
(2012) 01 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

KRISHNA SHARMA

APPELLANT

Vs

Babulal Pandey

RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Citation : 2012 0 NCDRC 746 : 2012 2 CPJ 59

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Final Decision : Petition dismissed

Judgement

1. COMPLAINANTS /Petitioners have filed this Revision Petition against the final judgment and order dated 13.7.2007 passed by the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal (in short, "the State Commission ") in appeal Nos. 1022 and 1354/06 whereby the State Commission partly allowed the appeal and modified the order dated 25.7.2006 passed by the District Consumer Disputes Redressal Forum, Satna (in short, "the District Forum ") in CC No. 96/95 and reduced the quantum of compensation awarded to the Complainants from Rs. 5 lakh to Rs. 2.5 lakh. Facts:

2. COMPLAINANT No. 1, Smt. Krishna Sharma is the widow of late Shri Ravi Sharma while other complainants, Harshit Sharma and Manas Sharma are their minor sons. Complainant No. 1, Smt. Krishna Sharma got an LPG connection of IOC. Respondent No. 3. herein (O.P. No. 3) from its Satna based dealer, Dharendra Gas Service, Respondent No. 2 (O.P. No. 2). Initially, it was a single barrel connection and was made double barrel on 3.1.94. Babulal Pandey, Respondent No. 1 (O.P. No. 1) on the relevant date was an employee-mechanic of O.P. No. 2 A refilled LPG Cylinder was supplied by the Respondent No. 2 to the Petitioner at her residence in Prabhat Vihar, Satna on 10.11.2004. On 16.11.2004, on a complaint of the Petitioner, mechanic Babulal Pandey, Respondent No. 1 had examined the cylinder and did some rectification work. Later on, in the day, when the cylinder put to use by late Ravi Sharma, the husband of Complainant No. 1, the said cylinder caught fire causing extensive burn injuries to him. He was shifted to Civil Hospital, Satna and then admitted in

a private nursing home, namely, Ayushyaman Hospital where he died on 3.12.2004.

3. THE case of the Petitioners before the District Forum was that the cylinder supplied by the Respondent Nos. 2 and 3 was defective having leakage which caused the fire resulting into the injuries and death of late Ravi Sharma. According to the Complainants, all the opposite parties, i.e., IOC, their dealer and the employee, Babulal Pandey were responsible jointly and severally for the said incident and liable to compensate the Complainants. Indian Oil Corporation had obtained a comprehensive insurance policy from the National Insurance Co. Ltd., Respondent No. 5 herein for miscellaneous accident cover for their distributors, transporters and consumers and the policy was in force from 22.4.2004 to 21.4.2005. That the National Insurance Company Ltd. which had issued comprehensive insurance policy for miscellaneous accident cover to distributors, transporters and consumers of IOC was liable to indemnify the said opposite parties and to pay on their behalf compensation to the Complainants. Complainants/Petitioners claimed compensation of Rs. 10 lakh from the Respondents.

4. OPPOSITE parties through their separate replies denied the complainants' allegation that the cylinder was defective or leaking. It was contended by the OP Nos. 1 and 2 that no complaint of leakage was ever made by the Petitioners. That Babulal Pandey attended to the complaint made by Late Ravi Sharma because of his friendship with him. It was further contended that the consumer had used substandard plastic tube and the regulator used by her was not of Indane. After the accident, necessary investigation was conducted by the IOC and the same irregularities were confirmed. It was further revealed that the victim in order to boil the milk had turned on the regulator knob and went on to search for the matchstick. It was after a few seconds that he could get the match box and when he tried to light the burner the gas which has leaked during this time, caught fire resulting in the said accident. National Insurance Company Ltd. in its separate written statement while supporting the case of other opposite parties, further contended that its liability vis-a-vis the victim was restricted to Rs. 1,00,000 only on no fault liability basis and that the said amount had already been deposited with the District Forum for payment to the Complainants.

5. PARTIES led their evidence in the form of affidavits and documents and on evaluation of which, the District Forum held that it was on account of leakage in the cylinder that the accident took place. District Forum allowed the complaint and directed the Opposite Parties to severally and jointly pay a sum of Rs. 5 lakh to the Complainants after adjusting the sum of Rs. 1 lakh which had already been paid. Interest @ 7% was also awarded from 30.3.2005. Rs. 1,000 were awarded as costs.

6. DISTRICT Forum came to the conclusion that the monthly income of the deceased was Rs. 4,000 p.m. which came to Rs. 48,000 p.a. After deducting 1/3rd towards the personal expenses of the deceased, the dependency of the

Petitioners was determined at Rs. 32,000. p.a. Applying the multiplier of 15, the loss of income was assessed at Rs. 4,60,000. After adding the expenses on account of consortium and funeral, the total amount of compensation was assessed at Rs. 5 lakh. Aggrieved by the order passed by the District Forum, the Indian Oil Corporation and the National Insurance Company Ltd. filed separate appeals before the State Commission. State Commission upheld the finding regarding negligence but however reduced the amount of compensation from Rs. 5 lakh to Rs. 2.5 lakh. State Commission came to the conclusion that the Petitioners had failed to produce any convincing or definite evidence of the income of the deceased. State Commission took the notional income of the deceased at Rs. 15,000 p.a. After deducting 1/3rd of the income towards the personal expenses of the deceased, the dependency of the Petitioners was computed to Rs. 10,000 p.a. By applying the multiplier of 15, the amount of compensation was determined at Rs. 1,50,000. Rs. 1,00,000 were awarded towards miscellaneous charges such as funeral, loss of consortium, loss of estate, etc. Total compensation payable was determined at Rs. 2,50,000.

7. THE deceased was 45 years of the age at the time of accident. Petitioners did not lead any evidence to show the exact income of the deceased. Accident had taken place in the year 1992. Keeping in view the wages of an unskilled worker in the year 1992, the State Commission has rightly taken the notional income of the deceased at Rs. 15,000 p.a. After deducting 1/3rd towards the personal expenses of deceased, the dependency of the Petitioners was determined at Rs. 10,000 p.a. Applying the multiplier of 15, the total dependency of the Petitioners was determined at Rs. 1,50,000. Rs. 1,00,000 has been awarded towards miscellaneous charges. Petitioners have failed to prove that the income of the deceased was Rs. 4,000 p.a. at the relevant time. There is no convincing or definite evidence on record to show the income of the deceased.

8. FOR the reasons stated above, we do not find any merit in this Revision Petition and dismiss the same with no order as to costs. Revision Petition dismissed.