
(1994) 02 NCDRC CK 0051

In the National Consumer Disputes Redressal Commission

Rajamani

APPELLANT

Vs

PRINCIPAL, LOYOLA MATRICULATION HIGHER SECONDARY
SCHOOL

RESPONDENT

Date of Decision : 23-02-1994

Acts Referred:

Citation : 1994 2 CPJ 183

Hon'ble Judges : S.A.Kader , R.N.Manickam , Ramani Mathuranayagam J.

Final Decision : Complaint dismissed

Judgement

1. THIS is a complaint under Sec. 17 read with Sec. 12 of the Consumer Protection Act.

2. THE complainants are man and wife. THEir only son R. Gopinath aged about 15 years was studying in the IX standard of the first opposite party school. In the summer vacation in 1993, the first opposite party invited the Students of the school to join the Summer Coaching Scheme in various disciplines. THE first opposite party promised that the P.T. Master will accompany the students for their safety. THE complainants admitted their son Gopinath in the swimming class and paid a fee of Rs. 300/-. THE swimming class is conducted by the second opposite party Sports Development Authority and the third opposite party is a wing of the second opposite party. THE complainants' son was attending the course from 16-04-93 with two other students. On 28-04-93 at about 5.30 p.m. the complainants heard that their son had drowned in the swimming pool and was taken to the K.M.C. Hospital. THEy rushed to the hospital and found that their son had died of drowning. According to the complainant there was deficiency of service on the part of the first opposite party school, P.T. master of the first opposite party never accompanied the students to the swimming pool. THERE was deficiency on the part of the opposite parties 2 & 3 because they did not provide any qualified coach. THE complainants claimed compensation in the sum of Rs. 7 lakhs. The first opposite party admitted that the complainant's son was a student in IXth standard and that in the Summer Vacation of 1993 he

called for students to join the summer coaching classes. Only 5 students gave their names for the swimming for which the charge was Rs. 250/-. Due to poor response the school did not take up this coaching. It had nothing to do with the swimming class conducted by the opposite parties 2 & 3. The fees collected by the school were refunded. But the complainant's son and 2 others joined the course conducted by the opposite parties 2 & 3 on payment of Rs. 900/- at Rs. 300/- per head. No fee was, therefore, collected by the first opposite party school. The swimming course was conducted by the second opposite party and the third opposite party. On inquiry, the first opposite party understands that on 28-4-93 the complainant's son had drowned in the swimming pool. The first opposite party is not liable on any ground.

The opposite parties 2 & 3 filed, a joint counter. They admitted that they conducted swimming classes for students. For students below 15 years the fee was Rs. 300/- each for 12 classes of one hour a day. For students above 15 years the fee was Rs. 350/-. The complainant's son was one of those students who attended the class which commenced on 16.4.93. for one hour per day between 4 p.m. and 5 p.m. He was regularly attending the swimming classes from 16-4-93 to 28-4-93. There were 4 sessions everyday 8 a.m. to 9 a.m., 9 a.m. to 10 a.m. then 3 p.m. to 4 p.m. and from 4 p.m. to 5 p.m. There were 3 coaches in every session. The complainant's son belonged to the 4th session and was under the direct control of a coach by name Veerabhadran. The boys and girls learning swimming were required to take a shower before entering the swimming pool and after the session is over the students are led out of the pool and the coach gets out last. Thereafter the learners are required to take showers. On 28-4-93 the complainant's son like all other learners had learnt swimming to a considerable extent. At the end of the class at about 5 p.m. the coach led the students out of the pool and sent them for showers. At that time the complainant's son requested the coach to permit him to go to the area where the water is up to 9 level and swim in the said area. The coach did not permit him and told the complainant's son that the session was coming to a close and asked the complainant's son as well as others to go out of the pool for showers. The coach had left only after all the candidates including the complainant's son had come out of the pool. His friends found the complainant's son missing at the time of dressing and informed the coach. A search was made by the lifeguards and they found the complainant's son drowned inside the pool in the 9 feet level. He was taken out and one of the doctor members of the swimming pool attended on him. On his advice he was rushed to the hospital where he was declared dead. The coach himself has given the FIR to the police. The other boys who were learning with the complainant's son have also given statements. The first complainant has also given a statement accepting the statements of other students. There was no negligence or deficiency of service. The accident was due to the fact that the complainant's son has gone to swimming in the 9" depth area against the orders of the coach. The opposite parties are not liable for any claim.

3. EXHS. A1 to A6 and B1 to B9 are marked by consent. Proof affidavits are filed. No oral evidence has been let in. The points that arise for determination are : (1) Whether the complaint is maintainable against the first opposite party? (2) Whether there has been any deficiency of service or negligence on the part of the opposite parties 2 & 3? (3) To what relief, if any, is the complainant entitled?

4. POINT No. 1 : The complainant's son Gopinath was a student of the IXth standard in the first opposite party school. It is true that the first opposite party called for students to join the summer classes in various disciplines including swimming. The fee was Rs. 250/-. The complainants' son and 4 others have offered for the training in swimming. As the response was very poor, the opposite party No. 1 dropped the scheme and refunded the money. Subsequently, the complainants' son and 3 others have directly joined the scheme conducted by the opposite parties 2 & 3 on payment of Rs. 300/- per head. There is absolutely no evidence to show that any amount was paid to the first opposite party for this coaching scheme. On the other hand it is conducted by the opposite parties 2 & 3 and had received Rs. 300/- from the complainants' son. The complainants' son was not, therefore, a consumer qua the first opposite party. The claim against the first opposite party is, therefore, unsustainable. Point No : 2 : Admittedly, the complainants' son joined the swimming class conducted by the second & third opposite parties. As is seen from the affidavit filed by Mr. R. Stephen David Jebaraja Singh, the third opposite party they have 3 qualified coaches and the complainants' son had undergone the swimming training in the 4th session between 4 p.m. and 5 p.m. daily. The coach for this session was one Tr. Veerabadhran who has also filed an affidavit. It is seen from his affidavit that on 28-4-93 the complainants son and the other students had learnt swimming between 4 p.m. and 5 p.m. Therefore he directed Gopinath and other students to leave the pool at 5 p.m. and asked them to go to the shower. At that time, the complainants' son Gopinath requested the coach to permit him to swim in the area where water was in the 9" level. The coach declined his request and told him to go out of the pool for showers and also told him that he shall teach him on the next day. After instructing Gopinath and his co-students to go home, the coach went to inspect the next batch of students. At about 5.20 p.m. the friend of Gopinath by name Santhiagu Maria Alex informed that Gopinath was missing. When a search was made, he was found in the swimming pool of 9" depth. He was taken out and was examined by Doctor member and on his advise he was rushed to K.M.C. Hospital where he was declared to be dead due to drowning. This coach Veerabadhran has given FIR under Exh. A6 to the same effect. According to this statement recorded by the police after the swimming lessons were over at 5 p.m. the coach ordered them to go out of the pool. At that time the deceased boy asked the coach to permit him to swim in the 9" depth area. The coach told him that the time was over and asked him to get out. Gopinath came to the bath but was subsequently found missing. His mates reported the matter to the coach and a search was made when it was found that Gopinath has drowned in the 9" depth area. It is significant that the first complainant has also

given a statement before the police under Exh. B5. In the said statement he has referred to the statements" of his son"s co-students that Gopinath wanted to go and swim in 9" depth area but the coach refused. But subsequently on his own accord he has gone there and attempted to swim when he found a watery grave. The affidavit of the coach Veerabadhran, the statements of the co-students and the statement of the first complainant proved that the coach was attending on Gopinath and co-stu-dents all the time during the swimming lessons, that on 28-4-93 after the swimming session was over at about 5 p.m. Gopinath had wanted to go and swim in the 9" depth area but the coach refused. In spite of his refusal, the boy has on his own accord went to the pool and attempted to swim in that 9" depth area of the pool and was drowned. The allegation that the opposite parties 2 & 3 did not give proper coaching and the boy was not looked after properly and there was gross deficiency of service are devoid of any merit. We are unable to find any deficiency on the part of the opposite parties 2 & 3. This is an unfortunate occurrence in which the complainants" son had died by drowning in the swim-ming pool. But it is not fair and reasonable to mulct the opposite parties 2 & 3 with the liability for the same. Point No. 3 8. In view of our finding on Point No. 2 the complainants are not entitled to any relief. In the result the complaint fails and is dismissed, but without costs. Complaint dismissed.