

(1990) 03 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

SUPERINTENDENT, TELEGRAPH TRAFFIC, BIKANER
DIVISION, BIKANER

APPELLANT

Vs

SHRI MOHAMMAD YAMIN DISTRICT FORUM, BIKANER

RESPONDENT

Date of Decision : 16-03-1990

Acts Referred:

Citation : 1991 1 CPJ 75

Hon'ble Judges : S.K.Mal Lodha , Damodar Thanvi , Saria Khan J.

Final Decision : Appeal dismissed

Judgement

1. BEING dissatisfied with the order dated 11.12.89, passed by the District Forum, Bikaner in Complaint Case No. 309 of 1989, the opposite-party has filed this appeal under Sec. 15 of the Consumer Protection Act, 1986 (Act No. 68 of 1986) ("the Act" herein). The District Forum, Bikaner has directed the opposite-party-appellant to pay an amount of Rs. 1000/- as compensation for bodily pain and mental agony caused to the complainant on account of the non-delivery of the telegram sent by him to his cousin at Lucknow on 10.7.89.

2. FACTS leading to this appeal lie in a very narrow compass. The complainant filed the complaint on 14.9.89, before the District Forum, Bikaner alleging that on account of the death of the relation, he was required to go to Lucknow in July, 1989, that as he was not knowing the residence of his relation, he sent a telegram on 10.7.89 that he will be reaching Lucknow on 13.7.89 and that his relation should get a reservation on 15.7.89 by the evening train which is mentioned in the telegram as Marudhar Express. The telegram was not delivered until the evening of 15.7.89. The complainant went on to state that as the telegram did not reach in time, he was put to inconvenience ijs''kkuh as he did not get the reservation. It will be relevant to quote from para 2 of the complaint-" esjs y[ku igqp us ds i''pkr okilh dk fjtosZ''ku E:/kj ,Dlizzl

Ls dj;k;k x;k tks osfVax fyLV dk gh fey ik;k vkSj eq>s jkLrs es Hkh dkQh ijs''kkuh mBkuh iMh A

3. After reaching Lucknow, the complainant lodged a complaint letter on 22.7.89 to the opposite-party. The opposite-party demanded the original receipt and a certificate from the addressee of the telegram. The complainant is said to have sent the original receipt of the telegram. The opposite-party informed vide letter dated 4.8.89 that it is not necessary for him to send a certificate of non-delivery. The opposite-party also informed him that investigation has been commenced and as soon as a reply from the Chief Superintendent, Central Telegraph Office, Lucknow is received, he will be informed accordingly. Thereafter, no reply was received from the opposite-party. He has, therefore, Prayed that a sum of Rs. 1,000/- may be awarded to him on account of mental agony and an order for the refund of the charges recovered for booking the telegram may also be made. The opposite-party resisted the complaint by filing the version of the case dated 3.10.89. It referred to rule 5 contained in Chapter II of the Post and Telegraph Manual Volume I. Amongst others a Plea was taken that the said telegram was sent to the addressee by the Telegraph Office, Chowk, Lucknow on 12.7.89 at 8.00 a.m. and it was delivered to the addressee in time. The complainant submitted affidavit in support of the complaint on 23.10.89. On that day, supplementary reply was filed on behalf of the opposite-party reiterating that the telegram was received by the addressee on 12.7.89. Reference was made to rule 86 which is as under: "86. Persons to whom telegram may be delivered: An inland telegram taken to the addressee's Place may be delivered either to the addressee or an adult member of his family, to any Person in his service, to his lodgers or guests, or to the Porter of the hotel or the house."

4. AFFIDAVIT dated 29.11.89 of Tribhuvan Lal Srivastava was submitted on behalf of the opposite-party in which it was stated that telegram No. C-61 was delivered to the addressee at the address given in the telegram and he obtained the signatures. The complainant thereafter, submitted an affidavit of Mujeebullah dated 30.11.89 on 7.12.89 in which it was stated that he did not receive the telegram sent by the Complainant. He has denied that his employee or any member of his family has signed receipt in token of the delivery of the telegram and that an employee of Telegraph Office, Bikaner came to him and told that a man has come on the shop for delivering the telegram. The District Forum held that the telegram was not delivered to Mujeebullah and that as the telegram was sent on 10.7.89 and was not delivered upto 15.7.89, the service rendered by the Telegraph Office. suffered from deficiency. The District Forum has stated-" bl rF; ls bUdkj ugha fd;k tk ldrk gS fd ifjoknh dk rkj le; ij ugha igqpus ds dkj.k mls vR;/kd "kkjhfd] ekufl d ijs"kkuh mBkuh iM+h gksxh A The District Forum, therefore, thought proper to award a sum of Rs. 1,000/- as compensation by its order dated 11.12.89. Hence, this appeal as aforesaid. We have heard Mr. U.D. Sharma, Advocate for the appellant and Mr. G. K. Bhartiya, Advocate for respondent No. 2 and considered the record carefully. In the light of the submissions made by the learned counsel for the parties, the principal question that arises for our consideration is whether the District Forum was right and justified in awarding compensation to the tune of Rs. 1,000/- to the complainant-

respondent No. 2. In para 4 of the complaint, the complainant has stated that on account of mental agony, which he suffered, he should be awarded a sum of Rs. 1,000/- as compensation. In his affidavit, the complainant has not said a word about the contents of para 4 which is, of course, with respect to the relief claimed by him in the complaint. Paras 1 to 3 of the complaint are conspicuously silent with respect to the bodily pain or mental agony which are said to have been suffered by the complainant on account of the non-delivery of the telegram in time. Sec. 14(1)(d) of the Act reads as follows: "(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite- party."

5. IT is well settled by the apex Forum of the country that under clause (d) of Sec. 14(1), compensation can be awarded to a consumer only in respect of loss or injury suffered by the consumer due to the negligence of the opposite-party. IT is of the essence of the above provision that the loss or injury for which compensation is to be adjudged and awarded should be found to have been caused by the negligence of the opposite-party. The complainant has, therefore, to establish that there was negligence on the part of the opposite-party and that as a consequence thereof, loss or injury was suffered by him.

6. IN *M/s. Chief Manager, South/Eastern Railway and others v. Shri Anand Prasad Sinha and others* (First Appeal No. 19/89, decided on July 28, 1989 by the National Commission), it has been observed: "It is an established principle of law that the compensation awarded must have a rational relation to the nature and extent of the injury, inconvenience or physical and mental suffering caused to the complainant by the action or omission of the opposite party. No attempt was made by the State Commission to approach the question of quantification of compensation from this correct perspective. The status of the complainant was of little relevance in this context since every passenger who has paid for first class travel and who has been subjected to inconvenience and suffering of a like nature on account of defects in the compartment is entitled to similar treatment in the matter of award of compensation irrespective of any question of status."

In a later decision rendered in *Commercial Officer, Manager, Patna v. Bihar State Warehousing Corporation* (First Appeal No. 2/89, decided on October 18, 1989), it has been observed by the National Commission as under: "As indicated by us in some of our earlier judgments, the award of compensation by the Forums established under the Act has to be made only on well recognised legal principles governing the quantification of damages or compensation. The compensation to be awarded has to be quantified on a rational basis on a consideration of material produced before the Adjudicating Forum showing the extent of injury suffered and the manner in which and the extent to which monetary loss has been caused thereby to the complainant....."

Having considered the complaint and the affidavits filed by the complainant, we are unhesitatingly of the opinion that the complainant has failed to place any material on record to substantiate the award of compensation to the tune of Rs.

1,000/-. The order of the District- Forum being infirm, has to be set aside.

7. WE are, therefore, constrained to allow this appeal on the limited ground and set aside the order dated 11.12.89 passed by the District Forum, Bikaner in Complaint Case No. 309/89 and dismiss the complaint. The parties shall bear their respective costs. Mr. U.D. Sharma informs that in pursuance of the order dated 10.1.90. passed in this appeal, the appellant has already deposited a sum of Rs. 1,000/- with the District Forum, Bikaner. The appellant shall be entitled to withdraw this amount as the order of the District Forum in pursuance of which the amount was deposited, has been set aside. Appeal dismissed.