(2011) 02 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

Sugri Deep S/o Late Bisi Deep APPELLANT

Vs

Bimal Prasad Pattnaik Managing Director M/s B.P. Motors (P) Ltd. RESPONDENT

Date of Decision : 07-02-2011

Acts Referred:

Citation : 2011 0 NCDRC 73

Hon'ble Judges : R.C.Jain , S.K.Naik J.

Advocate : Swati Bhusan , Suchit Mohanty

Judgement

1. THIS original petition has been filed by Sugri Deep S/o Late Bisi Deep seeking compensation of Rs.20,84,987/- on various counts of deficiency in service by the opposite parties. The complaint was filed way back during the year 1998. The allegations against the opposite parties, a pair of husband and wife, the opposite party no.1 Bimal Prasad Pattnaik being the Managing Director of M/s B.P. Motors (P) Ltd. and his wife opposite party no.2 Anima Pattnaik claiming to be the Managing Director of M/s Sanchit Marg Pvt. Ltd., are that after the complainant had already paid a sum of Rs.1,16,468/- for a bus of Eicher make, which met with an accident after few months of its purchase on 01.01.1994, the opposite party no.1 took away the vehicle alongwith the registration and other documents on the pretext of lodging a claim with the Insurance Company and thereafter never returned the vehicle nor the documents nor did they refund the amount paid by him. He alleged that it was a case of not only deficiency of service but also unfair trade practice as the vehicle in fact had not been hypothecated to M/s Sanchit Marg Pvt. Ltd. but the hypothecation was with the M/s Eicher Span Financial Services Ltd., a fact which was withheld from the complainant all through.

2. WHEN the complainant appeared in person to present his case for the first time before this Commission on 13th of September, 2007 this Commission seeing the circumstances of the case felt it appropriate to appoint an Amicus Curiae to properly present the complainants case and assist this Commission in the matter.

Accordingly, we appointed M/s Swati Bhushan Sharma as the Amicus Curiae on behalf of the complainant. During the intervening years, the opposite parties have filed their joint written version and opposed the complaint. Thereafter rejoinder was filed on behalf of the complainant and evidence in the form of an affidavit has been laid. Similarly, the opposite parties have filed their evidence in the form of affidavit. Since the vehicle in question had been insured by the opposite party no.1 i.e. B.P. Motors (P) Ltd. and the complainant had specifically alleged that the vehicle and its documents were taken away for making a claim before the Insurance Company, this Commission had directed opposite party no.1 to disclose on affidavit as to how much amount was received from the Insurance Company. Similarly, when the opposite parties had alleged that the complainant had earlier approached the District Consumer Disputes Redressal Forum, Kalahandi at Bhawanipatna for the same cause of action, thereby raising a preliminary objection that the complaint before this Commission was not maintainable being res judicata; this Commission had directed the complainant to file a copy of his complaint before the District Consumer Forum, Kalahandi and the written version of the opposite parties. While the complainant has filed the earlier complaint filed under Section 12 of the Consumer Protection Act, 1986 before the District Consumer Forum, Kalahandi alongwith the written version of the opposite party no.1, the opposite party no.1 has failed to provide any information with regard to insurance claim despite ample time given to him. In the circumstances, this being a very old case, we proceed to decide the matter on the basis of available record/evidence.

Learned Amicus Curiae, presenting the case of the complainant, has submitted that the complainant, a class IV employee of Hindustan Fertilizer Corporation, on his retirement wanted to invest his retrial benefits in a manner that could provide him self employment and in this respect he was attracted by the presentation of one Simanchal Panda, who claimed himself to be an agent of opposite party no.1 with regard to the facility of running a transport passenger service (bus) for which the Government is willing to issue permits provided he agreed to purchase the bus. He further offered that on deposit of certain earnest amount, the opposite party no.1 will provide him a Canter bus under the Hire Purchase scheme of opposite party no.2 which was presented to be a financing company. Lured by this offer, the complainant paid a sum of Rs.1,16,468/- and a bus was finally given to him on 09.04.1993. However, as ill luck would have it, the vehicle met with an accident on 01.01.1994 after about eight months from its delivery. The opposite parties were informed about the accident and within a few days on 09.02.1994 they came and took away the vehicle alongwith the registration certificate etc. informing him that since the vehicle was insured with National Insurance Company Ltd., they would get the repair charges of the vehicle reimbursed from the Insurance Company. Vide a letter dated 15th of December, 1994 they further informed the complainant that the vehicle was under insurance settlement at their end. Further, despite repeated requests neither the vehicle nor the documents were ever returned to him, which forced him to file a complaint before the District Consumer Forum, Kalahandi seeking direction from the Forum to the opposite parties to give him the copies of the Hire Purchase Agreement in connection with the vehicle, informing him the present state of existence of the vehicle and the right of the complainant over the said vehicle. The District Forum found that the complaint was not maintainable on the ground of pecuniary limits but all the same directed the opposite parties to supply the documents as requested by the complainant so that complainant was in a position to put forward his grievance in the appropriate forum. However, even thereafter the opposite parties did not comply with the District Forums order promptly and it was only at a very late stage that the copies of the lease agreement etc. were supplied to him and only thereafter he has filed the present petition.

3. LEARNED Amicus Curiae submits that the evidence on record clearly proves that the opposite parties have first lured the complainant to invest his hard earned retrial benefits and got a hire purchase agreement signed from him in favour of Managing Director of M/s Sanchit Marg Pvt. Ltd. while the vehicle was hypothecated in favour of Eicher Span Financial Services Ltd. In this regard, she has drawn our attention to page 18 of the paper-book which is the sale certificate issued by the manufacturer in favour of the opposite party no.1 in which it has been clearly stated that the vehicle is held under an agreement of hire purchase with hypothecation to Eicher Span Financial Services Ltd. The factum of the insurance having been taken by opposite party no.1 is evident from their letter dated 23rd of July, 1993 addressed to the complainant. It is also not denied and in fact proved from the receipt given by opposite party no.1 at page 21 that the vehicle bearing registration no. OR-08/2116 alongwith the original RC, tax receipt, insurance cover note, copy of FIR etc. were taken possession of on the 19th of February, 1994. Thereafter the repeated requests of the complainant to return the vehicle had fallen in deaf ears and the opposite parties have neither returned the vehicle which was to be the means of his livelihood post retirement nor have they refunded the amount paid by him. She has, therefore, submitted that the complainant belonging to economically weaker section of the society has been dealt with in a very high handed manner by the opposite parties and deserves to be suitably compensated by the opposite parties. She further submits that for the unethical and unfair trade practice the opposite parties deserved imposition of heavy damage as a deterrence. Learned counsel for the opposite parties at the outset has contended that the complaint before the National Commission is not maintainable as the complainant had earlier approached the District Consumer Forum, Kalahandi for the same cause of action. He has further contended that the complaint has been filed belatedly and cannot be entertained on ground of limitation. Referring to the clause of arbitration in the hire purchase agreement, he submits that a complaint before this forum would not lie as the complainant has failed to abide by the dispute being resolved by the sole arbitrator. On the point of repossession of the vehicle alongwith its documents, the counsel submits that repossession was resorted to

as the complainant had failed to pay the due installments and was a chronic defaulter. According to him, an amount of Rs.11,64,987/- was due from the complainant as on January, 1995 and, therefore, the complaint has been filed before the District Consumer Forum to escape from the said liability. Finally, he contends that the District Consumer Forum having dismissed the complaint, it was a fit case for being adjudicated upon by a civil court as it involves complicated question of facts. According to him, since the complainant had entered into a hire purchase agreement with opposite party no.2 with open eyes, he cannot now go behind the said agreement and plead on extraneous grounds of vehicle being hypothecated with some other financial institution. According to him, there is no deficiency in service on the part of opposite parties and the complaint deserves to be dismissed.

4. HAVING heard the learned Amicus Curiae and the learned counsel for the opposite parties and also having given our due consideration to the evidence, we cannot but hold that this is a glaring case where the gullible consumer has been taken for a ride by the opposite parties. It is admitted by the opposite party no.1 that they had received a sum of Rs.1,16,468/- from the complainant. No doubt, the vehicle was to be given on the basis of a hire purchase agreement but the finance was to be provided by M/s Eicher Span Financial Services Ltd. The vehicle, accordingly, stood hypothecated with them. Further the opposite party no.1 appears to have cleverly directed the complainant to a financing firm opened by his wife and got a hire purchase agreement signed by the complainant with her. Appropriately the hire purchase agreement should have been with M/s Eicher Span Financial Services Ltd., the principle financer with whom the vehicle stood hypothecated. The conduct of the opposite parties throughout appears to have been dubious. They have never informed the complainant with regard to the status of the claim from the Insurance Company nor the status of the repair of the vehicle and its probable date of return to him. Before us only flimsy grounds have been advanced. Insofar as the contention that the complainant having knocked the doors of the District Consumer Forum earlier for the same cause of action and, therefore, the principle of res judicata would be applicable in this case; we have perused the complaint before the District Consumer Forum, Kalahandi and the order passed by it and find that the prayer made therein was only for the return of the documents and no pecuniary relief had been sought therein. The District Consumer Forum has found that they had no jurisdiction to entertain the complaint as the question of repayment of Rs.11,64,987/- involved in the case which was beyond its pecuniary limit. All the same, it directed the opposite parties to supply the documents asked for by the complainant so that the complainant was in a position to agitate his grievance in the appropriate forum. The relief sought before the District Consumer Forum being totally different and the District Consumer Forum having clearly stated that the documents be given to the complainant so that he can approach the appropriate forum, we hold that the principle of res judicata would not be applicable in this case. Insofar as the question of limitation is concerned, in view of the liberty

given by the District Consumer Forum to agitate the dispute before an appropriate fora, it has to be treated as a continuing cause of action and, therefore, would not attract any infirmity on the ground of limitation.

5. WITH regard to the clause of arbitration, the law by now is very well settled that a complaint before the consumer fora under Section 3 of the Consumer Protection Act, 1986 is in addition to and not in derogation of the provisions of any other law for the time being in force. Besides, it is not the case of the opposite parties that they had referred the matter for any arbitration and that any notice in that respect was ever issued to the complainant.

6. WITH regard to the contention of the learned counsel for the opposite parties that they had resorted to repossession of the vehicle on account of default in payment of the premiums, the same has to be rejected on the face of it for the simple reason that there is not even an iota of evidence to prove that the opposite parties had ever intimated the complainant with regard to any default of payment of premiums. On the contrary, the opposite parties in their written version admit that the complainant had paid the following amounts on the dates mentioned against them :- Rs. 2000/- 16.08.1993 Rs. 1200/- 17.08.1993 Rs. 1000/- 18.08.1993 Rs.10973/- 20.10.1993 Rs. 5000/- 16.11.1993 Rs. 4500/- 27.12.1993

We note that these payments were made by the complainant towards his installments prior to the accident of the vehicle on 01.01.1994. Since the vehicle was repossessed thereafter, it does not lie in the mouth of the opposite parties to say that the complainant had failed to pay the installments. The complainant had amply demonstrated the sincerity to discharge his liability to pay the installments, albeit in small amounts from time to time. This plea of the opposite parties that they repossessed the vehicle for the failure on the part of the complainant to repay the installments, therefore, has to be rejected. It appears to be only an afterthought to justify their illegal action. Another point that has been argued by the learned counsel for the opposite parties is that the complaint suffers from non-joinder of the parties, inasmuch as the principal financer M/s Eicher Span Financial Services Ltd. have not been impleaded in this case. This plea has to be rejected outright for the simple reason that the complainant had nothing to do with M/s Eicher Span Financial Services Ltd. as the opposite party no.1 had arranged the hire purchase agreement with the firm of his own wife and as such there was no privity of contract between the complainant and M/s Eicher Span Financial Services Ltd.

Coming to the question of compensation, the complainant has not been able to justify the huge claim of Rs.20,84,987/-. However, the initial payment of Rs.1,16,468/- stands admitted by the opposite parties. In addition, they also admit to have received Rs.24,673/- as stated in para 11. Thus, the opposite parties have received a total amount of Rs.1,41,141/- and even thereafter the complainant has been deprived of his vehicle for the high handed action of the opposite parties. Even though he may have used the vehicle for the initial few months, the harassment, mental agony and deprivation of the opportunity to earn his livelihood would far outway his earnings during these months. Considering the utter high handedness on the part of the opposite parties, we think it appropriate that the ends of justice would be met if the full amount paid by the complainant is refunded to him by the opposite parties with interest @ 7% per annum from the date of filing of the complaint as the conduct the opposite parties amounts to snatching the livelihood of the complainant.

7. THE complaint, accordingly, stands partly allowed in the above terms with no order as to cost. THE opposite parties shall pay the complainant the amount of compensation within three months from the date of this order, failing which the compensation amount will carry interest @ 9% per annum for the defaulted period. Before parting with the order, we would like to appreciate the valuable assistance rendered by Ms. Swati Bhushan Sharma, Amicus Curiae in this case.