

(2004) 10 NCDRC CK 0037

In the National Consumer Disputes Redressal Commission

N.S. RAMAKRISHNAN NAIR

APPELLANT

Vs

STAR ENGINEERING INDUSTRIES

RESPONDENT

Date of Decision : 21-10-2004

Acts Referred:

Citation : 2003 3 UC 1964 : 2005 3 CPJ 500 : 2005 3 CPR 126

Hon'ble Judges : T.M.Hassan Pillai , A.Radha J.

Final Decision : Appeal dismissed

Judgement

1. THE propriety and sustainability of the order passed by the CDRF, Kannur in O.P. 258/00 is sought to be challenged by filing this appeal by the complainant who approached the Forum below for redressal of his grievance alleging that the newly purchased main shaft for the use of Mahindra Jeep belonging to him (jeep bearing No. KL-10F/6839) was entrusted with the opposite party/2nd respondent herein for doing some lathe work on 18.5.2000 and the lathe work was done in a negligent manner causing breaking of the head of the top portion of the shaft thereby rendering it unfit to be used. Further case pleaded by the complainant was that the opposite party turned a deaf ear to the demand made by the complainant/appellant for purchasing a new shaft under some pretext. THE jeep was plying as a taxi at Manakkadavu town fetching a daily income of Rs. 750/-. To avoid huge loss he had purchased a new shaft and the new shaft was purchased by him on account of the fact that the opposite party had not purchased new shaft. Lathe work was got done by him and that shaft was fitted to the jeep. Price of the shaft purchased by him was Rs. 1,970/-. Though he sent a Lawyer notice demanding the price of the new shaft, the opposite party evaded that notice. He had suffered a loss of Rs. 1,970/- by purchasing new shaft again (the price of the new shaft purchased). For sending legal notice he spent Rs. 250/- and Rs. 250/- was the taxi fare paid by him for meeting the opposite party. He suffered mental agony and he claimed Rs. 1,000/- by way of compensation of the mental agony suffered. Total amount claimed by him from the respondent was Rs. 3,470/-.

2. THE claim made by the complainant was resisted by the managing partner of the second opposite party by filing a version disputing all the aforesaid allegations made in the complaint. It was contended by him in the version that complainant was not a consumer and the opposite party has not rendered any service to the complainant. Opposite party had not received any consideration from the complainant. THE complainant had not entrusted the main shaft to the opposite party for lathe work. THE opposite party establishment has been manufacturing rubber rolling machines and doing lathe work. THE establishment is entrusted with work by the owners of the workshops. On 18.5.2000 one Kunjappan, the owner of a workshop entrusted a main shaft for rectifying the defects (vibration of 2nd and 3rd gears of the main shaft) and as per his direction the opposite party establishment set the ply of the 2nd and 3rd gears of the main shaft. It made two small sleeves and sleeves also were set. Later gear was fitted to the main shaft. After completion of work the main shaft was examined by Kunjappan and he expressed satisfaction and got back the main shaft. No lathe work used to be done for a new main shaft. It was contended that no documentary evidence was produced by complainant to prove that the main shaft entrusted by Kunjappan belonged to the complainant. It was also contended that there was no deficiency in service on the part of opposite party and it had not done any lathe work on the main shaft. It was the case of the opposite party that if any damage was caused to the main shaft it was either due to the manufacturing defect or due to the defect in fitting the main shaft in the vehicle. THE receipt of Lawyer notice was not deliberately evaded. That notice was addressed to the manager and there was no Manager for the establishment. Contention is raised in the version that opposite party establishment is a partnership firm. Complainant filed application to implead Star Engineering Industries, Thaliparamba as supplementary 2nd opposite party and that application was allowed.

The lower Forum on a consideration of the materials produced before it came to the conclusion that complainant has not established his case of deficiency in service and consequently answered the point formulated by it whether there is deficiency in service in the negative against the complainant. Consequently Forum below also held that complainant was not entitled to any compensation and dismissed the complaint.

3. THE complainant who is aggrieved by that order passed seeks to file this appeal and the question that is to be considered at this stage is whether the complainant/appellant made out a case for admitting the appeal. We may point out at the outset itself that even if we proceed on the assumption that averments made in the complaint are true i.e., for doing lathe work main shaft purchased by complainant was entrusted with opposite parties and the top or head portion of the main shaft was broken due to the negligence of the opposite parties we are not prepared to admit the appeal and the ground is that there is no whisper in the complaint that complainant hired or availed of the service of the opposite parties for consideration either paid or promised or partly paid or partly

promised. As no such case is pleaded in the complaint it may not be possible for us to hold that the complainant is a consumer as defined in the Consumer Protection Act, 1986 i.e., he satisfied the definition of the consumer contained in Section 2(1)(d) of the Consumer Protection Act, 1986 as amended by the Consumer Protection (Amendment) Act, 2002. We may also point out here itself that in the Lawyer notice sent by the complainant he has not asserted that he had availed or hired the service of opposite parties for consideration i.e., consideration paid or promised or partly paid or promised. It is true that the complainant while giving evidence as P.W. 1 asserted that he paid labour charges for doing work and his assertion on the aspect cannot be given credence to on the ground that no such case is pleaded by him. It has been held by the Supreme Court in *Bonder Singh v. Nihal Singh*, II (2003) SLT 649= AIR 2003 SC 1383, that it is, settled law that in the absence of a plea no amount of evidence led in relation thereto can be looked into. Supreme Court held in *Devender Pal Singh v. State*, NCT Delhi, I (2003) SLT 55=I (2003) CCR 66 (SC)= AIR 2003 SC 351, that the law declared by Supreme Court is the law of the land. It is precedent for itself and for all the Courts/Tribunals and authorities in India.

4. THE other ground for rejection of the case put forth by the complainant/appellant is that no expert evidence has been produced by the complainant before the Forum below to prove his case that the newly purchased shaft which was alleged to be entrusted with the opposite parties for doing lathe work was damaged (top or head portion was broken) while doing the lathe work negligently by the opposite parties as alleged in the complaint. It is the case of the complainant that the head or the top portion of the main shaft was broken due to the negligent manner of doing lathe work (in the legal notice it is asserted that damage to the main shaft is caused due to careless handling of the same by the opposite party). THE shaft alleged to be damaged by the opposite parties while doing lathe work was not produced before the Forum below nor was it sent to any laboratory to find out whether damage was caused while doing lathe work. We may also point out here that barring the interested testimony of P.W. 1 (complainant) there is no evidential basis for the assertion made by him that top or head portion of main shaft was broken due to careless handling of the same by the workers or employees of the opposite parties. At least the workshop man who told the complainant that the shaft is unfit to be used could have been examined to prove that it was on account of doing of lathe work in a negligent or careless manner the top or head portion of main shaft was broken. The case of the complainant that the main shaft purchased by him was entrusted for doing lathe work cannot be accepted on the ground that the bill produced by him would show that the work done by the opposite parties was 2nd and 3rd gear ply setting, sleeves two members and another work shown in that bill. That bill does not show ex facie that it was issued to the complainant by the opposite party nor that bill would show that Rs. 330/- shown therein as the labour charge payable for work shown as done therein was paid by the complainant to the opposite parties. If the second part of definition of consumer contained in the Consumer

Protection Act as amended by Consumer Protection (Amendment) Act, 2000 is applied it will be possible to hold that main shaft was purchased for fitting in the jeep belonging to complainant and it is the case of the complainant that the vehicle has been used as a taxi and he has been earning a daily income of Rs. 750/-. If the second part of the definition of consumer as amended by Consumer Protection (Amendment) Act, 2000 is applied it may be possible to hold that the alleged availing of or hiring of the service by the complainant was for commercial purpose. There is no case for the complainant that service of opposite parties was availed of or hired by him exclusively for the purpose of earning his livelihood by means of self-employment. So on the ground also it may be possible to hold that complainant is not a consumer. During the course of inquiry or trial while giving evidence complainant attempted to built up a new case (a case not pleaded by him). Case attempted to be trotted out during the course of inquiry or trial is that the employees of the opposite parties told him that broken top of the main shaft would not cause any problem, that he was told by the workshop men that shaft was not fit to be used in the jeep, that he came back to the establishment of the opposite parties, that the manager was not there, that the employees promised to do the needful on the next day when the manager comes and that they asked him to purchase a new main shaft. No case is also pleaded by him in the complaint that on the next day he went to the opposite parties establishment and he was promised by the workers to give up the labour charges. It is clear from his evidence that when he demanded the price of the 2nd shaft purchased by him the opposite parties refused to pay the price saying that the defect was caused to the shaft by the workshop people and no damage was caused to the shaft by the opposite parties. So it is clear from the evidence of P.W.1 that the opposite parties had a case even at that time that the damage was caused to the shaft not due to any work done by opposite parties. As there is no expert evidence to prove the case of the complainant that it was as a result of the lathe work done by the opposite parties on the main shaft, top or head portion of it was broken. We are not persuaded to accept complainant's case.

5. WE find no ground to interfere with the order passed by the Forum below dismissing the complaint, but for entirely different reason. So in our view no ground is made out to admit the appeal. Hence the appeal is not admitted and dismissed. Appeal dismissed.