
(2011) 10 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

Savita Prem

APPELLANT

Vs

P Lakshmikutty Warrasiar

RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Citation : 2011 0 NCDRC 658 : 2011 4 CPJ 398 : 2012 1 CPR 205

Hon'ble Judges : V.R.KINGAONKAR , VINAY KUMAR J.

Final Decision : Appeals are disposed of

Judgement

1. THE above two appeals are being decided together since they arise out of same judgement and order rendered by the Andhra Pradesh State Consumer Disputes Redressal Commission (for short "the State Commission "). By the impugned judgement, both the appellants, who were opposite party nos. 1 & 2, are directed to pay compensation of Rs.10 lakhs to respondent no. 1 - Smt. P. Lakshmikutty Warrasiar. The complaint was dismissed as against opposite party no. 3 - Commissioner, Municipal Corporation of Hyderabad and no claim is made against the respondent no. 3 in the present appeals also. Thus, the respondent no. 3 - Commissioner, Municipal Corporation of Hyderabad, is a formal party.

2. FOR the sake of convenience, the contesting parties may be referred to by their first names and as per their nomenclature before the State Commission. Complainant, Smt. P. Lakshmikutty Warrasiar is a widow. She is mother of deceased C. Vyasan. Her son C. Vyasan was employee of UTI Bank. He was young. He was having six years working experience. It is an admitted fact that (Shri) C.S. Narasimha Rao, is owner of a house property bearing no. 108 in Park Lane, S.D. Road, Secunderabad (A.P.) A part of the building bearing Door No. 108/A, in the first floor was let out to appellant (Smt.) Savita Prem by C.S. Narasimha Rao. There is no dispute about the fact that (Smt.) Savita Prem used to run a restaurant in the name and style as "Reshmi Family Dhaba " in the tenanted premises. There is also absolutely no dispute about the fact that on 13.02.2001 somewhere around 8:00 PM, the roof-top and structure of the said restaurant had collapsed.

3. BRIEFLY stated, the case of complainant - Smt. P. Lakshmikutty Warrasiar is that her son (C. Vyasan) had gone to "Reshmi Family Dhaba " in the relevant evening for dinner. While he was awaiting the food ordered by him, the structure of the premises and the roof collapsed. He was pressed to death under the debris. It resulted into his instantaneous death on the spot. She depended on a sizeable portion of his income. She lost her son. She lost consortium and also lost dependency due to his death. The complainant - Smt. P. Lakshmikutty Warrasiar further alleged that the roof and structure of the restaurant had collapsed due to negligence of the appellants - (Smt.) Savita Prem and (Sh.) C.S. Narasimha Rao. They had not taken due care to maintain the building of the restaurant. They were simultaneously planning structural alterations and changes without taking proper care to ensure safety of the customers. Though, there was no approval of the competent authority for the structural changes, the illegal work of renovation was being done at the relevant time. She, therefore, issued notice to (Smt.) Savita Prem and C.S. Narasimha Rao calling upon them to pay compensation of Rs.25 lakh alongwith interest @18% p.a. Both of them denied their liability. Hence, she filed the complaint seeking compensation of Rs.20 lakh on account of loss of the life of her deceased son and also claimed interest @18% p.a. on said compensation amount.

4. (SMT.) Savita Prem, original opposite party no. 1, resisted the complaint proceedings on the ground that there was sudden collapse as the structure had caved in without any fault on her part. According to her, it was an act of God, i.e., Vis Major. She denied that renovation work was going on in the premises of the restaurant. She categorically alleged that the premises of the restaurant were being maintained properly and there was no fault in maintenance of the same. She pointed out that she was tried in a criminal case (CC No. 955/2001) before learned Metropolitan Magistrate, Secunderabad and was acquitted after due trial for offence under section 304-A IPC. She alleged that the licence of the restaurant was renewed and the business of catering was in accordance with provisions of the Municipal Law. However, the licence for period of 2000 - 2001 was lost because of the collapse of the building. She could not get duplicate copy of that licence. In short, her case is that the death of C. Vyasan was not on account of any negligence on her part but it could be a result of the act of God. Hence, she sought dismissal of the complaint. (Sh.) C.S. Narasimha Rao, original opposite party no. 2, resisted the complaint on basis of plea that maintenance of the restaurant premises was the sole liability of the tenant, namely, (SMT.) Savita Prem. His further contention was that deceased C. Vyasan was not a consumer qua him. According to him, one Tara Chand and Premchand were his tenants in the premises and they had sub-let a part of the ground floor to one Prem Sahani, i.e., husband of (SMT.) Savita Prem, and Rajan Soni. The latters had started the restaurant at the place. They had carried out certain alterations, removal of walls and changes which impaired the value and utility of the building. He alleged that there was no privity of contract between him and C. Vyasan and, therefore, he is not liable to pay any compensation to complainant - SMT. P.

Lakshmikutty. He, therefore, sought dismissal of the complaint.

5. THE parties adduced evidence by way of filing affidavits. The State Commission held that death of C. Vyasan was on account of structural alterations and changes caused in the premises without any legal authority. The State Commission held that deceased C. Vyasan was consumer of the appellants and, therefore, his death was on account of deficiency in the services of the appellants. The State Commission held that (Smt.) Savita Prem did not have licence for running of the restaurant at the time of the incident and (Sh.) C.S. Narasimha Rao, gave the premises on rent to her without taking proper care. Both of them were, therefore, held liable to indemnify Smt. P. Lakshmikutty.

6. WE have heard learned counsel for the parties in extenso. We have also perused the relevant material placed on record. Mr. Yadav, learned counsel appearing for appellant (Smt.) Savita Prem, urged that the State Commission had failed to deal with material issue of deficiency in service on part of the appellant. He pointed out that though point for consideration was framed by the State Commission in the context of deficiency in service on part of the opposite parties no. 1 & 2 yet the question was not answered with specific reasons. He submits, therefore, that the matter is required to be remanded for decision on merits. He further argued that deceased was not consumer in so far as structure of the building is concerned. He argued that there was no deficiency in service in respect of the food which was offered for catering and, therefore, the dispute could not be branded as a "consumer dispute " He further argued that no negligence was proved in respect of maintenance of the building by (Smt.) Savita Prem. He pointed out that on 06.02.2001 lease deed was executed in her favour by (Sh.) C.S. Narasimha Rao and within 10 days thereafter in the evening of 13.02.2001 the incident had occurred. It is argued during such a short period there could not be any negligence committed by (Smt.) Savita Prem in maintenance of the restaurant premises which could have such catastrophic result. He would submit that the State Commission failed to properly appreciate the fact situation and, particularly, the issue whether the deficiency in the service was proved. He invited our attention to certain observations of the learned Magistrate in the judgement of acquittal in criminal case CC No. 955 / 2001. The criminal case was filed against both the present appellants. The learned counsel, therefore, urged to set aside the impugned judgement on merits or to remand it for afresh decision. The counsel appearing for (Sh.) C.S. Narasimha Rao contended that no joint liability could have been fastened against him because it was the responsibility of the tenant to maintain the building properly and ensure that the customers of the restaurant were safely attended. He submitted that, in any case, deceased C. Vyasan was not the consumer qua (Sh.) C.S. Narasimha Rao, because the latter was not a service provider to him. Hence, he urged to allow FA No. 106 / 2006 filed by (Sh.) C.S. Narasimha Rao. Per contra, learned counsel appearing for respondent no. 1 /complainant - Smt. P. Lakshmikutty supported the impugned judgement. Before we embark upon determination of the relevant points involved in the appeal, it may be stated at the outset that the

plea of (Smt.) Savita Prem that the roof of the restaurant had collapsed as per act of God is absolutely without any merit. The term "Act of God " (Vis Major) does imply happening of some event, which is totally beyond control of human beings or that it is due to certain natural calamities like Earthquake, tempest, lightening or like causes, that may be beyond control of human beings. They may be termed as "Acts of God ". Falling of structure, without any earthquake, hurricane or the storm etc. cannot be termed as "Act of God ". It is obvious that absence of due care in maintenance of the building, up-keeping of the structure and like factors are the reasons which may result into the collapse of the structure. The present case is covered by such act of negligence. By no stretch of imagination, it can be said to be an incident of "Vis Major ".

7. TRUE , the State Commission framed point for consideration as below:- "Whether there is any deficiency of service on the part of the parties; and whether the complainant is entitled to any relief sought for in the complaint? "

What we find from the record is that the State Commission discussed the relevant evidence in the context of the said point. The only thing absent in the impugned order is specific answer to the issue and the manner of deficiency in the service. Still, however, this could be at the most an irregularity which does not vitiate the impugned order. The impugned order of the State Commission is not rendered without giving reasons. The State Commission recorded the reasons as stated below:- i) In the instant case, the collapse of building could have been avoided if structural alterations and renovation works were not undertaken in such an old building without first evaluating whether the building can withstand such alterations or not. ii) The opposite party No. 1, i.e., (Smt.) Savita Prem did not file the licence for the relevant period but stated that there was a licence for period between 1994 - 2000 to run the restaurant. iii) The receipt (Annex P-14) filed for payment of Rs.14,365/- paid to the Municipal Corporation of Hyderabad for renewal of licence for the year 2004 - 2005 could not be taken into consideration because it is not the relevant document to show that the restaurant or doing business with due licence as on the date of the incident, i.e., 13.2.2001.

8. IT is well-settled that an appellate court need not remand the matter only because certain point is not specifically addressed to by the trial Court. For, the appeal is continuation of the original proceedings. Learned counsel for the appellant (Smt.) Savita Prem seeks to rely on certain observations in "Swaran Lata Ghosh Vs. Harender Kumar Banerjee " [AIR 1969 SC 1167]. The Supreme Court observed that a judicial determination of a disputed claim where substantial questions of law or fact arises is satisfactorily reached, only if it be supported by the most cogent reasons that support themselves to the Judge, a mere order deciding the matter in dispute not supported by reasons is no judgment at all. Recording of reasons in support of a decision of a disputed claim serves more purposes than one. Counsel further refers to observations in "Account Officer, Jharkhand State Electricity Board Vs. Anwar Ali " [(2007) 11

SCC 753]. In that case, the National Commission had not addressed the question as to whether consumer of electricity is covered by definition of "Consumer " as defined in section 2(O) of the Consumer Protection Act. That matter was remanded to this Commission by the Supreme Court. He also invited our attention to "Chairman, Thiruvalluvar Transport Corporation Vs. Consumer Protection Council " [(1995) 2 SCC 479]. The Supreme Court held that the case arising out of provisions of the Motor Vehicles Act, 1988 is not a consumer dispute and, therefore, the National Consumer Disputes Redressal Commission has no jurisdiction to adjudicate upon the claim. The Supreme Court took such a view in the particular context because section 175 of the Motor Vehicles Act, 1988 bars jurisdiction of the Civil Court. This case law has no application to the facts of the present case. Similarly, learned counsel invited our attention to observations in "Ravneet Singh Bagga Vs. KLM Royal Dutch Airlines " [(2000) 1 SCC 66]. In our opinion, neither case law is of any assistance to the case of the appellant in the context of present case. We may now address the main point involved in the present appeals. The clinching question is whether deceased C. Vyasan was "consumer " of either of the appellants and if so then whether there was deficiency in the service(s) that was / were being offered to him or that was hired by him. Considering the affidavits of the parties and observations from judgement in the criminal case (CC No. 955 / 2001), it is amply clear that deceased C. Vyasan had gone to the restaurant, i.e., "Reshmi Family Dhaba " alongwith his friend, by name, Madhu Verma. It is amply clear that dead body of C. Vyasan was found under the debris. He was crushed to death under the weight of debris after fall of the roof and the structure. It further appears that Madhu Verma was examined as PW-2 and was injured during the course of same incident. His version before the criminal court was that he was stuck under the debris upto the neck. He further narrated before the criminal court that certain renovation work of Reshmi Family Dhaba was going on at the relevant time though he could not give details thereof. He admitted, no doubt, that he had not seen the renovation or construction work at the material time. The record shows un-mistakeably that deceased C. Vyasan and his friend had gone to the restaurant in the relevant evening for dinner. It has come on record that while they were waiting for the dinner to be served on the table, all of a sudden, the roof of the restaurant had collapsed.

9. WE cannot and shall not ignore the fact that deceased C. Vyasan had not gone to the restaurant for any casual purpose. He had gone as a consumer of the restaurant. He had ordered the food articles for payment to be made as per the billing at end of the dinner. The argument that he was not a consumer of the proprietor of the restaurant, i.e., (Smt.) Savita Prem in respect of the building premises is totally fallacious. Services rendered at the restaurant not only include the service of the quality food, the proper services of the waiters, attendants etc. But it also includes the comfortable infrastructure for consumption of the eatables with proper safety of structure in which the eating house is being run. Where there is deficiency in maintenance of the structure of the eating house, it

goes without saying that there is deficiency in service offered to the customers of the restaurant. The safety of the building, comfortable and proper sitting arrangement in the restaurant alongwith proper service of eatables are the services clearly expected by any consumer. No customer would enter the death trap of such a dilapidable structure. We cannot accept the argument that the services of catering and the maintenance of the restaurant are different kind of services, and, therefore, the proprietor of the restaurant could not be blamed for deficiency in service.

10. SECTION 2(1)(g) of the Consumer Protection Act, reads as follows:- "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service "

A bare perusal of section 2(1)(g) would make it amply clear that the deficiency in the service is not restricted to a particular category of defect. Any inadequacy in the quality and nature of performance which is required to be maintained to and or under the Law for the time being in force will make out a case to say that there was a deficiency in service. As pointed out before, (Smt.) Savita Prem was required to maintain the safety of the building of restaurant for giving expected services to the customers. It is not proved that she was having relevant business licence at the relevant time to run the restaurant. Her acquittal from the criminal charges is of no avail in the present proceedings which are of civil nature. So far as the status of deceased C. Vyasani as "Consumer " is concerned, it may not be out of place to say that in view of section 2(1)(O) of the Consumer Protection Act, 1986, proprietor of the restaurant, i.e., (Smt.) Savita Prem was the service provider of the service which was being availed by him. A plain reading of section 2(1)(O) of the Consumer Protection Act, 1986 will make it crystal clear that any service of boarding is covered by the said provision. We reject the argument of learned counsel for appellant (Smt.) Savita Prem that there was no consumer dispute and she was not a service provider and also reject further argument that there was no deficiency in the service.

11. THOUGH , formal agreement of tenancy between the appellants was executed on 6.02.2001 yet we cannot overlook the fact that husband of appellant (Smt.) Savita Prem was running the restaurant in partnership of another person, as stated by the landlord, i.e., another appellant - (Sh.) C.S. Narasimha Rao since long. Obviously, she cannot be heard of saying that due to short span of tenancy period the maintenance of restaurant could not be verified by her. Licence for running the restaurant was obtained in 1988 - 1989 and was renewed till before 2000 by the two partners one being husband of (Smt.) Savita Prem. What appears from the record is that the partners fell out and, therefore, in the first week of Feb. 2001, the tenancy agreement was entered into in the name of wife of one of the proprietor, i.e., (Smt.) Savita Prem. Hence, knowledge could

be attributed to her about the structural defects, improper and unauthorised changes in the premises and likelihood of the untoward incident which ultimately occurred in the evening of 13.02.2001.

12. IN "Geeta Jethani and Ors. Vs. Airport Authority of India and Ors. " [III (2004) CPJ 106 (NC)], this Commission had occasion to deal with a case in which accident took place due to faulty maintenance of escalators of the Airport Authority of India. This Commission held that the contention of AAI, OP No. 1 in that case, that no service was undertaken in respect of the escalator at the arrival terminal of the Airport and the complainant had not hired or availed any service for consideration from the AAI was liable to be rejected. We are of the opinion that appellant - (Smt.) Savita Prem committed deficiency in service expected of a reasonable restaurant owner in relation to safety measures and maintenance of the building and, therefore, is liable to indemnify the complainant on account of deficiency in service. Coming to the case of C.S. Narasimha Rao, in F.A. No. 106 / 2006, we have no hesitation in holding that there was no privity of contract between him and the deceased. The deceased had neither availed any service of (Sh.) C.S. Narasimha Rao, nor was the latter under legal obligation to provide safety at the restaurant for beneficial use thereof by the customers. Needless to say that deceased C. Vyasani was not a consumer qua appellant - (Sh.) C.S. Narasimha Rao. The State Commission erroneously held that both the appellants were jointly and severally liable to indemnify the complainant. The appeal filed by C.S. Narasimha Rao, deserves to be allowed in view of the fact that there was no service provider - consumer relationship between him and deceased C. Vyasani.

13. SO far as quantum of compensation awarded by the State Commission is concerned, we do not find any substantial reason to reduce the quantum having regard to the fact that deceased C. Vyasani was well-educated engineer, was young employee of the UTI Bank and his sizeable income was made available to the mother for her benefit. For the reasons afore-stated, we do not find any merit in FA No. 103 / 2006 filed by (Smt.) Savita Prem. However, FA No. 106 / 2006 filed by (Sh.) C.S. Narsimha Rao deserves to be allowed. We hold, therefore, that appellant (Smt.) Savita Prem alone is liable to pay the awarded compensation amount to complainant Smt. P. Lakshmikutty Warrasiar.

14. IN the result FA No. 103 / 2006 is dismissed. FA No. 106/2006 is allowed and the appellant C.S. Narasimha Rao stands exonerated from liability to indemnify the complainant. We modify the final order of the State Commission accordingly and direct that the appellant (Smt.) Savita Prem alone shall be liable to pay the awarded amount of compensation to Smt. P. Lakshmikutty Warrasiar alongwith cost of the appeal, which is quantified at Rs.10,000/-. The appeals are accordingly disposed of.