
(2013) 05 NCDRC CK 0096

In the National Consumer Disputes Redressal Commission

R Sarto Irudayaraj

APPELLANT

Vs

M/S. Sivanesan And Co. , Amara Stores

RESPONDENT

Date of Decision : 21-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 425 : 2013 2 CPJ 729

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : Asmita Singh , MANORANJAN PADHI

Judgement

1. THIS revision petition has been filed against the impugned order dated 22.03.2012, passed by the Tamilnadu State Consumer Disputes Redressal Commission (hereinafter referred to as "the State Commission ") in FA No. 200/2010 "M/s. Sivanesan and Co. and Anr. Vs. Mr. R. Sarto Irudayaraj ", by which, while allowing appeal against the order dated 02.02.2010 passed by the District Consumer Disputes Redressal Forum, the complaint filed by the petitioner before the District Forum was ordered to be dismissed.

2. THE District Forum vide said order had allowed the claim of the complainant and directed the OP to pay a total sum of Rs.55,505/- under various heads. Brief facts of the case are that as per complaint no. 234/2000 filed before the District Forum, Chennai, by the present petitioner and his wife, the complainants purchased a Premier brand 7.5 litre pressure cooker from M/s. Amara Stores (respondent no. 2 in the present petition), who is authorised dealer of M/s. Sivanesan and Co. (respondent no. 1 in the present petition). It has been stated in the complaint that bill no. 31748 dated 31.12.1997 was issued by the dealer and a guarantee card no. 8231400 was also issued by which the manufacturer had issued a guarantee for the product for the period of 10 years from the date of purchase. The second complainant, the wife of the present petitioner was operating the said pressure cooker on 07.09.1999 when the pressure cooker is stated to have exploded and injured the wife of the petitioner badly. The petitioner found his wife lying unconscious on the floor and profusely bleeding all over her face. She was rushed to the nearby hospital where an emergency

surgery was done. It has been stated that despite the surgery, the victim did not fully recover from the injury. The petitioner sent a letter dated 6.04.2000 informing respondent no. 1, the manufacturer about the incident and calling upon them to reimburse medical expenses of Rs.35,000/- and a sum of Rs.2 lakh towards compensation. However, vide letter dated 3.05.2000, respondent no. 1 accused the complainants of mishandling the cooker. There was further correspondence between the petitioner and respondents, but of no avail. It is the case of the complainant that the explosion had occurred due to some manufacturing defect in the pressure cooker and hence, the OPs are liable to pay compensation to the complainants for the supply of defective goods. The explosion took place within the period of warranty stipulated by the OPs. They are, therefore, guilty of unfair trade practice and liable to pay the damages to the complainants.

3. THE OP No. 1, in their written statement took the stand that the petitioner had not produced the bill dated 31.12.1997 by which the said cooker is stated to have been purchased. The guarantee card produced indicates that the said cooker was of 6 litre capacity. Further, the complainant had earlier stated that the cooker was purchased in December 1998, but now they were saying that the same was purchased in December 1997. Further, the accident had taken place on 07.09.1999, but a report was made to the OP for the first time on 06.04.2000, i.e., after an inordinate delay of 7 months. OP also took the stand that from the year 1995 to 2000, they had manufactured about 5,77,974 pressure cookers, which were sold in India and abroad but there was not a single case of explosion reported by any consumer. OP denied any manufacturing defect in the said cooker and stated that the cooker in question had functioned well for 18 months from the date of purchase.

4. THE District Forum after taking into account the evidence of the parties, allowed the complaint and directed the OP No. 1/respondent no. 1 to pay a total sum of Rs.55,505/- to the complainants, including Rs.950/- as cost of cooker, Rs.34,555/- as reimbursement of medical expenditure, Rs.15,000/- as compensation for mental agony and Rs.5,000/- towards cost of the proceedings. An appeal was filed before the State Commission against this order by respondent no. 1 which was allowed by the State Commission. The order passed by the District Forum was set aside and the complaint was dismissed. It has been observed by the State Commission that the complainant had failed to produce the cash memo for purchase of pressure cooker and it had not been proved that the second complainant sustained injuries because of explosion of cooker. It has also been observed that cooker would have started giving trouble from day first itself, had there been any manufacturing defect. It is against this order of the State Commission that the present revision petition has been filed.

5. HEARD the learned counsel for the parties and perused the material on record.

6. IT has been stated by the learned counsel for the petitioner that the said pressure cooker with 7.5 litre capacity was purchased from respondent no. 2 on

31.12.1997, but they had misplaced the bill for the same. However, copy of the guarantee card has been produced before us upon which although the words "6 litres " have been printed, but the figure "6 " had been changed to "7.5 ". Learned counsel invited our attention to the test report given by the laboratory of "Bureau of Indian Standards " on 16.01.2007 saying that the product did not meet various safety requirements, as mentioned in the report. Moreover, it was clear from the "discharge summary " issued by the hospital at Chennai, in respect of the wife of the petitioner that she was a victim of accidental pressure cooker blast, following which she had to undergo repair of cartilage of the nose and repair of the lachrymal duet. It is also mentioned in a certificate given by a Doctor that she required further corrective surgery. Learned counsel stated that the explosion had occurred within the warranty period and hence the complainant were entitled to get compensation from the OPs. The consumer complaint had been filed within time from the date of the incident. It has also been stated that the petitioner "s wife was a home-maker and was accustomed to handling the pressure cookers and hence there was no mishandling on her part. The explosion had occurred due to manufacturing defect only. Learned counsel has also made written submission which is part of record. In reply, learned counsel for respondents stated that information about the said incident which is stated to have taken place on 7.09.99, was given to respondent no. 1 after a lapse of seven months and there was no justification for such inordinate delay in giving this information. Vide their letter dated 6.04.2000, the complainant asked the respondents to inspect the product after explosion, but it sounds quite absurd to do such inspection, after a long period of seven months. The learned counsel has drawn our attention to the terms and conditions as printed on the copy of the guarantee card produced by the petitioner. One such condition states that, "the guarantee card duly stamped and signed by the dealer along with cash memo should be preserved and produced along with the unit sent to the service centre, otherwise, the claim will be treated as invalid. " In the instant case, since the petitioner have not been able to produce the cash memo for the purchase of pressure cooker, they are not liable to get the claim from the opposite party. The learned counsel further stated that the Technical Executive of their company, H. Sankaranarayanan had filed an affidavit saying that the pressure cooker manufactured by respondent no. 1 conformed to the ISI and Underwriters Laboratory (USA) standards. The respondent no. 1 was holding licence from the Bureau of Indian Standards (ISI) since 1991 and the said licence was never revoked or suspended any time. Regarding the hospitalisation of the wife of the petitioner, the learned counsel says that she was discharged on 9.9.99, i.e., two days after the admission and hence the petitioner could have given intimation about the alleged incident to the respondents earlier.

7. FROM a careful consideration of the facts on record and the oral arguments advanced before us, it is quite apparent that there was no valid justification on the part of the complainants to write to respondent no. 1, seven months after the alleged incident. They requested respondent no. 1 to depute a responsible

person from their office to inspect the product. They have also called upon them to pay Rs.35,000/- for medical expenses and Rs.2,00,000/- as compensation for ensuing medical treatment and sufferings of the family. No explanation has been offered by the petitioner as to why they could not give intimation to the respondents earlier. It is also quite absurd to ask for inspection of the product after the lapse of such a long time. Further, the cash-memo as a proof for the purchase of the pressure cooker is a very crucial document in the whole scenario, but the same has not been produced by the petitioner and no reasons have been given as to why it could not be produced. The petitioners earlier gave the version in three letters that the pressure cooker was purchased in December 1998, whereas later on they have been taking the plea that the same was purchased in December 1997. There is controversy regarding the capacity of the pressure cooker as well. The petitioners say that the pressure cooker was of 7.5 litre capacity, while copy of the guarantee card produced by them has figure "6 " printed on the same. It has been argued by the learned counsel for the petitioner that the numeral "6 " has been changed to "7.5 " in hand, but this version is not clear from a perusal of copy of the guarantee card.

8. IT becomes clear from the above facts that the petitioners/complainants have failed to prove that they purchased the same cooker which had exploded. We agree with the arguments taken by the State Commission that a complainant becomes a "consumer " only, when he proves beyond doubt that the purchase was made by him and the sale-consideration, date of purchase and description of goods is clearly stated. In various letters sent by the petitioner, including the one dated 6.4.2000 sent to respondent no. 1, reference has been made to a cooker purchased in December 1998. However, later on, they have taken the stand that the cooker was purchased in December 1997. The price of the product has not been mentioned anywhere. Even the terms and conditions mentioned on the guarantee card state very clearly that the claim can be treated as valid only if accompanied by the cash-memo. In view of all these facts, it is held that the petitioners have not been able to substantiate their claim against the respondents and the order passed by the State Commission reflects correct appreciation of the facts and circumstances of the case on record. The revision petition, is therefore, ordered to be dismissed and order passed by the State Commission upheld, with no order as to costs.