the manufacturer of the cylinder and the distributor are both liable for the supply of the defective gas cylinder, alongwith the defective valve, and for the negligence and deficiency in service of the same. And taking into consideration the various heads under which damages and compensation was claimed, the State Commission deemed it fit to award Rs. 75,072.40 ps as overall compensation to the complainant plus Rs. 500/- costs.

3. AGAINST this Order, the appellants in First Appeal No. 189 of 1992 and First Appeal No. 223 of 1992 have come in appeal. First Appeal No. 189 of 1992 was filed within time, but F.A. 223 of 1992, there was a delay of 10 days with no application for condonation of delay. Nevertheless, we have entertained both the appeals. We have perused the records and the written arguments submitted by the appellants and have also heard the Counsel for both the appellants. The main plea taken is that the said tire accident was not reported by the complainants on the day it was said to have occurred and so there could not have been any fire accident at all. This plea was rejected, as evidence taken by the State Commission showed otherwise. Both the appellants also put forth the argument that even if there was a fire accident, it was not caused by any defect in the product or deficiency in the service given by them.

4. ON behalf of the complainant/respondent Mr. H.D. Shourie, made one point that the fact that the complainant wrote to the Chairman of Bharat Petroleum Corporation, Bombay and on 18.1.1989 a representative of the Corporation came and inspected the site of accident and took snaps with the gas stove in position, was not revealed at the time of the hearings. And also that reminders were sent to the Chairman for the claim made against the accident, to which no reply or claim form was sent. ONLY on 5th September, 1991, the Senior Divisional Manager, from the Bangalore office of the Corporation wrote to say, that on investigation they found that there was no L.P.G. accident in year 1988 at this customer's premises in Krishnagiri, and so they are not in a position to take any action in this regard. That is when the complaint was taken to the Consumer Forum first, and because of the pecuniary jurisdiction it was taken to State Commission, as compensation asked was Rs. 3 lakhs and more. As there was no satisfactory report from the Corporation nor the Agency in Krishnagiri, as to what were the findings of the inspection done on 18.1.1989, we are not prepared to accept the rejection of the claim by the Corporation at face value.

5. ALSO, as to their argument that on occurrence of the fire accident immediately no complaint or report was lodged with any authority, we can comment that when such a ghastly accident takes place the first concern about those around is to take the victim to a hospital. In the hospital the complainant had to undergo treatment for a long time, and after convalescing at her parents place she returned home, and only then did she made a formal complaint with the Corporation.

6. THE appellant in First Appeal No. 189 of 1992 state that they received the complaint 3 years after the occurrence of fire, and that they have been supplying cylinders to the complainant on regular basis during that period. It was also stated by the Counsel for the appellant in First Appeal No. 223 of 1992 that three days after the incident, a cylinder was delivered by the gas agent. THE agent was probably brought into the picture after the Corporation refused to pay and when the complaint was taken to the Consumer Forum. Also taking into account the fact that the complainants are from a small place, Krishnagiri, it is not very surprising that that took a long time to register the complaint, and that discrepancies occur in the date of the incident mentioned in various letters, though it is established now that the incident took place on 3rd November, 1988 as stated by the affidavits of the neighbours.

In conclusion the appellants have not been able to establish their case and thus we confirm the order passed by the State Commission and dismiss both the appeals.

7. Y. Krishan, Member- The facts of the case have been set out in the majority order recorded by Mrs. A.S. Vijayakar, Member. It is, therefore, not necessary to repeat the facts. SS There is no doubt that there was a fire accident due to leakage of gas from the gas cylinder on the 3rd of November, 1988. According to the finding of the State Commission, the cylinder bid defective valve as a result of which the gas gushed out and it caught fire. From a perusal of the record as well as after hearing both the parties. I do not find that there was any evidence to establish that the valve of the cylinder was defective. The finding of the State Commission on this point is based on inference only.

8. MORE importantly, the respondent before this Commission and the complainant before the State Commission has not come with clean hands. Herreport/ complaint to the Chairman of the respondent - M/s. Bharat Petroleum Corporation Ltd. is undated. This report/complaint contains a handwritten addition about the date on which the accident took place, viz. the 3rd of November, 1988. This is of relevance because, according to the appellant in First Appeal No. 223 of 1992, viz. Bharat Petroleum Corporation Ltd., she had written in her first letter to the Chairman that she met with accident on the 3rd of December, 1988. In her "subsequent" letter on 25th June, 1991 of the respondent, the date of accident was shown as 4th November, 1988. These letters are at pages 21 & 22 of the paper book. A bona fide error in recording the date could have taken place. The corrections of these dates in hand do not

inspire confidence in their authenticity. Again no report of accident was filed either with the police or with the fire department immediately after the accident took place. In fact in March, 1989 the fire station at Krishnagiri stated that there was no accident of fire in 1988. The appellant in First Appeal No. 189 of 1992 M/s. Karthik Agencies have in its appeal submitted that the report of accident was made to it on behalf of the respondent/complainant in 1991, i.e., 3 years after the accident. The respondent claimant however states to have lodged an oral report with the dealer in 1988.

9. AT the last hearing, the Counsel for the appellant in First Appeal No. 223 of 1992 viz. M/s. Bharat Petroleum Corporation Ltd. had submitted that another cylinder was supplied to the respondent/complainant three days a It either alleged accident viz. on the 6th/7th of November, 1988, the second cylinder was supplied on the 8th of December, 1988 and the third cylinder on 3rd of January, 1989. He had submitted that at no point of time while getting the new cylinders the respondent/ complainant or any one on her behalf made any complaint to the dealer about the defective supply of the gas cylinder from which the gas leakage occurred on the 3rd of November, 1988.

10. THE injuries suffered by the complainant because of the fire accident are based on a certificate of treatment of the burns issued by St. Louie Hospital, Krishnagiri on 25th of September, 1991. THE treatment was undergone by the respondent/complainant between 3rd of November, 1988 and 25th December, 1988. THE certificate issued merely three years after the accident is a weak evidence of the accident and the injuries sustained. Again the bills for treatment paid by the respondent/complainant are for room rent or the medicines etc. during the period of treatment of 3rd November, 1988 to 25th November, 1988. At the hearing the Counsel for the appellant M/s. Bharat Petroleum Corporation Ltd. had also urged that there was no evidence that the cylinder was defective and that the gas leakage was consequent thereof, is entirely based on the affidavit of the first respondent which remained uncontradicted before the State Commission.

Considering therefore that there is no evidence to establish that the cylinder was defective, the absence of a report of fire accident with the police and the fire department, the fact that complaint was lodged by the respondent/complainant regarding the supply of defective cylinder only three years later, and that the certificate of treatment for the burns is also three years after the accident, I am of view that it is not a bona fide complaint in which it has been established that there had been deficiency in service on the part of the appellants in the two appeals. On the other hand, there is reasons to suspect that the evidence of alleged report to the appellant in Appeal No. 223 of 1992 has been fabricated to sustain the claim. In the circumstances, the appeals are allowed and the order of the State Commission is set aside. There is no order as to costs. Appeal allowed.