

(1995) 09 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

SHASHIKANT KRISHANAJI DOLE , MAHESH VASANT DATE , APPELLANT
SHIKSHAN PRASARAK MANDALI

Vs

SHIKSHAN PRASARAK MANDALI , SHASHIKANT KRISHANAJI RESPONDENT
DOLE , SHASHIKANT K. DOLE

Date of Decision : 27-09-1995

Acts Referred:

Citation : 1995 3 CPJ 97 : 1995 3 CPR 274 : 1996 1 CLT 71 : 1996 1 CPC 40

Hon'ble Judges : V.Balakrishna Eradi , B.S.Yadav , S.S.Chadha ,
R.Thamarajakshi , S.P.Bagla J.

Final Decision : Appeals dismissed

Judgement

1. - THIS order will dispose of the above three appeals as all of them have arisen out of the same order passed by the State Consumer Disputes Redressal Commission, Maharashtra at Bombay in Complaint Case No. 248 of 1991. That complaint was filed by Shri Shashikant K. Dole and his wife, Smt. Sarika Shashikant Dole (Appellants in Appeal No. 134 of 1993) who are the parents of Kedar deceased. Shikshana Prasarka Mandli, Pune (Appellant in F.A. No. 149) who was arrayed as opposite party No. 1 while Mahesh Vasant Date (Appellant in appeal No. 141/93 had been arrayed as opposite party No. 2) in the complaint. By the impugned order the State Commission held opposite parties Nos. 1 and 2 liable to pay to the complainants Rs. 1,50,000/- as compensation towards the loss of life of their only child, Kedar. The amount was ordered to be paid within 30 days from the date of the order failing which it shall carry interest at the rate of 18 per cent per annum till realisation. Feeling aggrieved of that order the complainant as well as the opposite parties have filed these three appeals. Opposite Parties Nos. 1 and 2 dispute the liability to pay compensation while the claimants pray for enhancement of the compensation.

2. ACCORDING to the allegations made in the complaint, Kedar was the only child to the complainants. The opposite party No. 1 is a registered Public Trust and owns a swimming pool situated on the campus of S.P. Mahavidyalaya, Pune.

Opposite Party No. 2 was one of the trainer/coach in the employment of the opposite party No. 1 at the swimming pool. Opposite Party No. 1 had offered swimming facilities to the public at large on payment of fees. The opposite party No. 1 used to conduct winter and summer training camps to train boys in swimming. On 3rd May, 1991, the complainants had enrolled their son Kedar for a training camp to learn swimming and had paid Rs. 190/- for the same as fees to the opposite party No. 1. The training of Kedar commenced on 10th May, 1991, under the guidance of opposite party No. 2. Kedar met with his death on 3rd June, 1991 at about 9.30 a.m. by drowning in the swimming pool due to the negligence of the trainer. It was further alleged that Kedar was sound in health and was not suffering from any illness on the date of death. The incident was witnessed by Sidharth, cousin of Kedar, who was also swimming in the same pool at the relevant time. ACCORDING to the complainants there was serious deficiency in the services of the opposite parties and they are liable to pay Rs. 2,50,000/- towards compensation for the loss of life of their child. The opposite parties contested the complaint and filed separate counters. Opposite party No. 1 pleaded that for the alleged incidents, the replying opposite party who was in no way connected and under no circumstances, is liable for the payment of any amount as compensation as there is no cause of action against it. It was admitted that it has its own swimming tank in the campus of S.P. College, Pune and it is run by it but the services of opposite party No. 2 were not being made available by the replying opposite party at its swimming tank alongwith the other services and facilities to the public at large. The enrolment of Kedar Shashikant Dole in the swimming training camp and the receipt of Rs.190/- was admitted, but it was pleaded that the replying opposite party did not offer or assure standard and full fledged services and facilities of swimming in their tank alongwith the services of opposite party No. 2 as trainer for the son. The incident of the death of Kedar on 3rd June, 1991 in the swimming pool was not disputed. It was alleged that the opposite party No. 2 was a qualified trainer and coach. The carelessness and negligence in making available standard services at the swimming pool was denied. Other allegations of the complainants about the standards of the swimming pool or the non-availability of facilities in the swimming pool in the emergency cases were also denied. It was further pleaded that for the swimming coaching camp of April-May-June, 1991, 50 coaches were appointed and one of them was opposite party No. 2 for the batch between 9.00 a.m. to 9.50 a.m. there were in all 16 coaches for the batch and one of them was opposite party No. 2.

Opposite party No. 2 (copy of whose counter is on the paper book of Appeal No. 149/ 93) admitted the incidents of 3rd June, 1991. He pleaded that the death was not mainly due to negligence on his (i.e. opposite party No. 2) part. He further pleaded that he is a very good swimmer and he is working as instructor at the swimming tank at S.V. College for the last several years. He also works as instructor and teaches swimming to the students for the last five years at the Maharashtra Mandal, Pune and at Gopal High School, Pune of the least five

years. He has also worked for one year with the Children's Welfare Institution, (Balkalyan Sanstha), Pune which educates spastic children (May, 1986). In the year 1991, he was honoured with the prize by Gopal High School as the Best Instructor. The swimming pool is in a very good condition and it is fixed with coloured tiles. Opposite Party No. 2 gives complete information about the tank, and in particular, he gives information regarding the depth of the water at different places. In all three clerks, three life-guards and 50 coaches or instructors are employed. Out of them 16 instructors were employed as instructors between the period 10th May to 9th June, 1991. The replying opposite party had himself shown Kedar/ independently, as also to other students, how to respire in the water by holding the side-bars and made him respire and told him to hold the shoulder of the other student in front of him, and holding him personally, taught him the foot-work in the water. This reduces the fear of water. He himself held every student in his hands and taught them how to respire in the water by putting their heads in the water which helps the students, to reduce their fear of water. Once the students started respiring properly he taught them how to footwork while swimming on the stomach. When they learnt the same he teaches them foot-work movement and other movements while holding the side bars and touching the walls, by the elbows and lying on the stomach and keeping their legs parallel to the water. Kedar had learnt swimming well and had been swimming independently, within 15 days of the beginning of the training. On 30th May, 1991, the complainant No. 1 came to meet the replying opposite party, and Kedar was practising swimming in the water, having 5 feet depth as is usually done by full trained students and he showed his father his swimming and complainant No. 1 in the presence of the replying opposite party praised his son's progress in swimming. On 3rd June, 1991 Kedar came and jumped into water level of 5 feet alongwith the replying opposite party and completed two rounds of swimming and thereafter started and practiced footwork by holding the side bars. At that time one guardian of the other student came to meet the replying opposite party. The opposite party No. 2 told to Kedar and other students that he is going with the guardian of one Sachin Raskar and to wait at the same place. Sachin jumped in the water 8 to 10 times and completed rounds and practiced other things. Thereafter opposite party No. 2 came at the place where Kedar was practising footwork and found that though the other students were there, Kedar was not swimming. He asked his brother Siddarath to search for Kedar in the bath-room and in the mean time opposite party No. 2 searched for Kedar in all parts of the tank, but could not see him. Siddarath came back and told that Kedar was not in the bath-room. Immediately opposite party No. 2 narrated this incident to other instructors and asked the life-guards to search for Kedar and ordered all the students to come out of the tank and rang the emergency bell and the coaches, life-guards and the opposite party No. 2 started searching for Kedar. The opposite party No. 2 came across the leg of a boy at the place where Kedar was practising footwork. The boy was taken out of water and was found that the boy was Kedar. After taking Kedar out of water he was laid down with the help of other instructors, and the opposite party

No. 2 started artificial respiration and pumped him and removed the water from his stomach. At the same time the bell indicating ending of the time for the batch of the students rang. The opposite party No. 2 with the help of other instructors took Kedar to the room to the side of the tank and laid him down on the bench and again started artificial breathing (pumping) and removed the water from Kedar's stomach. Therefore, the other employees of the tank took Kedar to Dr. Ashok Desai's dispensary by rickshaw. The said doctor examined the pulse of Kedar and told the employees to take him to a big hospital for emergency treatment. He was admitted in the Pune Hospital, where he died after sometime. Thus, according to opposite party No. 2 he was not careless or negligent nor he was absent in the pool during the training period.

3. BEFORE the State Commission the learned Counsel for the complainant pointed out the following circumstances to establish the deficiency in services of the opposite parties: 1. No immediate or prompt action was taken by the opposite party No. 2, when Kedar was not seen in the Swimming Pool after he had entered in the water. 2. No arrangements were made by the opposite parties to sound the alarm when Kedar was not seen on the surface of the pool water. 3. No immediate resuscitation exercise was made to save the life of Kedar after he was taken out from the water of the swimming pool. 4. The other life-guards engaged by the opposite party No. 1 present at the time of incident were negligent inasmuch as they did not take immediate action to locate the body of Kedar. 5. The alleged resuscitation exercise was made by the opposite party No. 2 in a room some distance away and on the edge of the pool immediately. 6. There was no compartment net in the pool so as to prevent the younger children from entering into the deep waters of the swimming pool. 7. No first aid apparatus was available in the swimming pool complex and lastly, 8. Opposite Party No. 2 Mahesh Date was not a trained coach.

The aforesaid circumstances were highlighted by Counsel for the complainants not on the face of the allegations made in the complaint, but on the basis of necessary requirements, which ought to have been provided in the swimming complex where young boys are trained. According to the said Counsel such facilities are needed in case of emergency to prevent mishaps occurring.

4. SIDDARATH was examined before the State Commission. According to the State Commission, the witness stood firm during the cross-examination on his version given in examination-in-chief. The opposite parties did not examine any witness to controvert the facts stated by Siddarth. The State Commission held that the testimony of SIDDARATH inspired confidence and there was no reason to disbelieve him as regards the things which led to the death of Kedar. The services of the opposite parties were held to be deficient by the State Commission on the following points: (1) The coach employed was not fully trained, hence should not have been employed in such a responsible position by opposite party No. 1. (2) Opposite Party No. 1 did not provide a partition in the pool to prevent young boy learners not proficient in swimming from entering the

deep end of the pool. (3) Opposite Party No. 1 does not appear to have provided even the basic facilities needed in case of accidental mishap to provide first aid. (4) Opposite Party No. 2 besides not being a trained coach did not appear to exercise even the basic common sense needed to counter an accident in swimming while in charge of trainee boy swimmers, hence he had no moral right to represent himself as a training coach. Thus, accepting the case of the complainants, the State Commission passed the impugned order.

We have heard learned Counsel for the parties and gone through the records of the case. We are of the opinion that in the present case the State Commission has given sound reasons for holding the opposite parties negligent in the rendering of service at the swimming pool. As noticed earlier, Siddarath, admittedly the eyewitness of the incident, stated in his evidence that he arrived with Kedar at the swimming pool at the material time. Kedar did not know how to swim whereas the witness had learnt how to swim. He saw Kedar entering the water with the help of a ladder in the swimming pool where the water was 3 feet deep. At that time opposite party No. 2 was at the edge of the pool. Kedar moved in the deeper end for swimming. The witness was at some distance away from Kedar. At that time he was told by one of the students that opposite party No. 2 was calling him (i.e. Siddarath) when he went near to opposite party No. 2, he was informed that Kedar was not to be seen in the pool. He looked around. He saw the clothes and chappals of Kedar lying near the pool, but he could not trace Kedar. At that juncture, opposite party No. 2 told the witness to search Kedar in the bath-room and lavatory near the swimming pool. Kedar was not found in those places and he returned after 3 or 4 minutes to the swimming pool. The witness asked the opposite party No. 2 to enter the water to search for Kedar. Opposite party No. 2 at that time was looking at a certain spot in the pool waters where the dead body of Kedar was eventually found. He further stated that thereafter Kedar was taken to a room where attempt was made to revive him. Thereafter, Kedar was taken for medical examination, but he could not be revived. The statement of Siddarath cannot be discarded merely on the ground that he is a cousin of Kedar. He was admittedly present at the time of the incident. The State Commission has rightly remarked that opposite party No. 2 was so casual in his behaviour that he did not attempt to take prompt action by the side of the pool to try and save the life of Kedar and was not vigilant while discharging his duties as a coach/ trainer. The State Commission further held that Kedar could not die due to drowning when opposite party No. 2 was present with other lifeguards near the pool, unless they were negligent in their duties. Opposite Party No. 2 was so negligent that he had wasted time in sending Siddarath here and there to locate Kedar and did not take instant action to locate the presence of Kedar in the pool water. The State Commission has further held that it clearly appears that opposite party No. 2 was negligent when the students were being trained for swimming in the pool. The State Commission further held that necessary life saving mechanism was not made available at the pool site and thus the Management of opposite party No. 1 was totally negligent in keeping

ready the necessary life saving mechanism to save the lives of trainee students in case of accidents. Thus, opposite party No. 1 is also clearly liable for the negligence of opposite party No. 2 who was their employee.

5. IN our view, the opposite party No. 2 was negligent in his duties. He left Kedar unattended. After he was found, instead of trying to revive him by the side of the pool, opposite party No. 2 took him to a nearby room and wasted precious time. The finding of the State Commission that the death of Kedar was the direct result of negligence in the services of the opposite parties is based on sound reasons.

6. IT may be mentioned here that the grievance of the opposite parties is that some of the affidavits filed by them were not taken into consideration by the State Commission while arriving at its findings. The affidavits of Mr. Risbud Vishwanath Shantaram, Mrs. Koparde Nilima Pramod and Mr. Raskar (father of Sachin whose name was mentioned while narrating the averments of opposite party No. 2) were filed. The affidavits of the first two persons are of general nature to the effect that the swimming pool in question is one of the best pools in Pune with all the amenities and all best possible facilities made available to the trainees. Mr. Raskar has, of course, supported the version of opposite party No. 2 to the effect that minimum first aid was started on Kedar, but he was not produced for cross-examination. One thing that states in the face is that if the coaches and lifeguards were attentive towards the students who were getting training in the swimming pool, they would have at once noticed the absence of Kedar who was doing footwork by the side of the pool. At the time Kedar went under water opposite party No. 2 was busy with Mr. Raskar, whose son Sachin was making jumps in 121/2 deep water. Only when Raskar alongwith Sachin and opposite party No. 2 came where the water was 5" deep and other students were practising at that time opposite party No. 2 found that Kedar was missing. It may be mentioned here that the affidavit of Baban Ganpat Kadam, one of the lifeguards working at the swimming pool is also filed. It is only to the effect that opposite party No. 2 told the life-guards that Kedar was not being seen and thereafter he (i.e. Kadam) and two other life-guards jumped into the water and started searching for Kedar. Opposite Party No. 2 took out Kedar from the water and immediately provided first aid. This witness also not produced for the purpose of corss-examination. As noticed above, the statement of Siddarth is to the effect that Kedar was taken to a nearby room to revive him. Thus no first aid was given to Kedar by the side of swimming pool.

Now, we come to the appeal filed by the claimants. The complainants in the complaint petition claimed Rs. 2,40,000/- as compensation on the ground that after reaching the age of 21 years, Kedar would have started earning and would have spent at least Rs. 2,000/- per month for ten years upon them. Rs. 10,000/- was claimed against the loss of life and affection of the deceased and thus in total Rs. 2,50,000/- was claimed. However, considering the likely prospects in life of a child of lower middle class family, the State Commission fixed the amount of Rs. 1,50,000/- as compensation for the loss of life of Kedar. Considering the age

of Kedar at the time of his death we think that the amount awarded by the State Commission is reasonable. Future prospects of a child cannot be calculated by any thumb-rule. Only guess work is to be made. Thus, we find no reason to enhance the amount of compensation. In the light of the above discussions, we do not find force in any of the appeals and dismiss all of them. The order of the State Commission is confirmed. We do not make any order as to costs. Appeals dismissed.