(1991) 08 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

MAHENDRA SINGH JAIN APPELLANT

Vs

SODHI TRANSPORT COMPANY RESPONDENT

Date of Decision : 31-08-1991

Acts Referred:

Citation : 1993 1 CPJ 187

Hon'ble Judges : S.K.Mal Lodha , Damodar Thanvi J.

Final Decision : Complaint allowed

Judgement

1. COMPLAINANT No. 1 is Shri Mahendra Singh Jain who is Proprietor of M/s. Harsh Distributors, Agra and COMPLAINANT No. 2 is M/s. Harsh Distributors, Agra. Opposite party No. 1 is Sodhi Transport Co., John''s Mill No. 4, Juni Mandi, Agra, opposite party No. 2 is Sodhi Transport Co., Nanaji-ka- Bagh, Moti Doongari Road, Jaipur and opposite party No. 3 is Sardar Amarjeet Singh Sodhi, Partner of opposite party No. 1.

2. THIS complaint has been submitted under Sec. 12 read with Sec. 17(a)(i) of the Consumer Protection Act, 1986 ("the Act" herein). Complainant No. 1 carries on business of medicines under the name and style of M/s. Harsh Distributors (complainant No. 2). It is said that the complainants placed order to M/s. Kamron Laboratories, Ahmedabad for supply of medicines. They sent Form 31 bearing No. 2251001 to them which is Anx. 1. Medicines worth Rs. 98,146/- were supplied vide invoice Anx. 2. They were in 43 cartoons. According to the complainant service of the opposite parties were hired at Jaipur for transporting the aforesaid 43 cartoons from Jaipur to Agra. The aforesaid 43 cartoons were delivered to opposite party No. 2 with all papers required under the U.P. Sales Tax Act, 1948 and the Central Sales Tax Act and the rules framed thereunder. Opposite party No. 2 issued Transport Receipt No. 236339 dt. 29.6.90 showing Rs. 344.40 as freight charges to be paid. Photo stat copy of the transport receipt has been produced by the complainants marked as Anx. 3. The consignment of 43 cartoons were loaded in opposite parties'' truck No. URT 9898. The truck proceeded from Jaipur to Agra. On the way at the Sales Tax Check Post Fatehpur

Sikri, it was checked. It was alleged by the complainants that the requisite papers of the truck were not with the driver and their particulars were not mentioned in the Sales Tax Form No. 35 submitted by the driver to the Sales Tax Check Post, Fatehpur Sikai. The complainants have submitted photo stat copy of the Form 35 marked as Anx. 4. All the 43 cartoons of medicines were seized on account of the defect in the Sales Tax Form 35 Anx. 4 and nonshowing of the requisite papers. The authorities of the Sales Tax Check Post, Fatehpur Sikri (Agra) issued notice which has been submitted as Anx. 5. Opposite party No. 1 sent letter (Anx. 6) dt. 9.7.90 to complainant No. 2 informing it that the said consignment of medicines has been seized by the authorities of the Sales Tax Check Post, Fatehpur Sikri (Agra) as bill, transport receipt and Form No. 31 were not banded over and Form No. 35 was not duly filled by the driver of the truck. The complainant has also produced the photostat copy of the common office copy of the letters issued by opposite party No. 1. The Sales Tax Officer, Sales Tax Check Post, Fatehpur Sikri issued notice for depositing Rs. 63,850/- to opposite party No. 1. Photostat copy of the notice has been produced marked as Anx. 8. The complainants have averred that they repeatedly requested the opposite parties to contest the case or deposit the amount demanded by the said authorities and get the medicines released. Opposite party No. 3 filed his affidavit before the Asstt. Commissioner, Sales Tax Out-Post. Photostat copy of the affidavit has been produced marked as Anx. 9. Complainant No. 1 approached several times to opposite parties No. 1 and 3 at Agra and opposite party No. 2 for delivering the said consignment. But nothing was done and the medicines are under seizure. The driver driving the said truck was the employee of the opposite parties. The complainants have stated that it was the fault of the driver of the said truck not to have mentioned the particulars of the transport receipt in Form 35 and not to have shown the requisite papers to the authorities of the Sales Tax Check Post, Fatehpur Sikri (Agra). Opposite party No. 2 did not care to check and verify that the said driver was given all the necessary documents in respect of the consignment mentioned in the letter Anx. 7 when the said truck proceeded from Jaipur to Agra. It has been alleged that on account of these faults and shortcomings in the performance of the service by the opposite parties that the goods were seized at the Sales Tax Check Post, Fatehpur Sikri (Agra). The amount of Rs. 63,850/- has also been demanded by the authority of the Sales Tax Check Post, Fatehpur Sikri on account of the aforesaid reasons. Letter Anx. 10 dt. 25.7.90 was written by the Manager of opposite party No. 1 to Sewla office in regard to G.R. No. 236341/2 stating that due to the fault of the truck driver these goods were seized at Check Post. Photo stat copy of the letter enclosed herewith which is self explanatory. You are enclosing original bill and photostat copy of bilty. You are requested to please send a person and release the goods. Please note that party is not at fault. An early action is appreciated. "There is another letter Anx. 11 dt. 1.8.90 which was sent by the Manager of opposite party No. 1 in respect of three G. Rs. mentioned therein to Sewla office stating that the goods are lying at Sewla which were seized at Fatehpur Sikri Sales Tax Check Post and so arrangement may be made for getting them released for the party is harassing them. Letter (Anx. 12) dt. 7.8.90 was in regard to G.R. No. 236341 again written by the Manager of opposite party No. 1 to opposite party No. 2 stating that "due to mistake of the driver goods of G.R. No. 236341 were seized and so why the party suffer in this regard? You are requested to please release the same immediately and sent to Gwalior." Copy of which was also sent to Sewla office and Mahendra Singh Jain. Notices were served on the opposite parties. The complainant has filed copies of the notices, postal registration receipts and acknowledgment due marked as Anxs. 13 to 16. The opposite party neither sent any reply nor the medicines nor any amount. Therefore the complaint was lodged before the State Commission on 26.12.90 praying for the following reliefs: "(1) to give the delivery of the said consignment of 43 cartoons of medicines and to pay Rs. 80,500/- as compensation and also the price of the medicines whose date of use expire by the time of delivery, with interest at the rate of 15% per annum. OR to pay Rs. 1,98,646/- towards the price of said medicines, loss of profits, expenses incurred, interest and compensation with interest at the rate of 15% per annum in case the delivery of the said consignment of 43 cartoons of medicines is not given. 2. to pay the costs of this complaint as may be fixed by the Hon''ble Commission. The Hon''ble Commission may also pass such order as may be deemed fit and proper.

To undergo imprisonment for 3 years and To pay a fine of Rs. 10,000/- if the order passed is not complied with within one month as provided in Section 27, Consumer Protection Act, 1986." 3. Notices were issued To the opposite parties. Presumption of service was drawn against opposite party Nos. 1 To 3 vide order sheet dt. 4.4.91. Opposite party No. 2 submitted the version of the case on 14.3.91 contesting the complaint. The main defence taken by the opposite party No. 2 is that the goods of the consignment were seized due To the negligence of the complainants. Sales Tax Form 35 was available and the transporters are not responsible for any defect in the same. To quote from the version of the case "Either the Sales Tax Deptt. is responsible or To whom the tax was payable, he must be vigilant To see the same". Transporter is responsible only for transport and earn a minor amount. It was pleaded that the taxes are To be borne by the party as per law on the goods. The opposite parties had intimated To the complainants on 9.7.90. After intimation it was the responsibility of the complainant To fulfil all the formalities. It may be mentioned that in para 10 of the version of the case opposite party No. 2 has stated as under: "The opposite party responsibility rest upTo the extent of proper loading and transport and the duty of the driver was only To drive the vehicle and as a humanitarian sense if the complainant not manage or authorise any person with the medicine To fulfil the entire formalities it does not mean that he was negligent, no judicial notice be taken and no responsibility can be fastened on the driver. Even intimating this fact on next very day on 9.7.90 complainant did not care."

It was submitted that Anxs. 10,11 and 12 do not relate to the transaction in question. They pertain to different bilties and the goods were different which were transported from Jaipur to Gwalior etc.

3. IN support of the complaint, the complainants submitted his affidavit dt. 24.4.91. On behalf of opposite party No. 2 it was stated on 29.5.91 in writing that the affidavit which has been filed in support of the version of the case of opposite party No. 2 may be treated as evidence on behalf of opposite party No. 2. No other evidence was produced. On behalf of the complainants written arguments dt. 2.8.91 were submitted. Reply to the written arguments was submitted by Mr. V.V. Harit on 13.8.91. After submission of the written arguments learned Counsel for the parties did not appear on 20.8.91 and so on that day there was nobody to make oral submissions. We have considered the complaint, version of the case of opposite party No. 2, affidavits of the parties and the documents of the complainant. It is not in dispute that 43 cartoons of medicines which were sent from Jaipur were seized by the Sales Tax Authorities at the Sales Tax Check Post, Fatehpur Sikri (Agra) and they are still in their possession. Letter Anx. 6 dt. 9.7.90 was written by opposite party No. 1 to complainant No. 1. It runs as under: "J.M.Agra, Harash Distributors, Hospital Road, Agra. NIVEDAN HAI KI GADI NO. U.R.T. 9898 G.R. No. 236339/43 J.P.R. 2 AGRA KA MALAA RAHA THA. YAH MAL FATEHPURI SEEKRI CHECK POST PUR BILL BILTI FORM 31 CHECK POST PUR NAHIN DIYE THE. AUR FORM WALE NE FORM NAHIN BHARE THE. ISLIYE MAL CHECK POST PUR SEEL KAR LIYA HAI AAPKE SMAST KAGAJ BHI AVDHESH GUPTA KE PAS SEVLA KARYALAYA ME HAI. DHANYAVAD SODI TRANSPORT CO. SEVLA JAT Opposite party No. 1 has kept common office copy Anx. 7 of this letter and two other similar letters. Opposite party No. 2 in para 6 of the version of the case has admitted this. Letter Anx. 7 is to this effect: NIVEDAN HAI KI AAPKA MAL FATEHPURI SEEKRI CHECK POST PUR BILL BILTI FORM 31 BARRIER PAR SHOW NAHIN KIYE THE. ISLIYE AAPKA MAL BARRIER PAR SEEZ KAR LIYA HAI. (1) GR. No. 236339/43 JPR to Agra. Harsh Distributors Hospital Road, Agra. (2) G.R. No. 236450/17-JPR to KNP- M/s. Dr. Babharwal Ngf. Labs. Ltd., 117/N.2/ 160 Pandu Nagar, Kanpur. (3) G.R. No. 236341/2 JPR to Gul. M/s. Kwality Allw, Steel More Bazar, Gwalior. Sd/- Sodhi Transport. MR. RAM SINGH NE SABHI JAGAH PATRA LIKHE HAIN LEKIN COPY HAMARE PAS NAHIN DI HAI.

4. COMPLAINANT No. 1 issued notice to opposite parties. Their copies are Anx. 13 and 14. Postal registration receipts are Anx. 15 and acknowledgment receipts are Anx. 16. No reply was received from the opposite parties No. 1 to 3. Opposite party No. 2 admits in para 15 of the reply that reply to the notice was not given. The two letters and the affidavit of complainant No. 1 show that Form 31 (Anx. 1) and invoice Anx. 2 were duly delivered alongwith 43 cartoons of medicines to opposite party No. 1 at Jaipur and the aforesaid two documents and transport receipt Anx. 3 were not shown to the Authorities of the Sales Tax Check Post, Fatehpur Sikri (Agra). They were not even mentioned in Sales Tax Form 35 (Anx. 4) by the driver of the said truck. The goods were sent by G.R. No. 226339/43. On the same day goods were sent by G.R. No. 236450/17 and G.R. No. 236341/2 from Jaipur to Gwalior. The letter (Anx. 7) dt. 9.7.90 relates

amongst others to complainant''s goods receipt G.R. No. 236339/43 from Jaipur to Agra. Letter (Anx. 7) dt. 9.7.90 relates to three G. Rs. including that of the complainant The order Anx. 8 passed by the Sales Tax Officer is also in respect of the three G. Rs. mentioned in the letter (Ex. 7) dt. 9.7.90. Affidavit (Anx. 9) given by Amarjeet Singh Sodhi who is partner of opposite party No. 1 is in respect of G.R. No. 236339 dt. 29.6.90. Letter (Anx. 10) dt. 29.7.90 is in respect of G.R. No. 236341/2 mention of which has been made in Anxs. 7 and 10. Letter (Anx. 11) dt. 1.8.90 makes reference of three G. Rs. G.R. No. 236346, G.R. No. 236341 and G.R. No. 236450. Letter (Anx. 12) dt. 7.8.90 is in respect of G.R. No. 236341 from Jaipur to Gwalior. It is thus clear that in respect of G. Rs. mentioned in the aforesaid documents, Forms No. 35 were defective and the required documents were not submitted. The consignments were loaded in the same Truck No. URT 9898. From these documents it is abundantly clear that the consignment in question was seized alongwith others as the driver failed to show the documents and mention the same in Form No. 35. Rule 83 of the U.P. Sales Tax Rules, 1948 deals with establishment of Check Post. Sub-rules (4), (5) and (8) are as follows: "(4)(a) The owner, driver or any other person in charge of the vehicle or vessel shall, in respect of such goods carried in the vehicle or vessel as are notified under Sub-section (1) of Sec. 28-A and as exceed the quantity, measure or value specified in the notification, carry with him the following documents: (i) declaration in Form XXXI or certificate in Form XXXII or transit pass in Form XXXIV (hereinafter in the rules in this chapter referred to as ''declaration'' ''certificate'' or ''pass'' respectively), as the case may be in duplicate; (ii) cash memo, bill of sale or challan; (iii) a trip sheet in triplicate. (b) The owner, driver or any other person in charge of any vehicle or vessel shall in respect of all or other goods carried in such vehicle or vessel carry with him a trip sheet in triplicate. (5) (a) The owner, driver or any other person in charge of the vehicle or vessel shall produce the documents mentioned in Sub-rule (4) before the officer-in-charge of the check post or barrier or before any other officer not below the rank of an assessing authority on demand. (b) At the first check post or barrier after his entry into the State, the owner, driver or any other person in charge of the vehicle or vessel, as the case may be, shall give the original and duplicate copies each of the declaration or certificate and original, duplicate and triplicate copies of the trip sheet to the officer in charge of the said check post or barrier who will after satisfying himself about their completeness and correctness, sign, and stamp them with his official seal and return the duplicate copy of the declaration or certificate and the triplicate copy of the trip sheet, after endorsing thereon for the copy received, a receipt duly dated mentioning time and place. (8) The trip sheet referred to in Sub-rule (4) shall be in Form XXXV and shall contain details in respect of all the goods referred to in Clauses (a) and (b) of Sub-rule (4) being carried by a vehicle or vessel. Separate trip sheets shall be submitted for goods meant for different destinations."

It is clear from the aforesaid sub-rules that it was the duty of the driver to show the documents and to mention them in Form 35. There is no dispute that he had failed to do so and so 43 cartoons of medicines were seized by the Authorities of the Sales Tax Check Post, Fatehpur Sikri (Agra). There is no dispute that the driver driving the truck in which the consignment was loaded was an employee of the opposite parties. For failure to carry out the duties mentioned in Sub-rules (4), (5) and (8) of Rule 83 of the aforesaid Rules the goods were seized and this was due to his fault, shortcoming and imperfection in the performance of the service as envisaged by Sec. 2(1)(g) of the Act. The freight charges as consideration were to be paid. The complainants had hired the services for consideration, the payment of which was to be made at the time of taking delivery of the consignment. In other words payment of consideration was deferred. The National Commission in I (1991) CPJ page 40 (NC) has observed in para 2 of the report as under: "Once it is found that there is a hiring of service for consideration and that loss has been caused to the complainant on account of neglect and deficiency in rendering the service the aggrieved consumer is entitled to seek his remedy under the Consumer Protection Act by approaching the appropriate redressal forum. Every transaction of hiring of service may amount to a contract in the eye of law and any deficiency in rendering the service may be technically a breach of contract but merely for that reason the consumer cannot be denied the benefit of the protection conferred by the Act. While ordinarily claims arising out of breach of contract will have to be agitated before the regular Civil Courts, grievances relating to loss or injury caused on account of negligence and deficiency in the performance of services which are hired for consideration have been classified for special protection under the Act and in such cases the aggrieved consumer is entitled to invoke the jurisdiction of redressal forums constituted under the Act, seeking relief as specified in the Act. Hence the ground on which the State Commission declined to investigate into the complaint does not appeal to us as correct or sound."

The said 43 cartoons of medicines were delivered to opposite party No. 2 from Jaipur to Agra. Thus part of the cause of action arose at Jaipur and so it is futile to submit that the Consumer Disputes Redressal Commission (State Commission Rajasthan) has no territorial jurisdiction to entertain and decide the complaint. Our finding is that there was "deficiency" in service rendered by the opposite parties.

5. NOW as to what relief the complainants are entitled is to be considered. The complainant has produced invoice (Anx. 2) in which it is stated that the cost of the medicines contained in 43 cartoons was Rs. 98.146/-. We may pause to state that 15th item in the invoice "Cequid Dry Syrup" price of which is Rs. 3,050.40 is of no use as the expiry date is Aug. 91 and this medicine is of no use to the complainant. The expiry date of the rest of the medicines has not passed as yet, for, their expiry months are Jan. Feb. May, Oct. 1992 Feb. 93 and Dec. 94. It is the duty of the opposite parties transporter to give delivery of the consignment of 43 cartoons of medicines to the complainant which they have failed to do.

6. IT is ordered that opposite parties will take necessary steps for delivering the

consignment of 43 cartoons of medicines to the complainants. At the time of the delivery of the consignment they will be required to pay Rs. 3,050.40 to the complainants in regard to item No. 15 of the medicine mentioned in the invoice (Anx. 2) as the date for the use of the medicine has expired. The complainants will deliver this medicine to the opposite parties on payment of Rs. 3,050.40. In case the opposite parties fail to arrange for the delivery of the consignment of 43 cartoons of the medicines as stated above, they will pay a sum of Rs. 98,146/- to the complainants being the price of the medicines received from Kamron Laboratories, Ahmedabad vide invoice (Anx. 2). The complainants have claimed a sum of Rs. 80.500/- as compensation and also the price of the medicines whose date of use expire by the time of delivery with interest @ 15% p.a. In the alternative the complainants have prayed for the payment of Rs. 1,98,646/- towards the price of the medicines, loss of profit, expenses incurred, interest and compensation with interest @ 15% p.a. in case the delivery of the consignment of 43 cartoons is not given. A prayer has also been made by the complainants that order for imprisonment for 3 years and to pay a fine of Rs. 10,000/- may also be passed against the opposite parties if the order is not complied within one month as provided in Sec. 27 of the Act. Complainant No. 1 has sworn the affidavit. Para 14 relates to the claim for Rs. 1,98,646/-. Invoice (Anx. 2) has been submitted by the complainants. There is no rebuttal. If the opposite parties fail to get the consignment of 43 cartoons released, they shall reimburse the complainants for the cost of the medicines i.e. Rs. 98,146/-. He has also deposed that the complainants on account of not getting the medicines in time due to fault, imperfection and shortcoming in performing service rendered by opposite parties they were deprived of the business profit etc. Having considered the facts and circumstances of the case we are of opinion that the ends of justice would be met if interest by way of compensation is awarded to the complainants on Rs. 98,146/- @ 12% from 9.7.90 when opposite party No. 1 informed the complainant about the seizure of the goods which it failed to get them released until the date of payment. The complainant in para 14 of the complaint which stands supported by the affidavit has claimed the amount of Rs. 5,000/-, Rs. 6,000/-, Rs. 4,000/-, Rs. 500/- and general damages amounting to Rs. 65,000/-. Compensation can only be awarded under Sec. 14(1)(d) of the Act. A consumer becomes entitled to the compensation for the loss or injury suffered by him on account of the negligence of the opposite party. The complainant has claimed these amounts which are detailed in Para 14(iii) to (vii) of the affidavit. It is well settled that compensation can only be awarded on well recognised principles. It is also settled that while Sec. 14(1)(d) of the Act provides for the award of compensation for any injury or loss suffered by the consumer on account of the negligence of the opposite party, still claim must be substantiated by sufficient evidence and the compensation has to be assessed not arbitrarily but on the basis of the well accepted legal principles. It is also firmly established that the compensation to be awarded has to be quantified on a rational basis on a consideration of materials produced before the adjudicating forum showing the extent of injury suffered and the manner in which and the extent to which monetary loss has been caused thereby to the complainant. In case no material showing the extent of loss or injury caused on account of negligence of the opposite party is on record, only nominal damages are to be awarded. See Commercial Officer, Office of the Telecom, Distt. Manager, Patna v. Bihar State Warehousing Corporation (First Appeal No. 2/288 (with Miscellaneous Petition No. 19/89 for intervention) decided by the National Commission on 18.10.89). In our opinion, the complainants merely on the basis of the affidavit in the absence of the other material or documents cannot be said to have substantiated their claim for the award of compensation mentioned under item (iii) to (vii) in para 14 of the affidavit. There is no doubt that on account of the negligent act of the opposite parties the consignment of 43 cartoons of medicines could not be delivered to the complainants on account of which they could not sell the medicines and the money spent by them in purchasing the medicines remained blocked. Even there was a risk of medicines being running out of date and thus all this resulted in mental agony, harassment loss of business etc. We have held above that the complainants have not led any cogent and convincing evidence in this regard. However, ends of justice would be met if Rs. 5,000/- arc awarded as compensation.

The result is that this complaint succeeds as under: 1. The opposite parties are directed to make arrangement for the delivery of the consignment containing 43 cartoons of medicines to the complainants by getting the same released from the Sales Tax Authorities. 2. The opposite parties shall be required to pay Rs. 3,050.40 in regard to item No. 15 of the invoice (Anx. 2) the date of which has expired. 3. The opposite parties will pay interest by way of compensation on the amount of Rs. 98,146.39 as they were deprived of the medicines from 9.7.90 until the date of the delivery of the medicines @ 6% p.a. 4. In addition to the aforesaid amounts the opposite parties shall pay Rs. 5,000/- as compensation to the complainant for mental agony, harassment and pursuing the remedy for getting the consignment released. One months'' time is allowed to the opposite parties from the date of the receipt of the order for complying with the above directions.

7. IN case the opposite parties fail to deliver the consignment containing 43 cartoons of medicines to the complainant within one month from the date of the receipt of the order, the opposite parties shall make payment of Rs. 98,146/- to the complainant, the cost of the medicines amounting to Rs. 98,146/- together with interest @ 12% p.a. from 9.7.90 until the date of payment. IN that case the opposite parties will be free to take the medicines from the Sales Tax Authorities. The complainants shall also be entitled to Rs. 5,000/- as compensation as mentioned above. On payment of Rs. 3,050.40 the complainant shall deliver item No. 15 of the medicine the date of which has expired in Aug. 91 to the opposite parties. The opposite parties shall destroy them.

8. IN the facts and circumstances of the case, the parties are left to bear their own costs of this complaint. The complaint is decided accordingly. Complaint

allowed.

