

(2016) 07 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

Case No : 4 of 2008

MINISTRY OF COMMUNICATION & ORS.

APPELLANT

Vs

JANARDAN SHAMRA (NOW DEAD) THROUGH LRS.

RESPONDENT

Date of Decision : 08-07-2016

Acts Referred:

[Post Office Act, 1898](#), [Section 6](#) -
Exemption from liability for loss, misdelivery, delay or damage

Citation : 2016 3 CPR 169

Hon'ble Judges : Ajit Bharihoke, Rekha Gupta

Advocate : Romil Pathak, G S Singh

Judgement

1. The present first appeal has been filed against the judgment dated 11.10.2007 of the Delhi State Consumer Disputes Redressal Commission, Delhi ("the State Commission") in Complaint Case no. C - 283 of 1998.

2. The facts of the case as per the respondent/ complainant are that the respondent booked a speed post parcel bearing no. 4669/ Air Mail - 950635 from the office of the appellant no. 2, i.e., Safdarjung Sorting Post Office, New Delhi on 29.06.1998 and the said parcel was despatched by the respondent in the name of his son namely Dr Pankaj Sharma at his address "instituto De Quimica, Unama Circuito Exterior, Cayoacam City, Mexico DF 04510 ". The said parcel sent by the respondent through Speed Post was not delivered to the addressee till the end of July 1998. Appellant nos. 1 to 5 did not deliver the above said parcel to the addressee was a total failure on the part of appellants in performing their duties. Mrs Manju Sharma wife of Dr Pankaj Sharma required immediately the document "professional certificate of Ph D". The appellant also paid the fee of Rs.1400/- to the Mexican Embassy in India. The respondent also paid to the appellant no. 5 a sum of Rs.500/- as prescribed charge for the speed post. The purpose of the respondent for sending the above said documents was now over and the respondent's son's wife was unable to get the job/ service of post-doctoral fellowship. Hence, the respondent has sought compensation in the following components:

1 Fee paid for the speed post Rs. 400/-

2 Fees paid for the authentication of document/ certificate Rs. 1,400/-

3 Loss of the post and its salary @ US \$1500 for the mandatory period of 9 months which comes to total indian currency Rs.5,67,000/-

4 Telephone /STD Charges + conveyance charges, visits several times to your office + expenses of papers and time. Rs. 5,500/-

5 Advocate fees for the present legal notice Rs. 5,500/-

6 Typing and postal charges Rs. 150/-

TOTAL Rs.5,84,450/-

3. The appellants have denied any negligence but admitted that the parcel sent by the respondent by speed post was lost in transit. The appellants have also raised the following contentions: As soon as the appellants came to know about the non-delivery of the said parcel, the appellants initiated an inquiry with its counterpart at Mexico which revealed that item was lost in the transit and as per the published norms and under Universal Postal Union Agreement the Speed Post charges of Rs.400/- and compensation for the loss of items of Rs.30/- SDR which was equivalent to Rs.1,168.05 have been paid to the respondent vide Cheque no. 925829 dated 08.09.1998 and cheque no. 75348 dated 04.09.1999 respectively. Since the goods in the said parcel was not got insured by the respondent, the appellants are not liable for the damages, if any, caused due to loss of damage of the said parcel.

4. The State Commission while allowing the complaint has observed as under: " However, in our view any shortcoming, imperfection or inadequacy in the quality, nature and manner of performance amounts to deficiency in service if the service provider like the courier service, speed post service does not deliver the parcel or parcel is lost in transit, as the case in hand, the consumer is entitled to an adequate or reasonable compensation for the mental agony, harassment and other suffering suffered by him. Taking over all view of the matter, we hold the OP guilty for deficiency in service and award compensation of Rs.25,000/- besides Rs.5,000/- as cost of litigation . The complaint is allowed and disposed of in the aforesaid terms" .

5. Hence, the present appeal.

6. We have heard the learned counsel for the appellant as well as the respondent and have gone through the record. Learned counsel for the appellant has stated that the State Commission has totally failed to take note of the facts of the case as also the statutory protection afforded to Section 6 of the Indian Post Offices Act. The appellant has contended that there was no wilful default or fraudulent act on the part of the appellant department in not delivering the envelope in question to the addressee. The envelope was booked on 29.06.1998 and the same was correctly dispatched to the destination on 30.06.1998 through flight

no. UAZ/ LAX/ UA/ 4425. On receipt of the complaint about non-delivery of the said parcel, inquiries were initiated by the appellant with its counterpart at Mexico which revealed that the item was lost in transit and as per the published norms and under the Universal Postal Union Agreement, the speed post charges of Rs.400/- and compensation for the loss of item, i.e., SDR 30 (which is equivalent to Rs.1168.65) have been refunded to the complainant vide cheque no. 925819 dated 08.09.1998 and cheque no. 75348 dated 04.09.1999 respectively.

7. Without prejudice to the above, the case is also covered by the immunity afforded to the Appellant Department by Section 6 of the Indian Post Offices Act. The said immunity is absolute and has been so upheld by the National Commission time and again. The State Commission failed to take note of the statutory protection afforded by Section 6 to the Appellant. For ready reference, Section 6 is reproduced below: "The Government shall not incur any liability by reasons of the loss, mis-delivery or delay or damage to, any postal article in course of transmission by post, except in so far as such liability may in express terms be undertaken by the Central Government as hereinafter provided, and no officer of the Post Office shall incur any liability by reasons of any such loss, mis-delivery, delay or damage unless he has caused the same fraudulently or by his wilful act or default".

8. Learned counsel for the respondent on the other hand has argued in favour of the order.

9. On our enquiry from the learned counsel for the appellant, he stated that no enquiry had been held in this case to establish where the speed post article was misplaced and no responsibility had been fixed for the same. As per the learned counsel for the appellant the article was dispatched by flight no. UAZ/ LAX/ UA/ 4425 and thereafter, the whereabouts of the article could not be traced. The fact remains that the article sent by the respondent did not reach his son and as the said article contains the professional certificate of Ph D of Mrs Manju Sharma - his daughter in law due to non-receipt of the certificate, she could not apply for the post of Doctor Fellow Ship which was available at Mexico for nine months.

10. We also note that the State Commission has awarded a paltry sum of Rs.30,000/-, i.e., compensation of Rs.25,000/- and Rs.5,000/- as cost of litigation.

11. The Hon"ble Apex Court in the case of Gurgaon Gramin Bank vs Khazani and another , IV (2012) CPJ 5 SC where the court observed: "Number of litigation in our country is on the rise, for small and trivial matters, people and sometimes central and State Governments and their instrumentalities Bank, nationalized or private, come to courts may be due to ego clash or to save the officers" skin. Judicial system is over burdened, naturally causes delay in adjudication of disputes. Mediation centers opened in various parts of our country have, to some extent, eased the

burden of the courts but we are still in the tunnel and the light is far away. On more than one occasion this court has reminded the Central Government, State Government and other instrumentalities as well as to the various banking institutions to take earnest efforts to resolve the disputes at their end. At times, some give and take attitude should be adopted or both will sink. Unless, serious questions of law of general importance arise for consideration or a question which affects large number of persons or the stakes are very high, courts jurisdiction cannot be invoked or resolution of small and trivial matters. We are really disturbed by the manner in which those types of matters are being brought to courts even at the level of Supreme Court of India and this case falls in that category". The Apex Court further held;

"10 . The Chief Manager stated in the affidavit that no bill was raised by the counsel for the bank for conducting the matter before the National Consumer Dispute Redressal Commission. We have not been told how much money has been spent by the bank officers for their to and fro journeys to the lawyers" office, to the District Forum, State Forum, National Commission and to the Supreme Court. For a paltry amount of 15 ,000/-,even according to the affidavit, bank has already spent a total amount of 12 ,950/- leaving aside the time spent and other miscellaneous expenses spent by the officers of the bank for to and fro expenses etc. Further, it may be noted that the District Forum had awarded 3,000/-towards cost of litigation and compensation for the harassment caused to Smt. Khazani. Adding this amount, the cost goes up to 15,950/-. Remember, the buffalo had died 10 years back, but the litigation is not over, fight is still on for 15,000/-.

11. Learned counsel appearing for the bank, Shri Amit Grover, submitted that though the amount involved is not very high but the claim was fake and on inspection by the insurance company, no tag was found on the dead body of the buffalo and hence the insurer was not bound to make good the loss, consequently the bank had to proceed against Smt. Khazani.

12 . We are of the view that issues raised before us are purely questions of facts examined by the three forums including the National Disputes Redressal Commission and we fail to see what is the important question of law to be decided by the Supreme Court. In our view, these types of litigation should be discouraged and message should also go, otherwise for all trivial and silly matters people will rush to this court.

13 . Gramin Bank like the appellant should stand for the benefit of the gramins who sometimes avail of loan for buying buffaloes, to purchase agricultural implements, manure, seeds and so on. Repayment, to a large extent, depends upon the income which they get out of that. Crop failure, due to drought or natural calamities, disease to cattle or their death may cause difficulties to gramins to repay the amount. Rather

than coming to their rescue, banks often drive them to litigation leading them

extreme penury. Assuming that the bank is right, but once an authority like District Forum takes a view, the bank should graciously accept it rather than going in for further litigation and even to the level of Supreme Court. Driving poor gramins to various litigative forums should be strongly deprecated because they have also to spend large amounts for conducting litigation. We condemn this type of practice, unless the stake is very high or the matter affects large number of persons or affects a general policy of the Bank which has far reaching consequences.

14. We, in this case, find no error in the decisions taken by all fact finding authorities including the National Disputes Redressal Commission. The appeal is accordingly dismissed with cost of 10,000/- to be paid by the bank to the first respondent within a period of one month. Resultantly, the Bank now has to spend altogether 25,950/- for a claim of 15 ,000/-, apart from to and fro travelling expenses of the Bank officials. Let God save the Gramins ."

12. In view of the principle of law laid down in Gurgaon Gramin Bank (Supra), as a paltry amount of Rs.30,000/- only is involved and this litigation is going on for about 8 years, therefore we are not inclined to entertain this appeal. However, the question of law raised in this appeal is kept open, to be decided in an appropriate case, where the stakes are high and amount involved is substantial.

13 . With these observations, the present appeal stand disposed of.