
(1996) 09 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

SHARUTI SHAUKEEN

APPELLANT

Vs

Union Territory of Chandigarh

RESPONDENT

Date of Decision : 12-09-1996

Acts Referred:

Citation : 1996 2 CLT 561 : 1996 3 CPJ 5 : 1996 3 CPR 98 : 1997 1 CPC 42

Hon'ble Judges : J.B.Garg , Sada Nand , P.Ojha J.

Final Decision : Complaint dismissed

Judgement

1. MR. Shaukeen Singh was a Staff Correspondent of a Newspaper at Chandigarh and he was allotted residential House No. 111, Sector 19/A, Chandigarh by the Administration. The electric wires were allegedly defective and required repairs. These were changed in 1989 and circuit breakers were also installed. The complainants were given to understand that in case of any leakage of electric current or any other defect in the circuit, the breaking unit will automatically cut off the electricity supply. On 4.5.89 at about 7.30 p.m. Shaukeen Singh handled the room cooler installed in the aforesaid residential premises and he was electrocuted. It has been alleged that it was on account of leakage of electricity and defective circuit breaker installed by the respondent. It has been further averred that had the electricity installation been proper, checked and maintained, this accident could certainly be avoided. Shaukeen Singh was aged 40 years and was getting Rs. 4,000/- per mensem and had he survived he could progress further in his career. The service rendered by the respondent was defective resulting in this occurrence and the compensation has been claimed in the sum of rupees ten lacs by the widow and two minor children of the deceased.

2. A reply has been filed on behalf of the respondent wherein it has been averred that the complaint is not maintainable under the Consumer Protection Act, 1986 because the complainant first approached the Civil Court but the suit was dismissed and the second remedy is not admissible. On merits it has been averred that electrical installations in the premises in question were replaced by the department in routine alongwith other Government houses in the locality in

October, 1988. The function of the respondent is to do the wiring and maintenance of electric points which are to be used. Respondent was not responsible for the loss occurring due to use of other appliances and gadgets like room cooler etc. The maintenance of the gadgets is the responsibility of the owner of the house. The department is not responsible for the mishap on account of defective appliances/ gadgets utilised by the occupants. No complaint was received regarding wiring. All the circuits were protected through MCB's and they were functioning properly. No understanding was given to the complainant that even in the event of any leakage of the current it will automatically cut off the electric supply. The premises of the complainant like over Government houses were properly earthed. Mrs. Rita Sharma was major and was fully aware of the proper use of the electricity in the house and in case she found any defect in the wiring or in the circuit breakers she could have immediately lodged complaint at the complaint centre of the Department which she never did. It is incorrect that leakage of electricity was due to defective circuit breakers installed at the premises of the complainant. The room cooler belonged to the deceased. On an investigation it was found that the room cooler was connected to light plug through two core cables (without earth wire) and without plug top for feeding power to the cooler. The protection of earth wire provided in the socket was not availed of by the deceased while handling the cooler. In such circumstances the leaked current from defective cooler passed through the body of the person who was handling the gadget resulting in electrocution. Had the occupant of the house used three core cable and made use of earth terminal available in the light plug from where the supply of cooler was taken, there would have been no case of electrocution of the body of deceased. It has further been averred that no fault was noticed in the electricity installation at the time of inspection. The complainants are not entitled for any compensation because the suffering if any was their own lapse on account of use of defective cooler. The complainants had been the consumers of electric supply provided by the respondent and we hold that this complaint is maintainable under the Consumer Protection Act, 1986.

A perusal of the record shows that earlier two minor children approached the Senior Sub-Judge, Chandigarh by moving an application under Order XXXIII of the Code of Civil Procedure to sue as a pauper. The issues were also framed for the purpose of assessing whether the complainants were paupers or not but at that preliminary stage the pauper petition was dismissed for default and obviously it never took the shape of a civil suit. Thus it is not a case where the suit has been dismissed. The withdrawal of pauper petition or its dismissal for default is no bar to the present complaint before the Commission.

3. THE case of the complainant is that their father/husband died as electric supply/wiring in the house was defective. On the other hand, the case of the opposite party is that the MCBs were installed in the year 1989 alongwith other Government residential houses in the vicinity. This fact has also been stated by the complainants themselves. THE complainants have further asserted that they were given to understand that the electric supply in the house was quite safe. On

the other hand the opposite party asserts that undoubtedly the wiring done in the house was quite safe and the accident resulting in death of Shaukeen Singh occurred because of use of two core cable (without earth wire) without plug top for feeding power to the cooler and that the occupant could not make use of earth connection available in the light plug through two core cables. THE protection of earth wire provided in the socket was not availed of by Shaukeen Singh while handling the plug. THE complainants have put in the affidavits of Anoop Inder Singh s/o Avtar Singh, Dr. J.C. Bhatla, Sh. Arjan Singh s/ o S. Gurdial Singh, Smt. Rita Sharma wd/o Sh. Shaukeen Singh and Sh. Paramjit Singh Trehan who ha ye stated that the cooler was having three pin plug. However, the opposite party has brought in the affidavits of S/shri S.R. Chhabra, XEN, Ashok Kumar, SDO; D.P. Singh, SDO; B.R. Madan, XEN; Mohinder Singh XEN and others to assert that the electric wire in the house was in order and it was only failure on the part of the deceased to make use of the earth wire while handling the cooler which resulted in unfortunate incidence. Sh. Mohinder Singh, XEN; Electricity Division No. 1, Chandigarh has stated that rewiring of the Government houses of Sector 19A was done under his supervision including that of House No. 111, Sector 19A, Chandigarh. THE wiring was done and completed on 30.11.88; that the wiring was duly protected against short circuit and overload; that the main earth was also provided on the main board and all the plug points were duly wired with the earth wire; that the 3rd pin of every plug was properly earthed. He further stated that there could not be any possibility of leakage of electric current from the new wiring. He has further stated that there was no loose connection in the wiring at MCB's and no MCB was defective. He also stated that the correct technical proposition was that in case of loose connection of the MCB or defective MCBs there would not be any leakage of current from the wiring because MCB's are provided on the main board near energy meter box outside the house and the loose connection if any at the main board could cause localised fault on the board and the leakage of current inside the house was completely ruled out. This technical opinion of the Executive Engineer, Electrical Division No. 1, Chandigarh has gone unchallenged and there is no evidence to rebut it. Anoop Inder Singh was the only independent person who was present at the time of occurrence and he and Sharuti Shaukeen brought Shaukeen Singh to the bed. Anoop Inder Singh has specifically mentioned in his affidavit that he checked the cooler wire and the plug of the cooler and the leakage of the current was due to some defect in the supply system. Hdwever, the leakage of the current due to some defect in the supply wire has not been explained or established in any of the evidence led by the complainants. On the other hand, the affidavit of Sh. Mohinder Singh, Executive Engineer, Electrical Division No. 1, is categorical and has in so many words supported the version of the respondent and tells that leakage of current inside the house was completely ruled out. Besides this he has specified that there was no loose connection in the wiring at MCBs and no MCB was defective. The learned Counsel for the complainants has relied upon the amendment of Electricity Rules Nos. 61, 71 & 73 containing the provision of the Earth Leakage Devices in Chandigarh. The letter of the Electrical

Inspector-cum-Superintending Engineer, Electricity "opposite party" Circle, Chandigarh was issued only on 27.9.89. This letter requires that the prospective consumer getting connection of 5 AMP and above categories shall install earth leakage protective devices of the suitable capacity. Since the occurrence now under consideration took place on 4th May, 1989 i.e., prior to the issuance of this letter, the circular in question cannot be helpful to the complainant.

4. THERE had been no complaint to any authority either orally or in writing regarding any defect of omission at premises of complainants. The complainants have not produced any evidence to support their contention that the wiring or MCBs were defective. The only evidence in this regard put forth by the complainants is that of Shri Arjun Singh son of Gurdial Singh who claimed to be a qualified wireman. He has stated that the leakage of electric current due to which Mr. Shaukeen Singh had received the electric shock and died, could only be due to some loose connection of the wiring with the MCBs as also due to defect in the MCBs which did not trip off at the time of short circuiting. Sh. Arjun Singh has not categorically stated that there was any loose connection of wiring with the MCBs or there was some defect in any of the MCBs. He only narrated in the affidavit that the death could be due to defect in the MCBs or loose connections of wiring with the MCBs, whereas the affidavit of Sh. Mohinder Singh categorically asserts that no MCB was defective and that there were no loose connection in the wiring of MCBs. He has stated that the correct technical proposition was that in case of loose connection or defective MCBs, there will not be any leakage of current from the wiring as MCBs are provided on the main Board near the energy meter box and that the loose connections, if any, at the main Board could cause localised fault. Shri Arjun Singh's opinion cannot over-ride the assertions of Shri Mohinder Singh, Executive Engineer, who is a qualified engineer. No doubt, the evidence produced by the complainant is that the deceased Shaukeen Singh used three-pin point plug when he touched the water cooler. There is nothing to suggest that even thereafter, the earth wiring or MCBs at any stage was found to be not in order. The evidence in rebuttal by the respondent is that only a two pin plug was used and that the earthing was in order and the MCBs were in working order. The learned Counsel for the complainant has referred to *Bimla Poddar and Others v. Union of India and Others*, 1986 ACJ 69, where compensation was ordered on account of electrocution and the plea of *res ipsa loquitur* was held applicable. In the aforesaid case, the deceased was staying in a guest house where facilities of lodging and boarding were provided to various visitors who came to visit the hydro-electric project at Surangani. In that case, hot water was supplied to the deceased in a bucket by a servant of the defendants. The deceased was found lying naked in the bathroom with his left hand clutching the cold water tap and the water tap had come out of the wall. In the aforesaid case there was leakage of electricity in the cold water tap. Thus, it was a clear case of leakage of electric current through the cold water tap. The facts and circumstances of the case now in hand are distinguishable inasmuch as no such leakage through the supply system of the respondent has been brought on

record or established. In the present case, since no defect in the electric installation provided at residential premises was established, the respondent could not be fastened with the liability. In view of the above, we hold that the complaint failed and is hereby dismissed leaving the parties to bear their own costs.

5. ANNOUNCED. The orders be communicated to the parties free of charges. Complaint dismissed.