
(2011) 10 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

STATE OF HIMACHAL PRADESH

APPELLANT

Vs

SURESH KUMAR

RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Citation : 2011 0 NCDRC 653 : 2011 4 CPJ 407 : 2012 0 KHC 2225 : 2012 1 CPR 325 : 2012 1 KERLJ 269

Hon'ble Judges : ANUPAM DASGUPTA J.

Final Decision : Petition is allowed

Judgement

1. THIS revision petition challenges the order dated 20.04.2007 of the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla (in short, "the State Commission ") in appeals no. 208 and 236 of 2004. By this order, the State Commission partly allowed the appeal no. 208 of 2004 filed by the respondent/complainant and enhanced the compensation awarded by the District Consumer Disputes Redressal Forum, Kangra (in short, "the District Forum ") in the respondent 's complaint from Rs.20,000/- to Rs.85,000/- and further awarded the cost of Rs.2000/- to the respondent/complainant. The appeal filed by the present petitioner (State of Himachal Pradesh and Ors.) was dismissed.

2. THE respondent had filed a complaint before the District Forum alleging deficiency in service on the part of the petitioners in not properly maintaining the culvert over which the passenger bus owned by the respondent/complainant used to ply and met with the accident on 19.03.2002 because of sudden collapse of a part of the said culvert, resulting in considerable damage to the bus and injuries to several passengers in the bus. The petitioners resisted the complaint on the grounds that there was no cause of action against the petitioners, the complaint was not maintainable and the District Forum had no jurisdiction. The petitioner also pleaded that the bus met with the accident not because of any deficiency in maintaining the culvert but because of over-speeding and negligent driving by the driver of the bus. On consideration of the pleadings, evidence and documents brought on record, the District Forum held that the complainant was

a "consumer " within the meaning of the term under section 2(1)(d)(ii) of the Consumer Protection Act, 1986 (in short, "the Act "), inasmuch as he regularly paid road tax to the Government of Himachal Pradesh and was thus entitled to the "service " of proper maintenance of the roads and culverts that he used for plying the bus in question, through which he earned his livelihood by means of self-employment. Accordingly, the District Forum also held that the complaint filed by the respondent was maintainable and that the District Forum had the jurisdiction to adjudicate upon the dispute. Finally, the District Forum awarded a sum of Rs.20,000/- by way of compensation to the respondent/complainant and directed the petitioner 1 to pay the sum within 30 days from the date of receipt of the order failing which the amount was to attract interest @ 9% per annum from the date of institution of the complaint (17.03.2003) till realisation of the amount. Both the sides challenged this order in respective appeals before the State Commission, with the result noticed above.

3. I have heard Mr. Abhishek Sood, Advocate on behalf of the petitioner and Mr. B. L. Sharma, Advocate for the respondent/complainant.

4. THE learned counsel for the petitioners has raised two important questions in this case. The first issue has two parts, the first of which relates to whether the respondent/complainant could not be at all held to be a "consumer " under the Act, even if it were accepted that he regularly paid road tax in respect of the vehicle that he owned and plied. According to the learned counsel for the petitioner, the respondent could not be considered to be a "consumer " under section 2(1)(d)(ii) of the Act unless he established that the road tax claimed to have been paid by him from time to time was in the nature of "consideration " or "fee " for maintenance of roads and culverts in the State and not a sovereign tax per se. The second part of this issue is that the respondent, by his own admission, was engaged in commercial activity in plying the bus and in view of the amendment to section 2(1)(d) of the Act effective from 15.03.2003, he ceased to be a consumer. The second issue raised by the learned counsel for the petitioner is that the compensation awarded by the District Forum and more so by the State Commission completely ignored the petitioners " pleadings that the respondent/complainant would have realised a part of the loss due to the damage to the bus from the insurance company with which the bus was insured and without ascertaining if the respondent/complainant had been duly indemnified by the insurance company concerned, the Consumer Forums below had no objective criterion to decide the amount of compensation. On the other hand, the learned counsel for the respondent/complainant has submitted that in view of the specific pleading of the respondent/complainant in his complaint that he was plying the bus for commercial purpose with a view to earning his livelihood through self-employment, he continued to be a "consumer " within the meaning under the term 2 (1)(d)(ii) of the Act, even after the amendment effective from 15.03.2003. He further submitted that though the road tax was named a "tax ", it was in fact a levy in the nature of fee for service, which included proper maintenance of roads, bridges and culverts in the State.

Moreover, proper maintenance of roads and associated public transport infrastructure could not be considered a "sovereign " function of the State in the same category as maintenance of law and order or administration of justice but was, in fact, in the nature of service being rendered by the State, through its Public Works Department.

5. AFTER careful consideration I find that the respondent would not cease to be a "consumer " under the Act merely because he was admittedly engaged in a commercial activity in plying the bus in question. This would be so in view of the specific pleading that he engaged in this activity for commercial purpose with a view to earning his livelihood through self-employment. The petitioners (opposite parties before the District Forum) did not produce any evidence to rebut this claim of the respondent/complainant. Therefore, on this ground the respondent cannot be disentitled to the status of a "consumer " under the Act. However, the point whether the road tax stated to have been paid regularly by the complainant was in the nature of a fee/consideration levied by the State Government for the service of maintenance of public roads, bridges, culverts, etc., has not been gone into either by the District Forum or the State Commission. The District Forum appears to have taken the statement of the complainant for granted that the road tax was indeed in the nature of a fee or consideration for the service of proper maintenance of roads, etc., provided by the petitioner. Likewise, neither the District Forum nor the State Commission, particularly the former sought any answer to the question if the bus owned by the complainant was insured, as he was required to do and, if so, whether the complainant had also filed an insurance claim and the result thereof. The quantum of compensation, by its very nature specified in section 14 of the Act, is to be determined on the basis of loss or injury to the complainant. If the insurer paid the insurance claim on account of the loss due to damage to the bus, the complainant (insured) could not seek compensation under section 14 of the Act, unless he established that his actual loss was much more and could not have been paid under the terms of the insurance policy. In the other words, both these substantive issues need to be answered adequately on the basis of proper evidence. This is a task can be attempted, even at this belated stage, only at the level of District Forum.

6. THOUGH I am fully conscious that considerable time has elapsed since filing of the complaint, I see no alternative but to remand the complaint back to the District Forum for fresh adjudication keeping in view the important issues raised by the petitioners as these have far-reaching consequences. As a result, the revision petition is allowed and the orders of the State Commission as well as the District Forum are set aside. The complaint is remanded back to the District Forum for fresh adjudication after allowing the parties opportunity to adduce fresh/additional evidence. For this purpose, the parties are directed to appear before the District Forum on 15th November 2011. The District Forum is requested to dispose of the matter in accordance with law as early as possible, preferably within six months of the date of the parties " first appearance.

7. COPIES of the order may be sent expeditiously to the parties and to the District Forum as well as the State Commission.