

(1996) 06 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

T T Private Ltd

APPELLANT

Vs

AKHIL BHARTIYA GRAHAK PANCHAYAT

RESPONDENT

Date of Decision : 18-06-1996

Acts Referred:

Citation : 1996 2 CPC 591 : 1996 2 CPJ 239 : 1996 3 CPR 29 : 1997 1 CLT 463

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , S.S.CHADHA ,
R.THAMARAJAKSHI , S.P.BAGLA J.

Judgement

1. THIS First Appeal is directed against the order dated 11.3.93 of the Maharashtra State Commission at Bombay allowing the complaint and directing the appellant herein (opposite party No. 2) to pay Rs. 38,000/- towards the reimbursement of medical bills and also to replace the defective cooker with a new one and to pay Rs. 1,00,000/- towards compensation besides Rs. 1,000/- as costs.

2. THE complaint was filed by Akhil Bhartiya Grahak Panchayat, Hindu Dharma Sankriti Bhavan, Dhantoli, Nagpur and Shri Mangesh Manohar Telrandhe, 53, Central Excise Colony, Wardha Road, Nagpur. The case set up in the nutshell is that Shri Mangesh Manohar Telrandhe had purchased a new Pressure Cooker of 5 liters capacity from M/s. Meghna Metals manufactured by M/s. T.T. (Pvt.) Ltd., the Appellant herein on 21.10.86 for Rs. 389/-. The opposite parties had issued 10 years guarantee for the use of the said cooker and the guarantee card dated 21st October, 1986 issued in favour of the complainant No. 2 is Exhibit No. 2 before the State Commission. Mrs. Meenal Telrandhe wife of the complainant No. 2 was injured on 10.11.89 when the cooker while cooking burst and exploded. In the explosion the part of the cooker which was blown, damaged the right hand of Mrs. Meenal Telrandhe and she suffered several injuries. The complainants alleged that the accident was due to the defective goods and Mrs. Meenal Telrandhe suffered permanent disability. The complainant claimed Rs. 38,000/- towards expenses for the treatment of Mrs. Meenal Telrandhe and Rs. 5.00 lakhs compensation for the permanent disability suffered by her. It is stated in the order of the State Commission that the opposite parties did not file any written

version. However, they were duly represented and heard on the merits of the claim made by the complainant. The State Commission in the impugned order found that the purchase of the cooker in question by the 2nd complainant as well as the guarantee of the cooker for a period of 10 years - and the explosion that occurred on 10.11.89 in which Mrs. Telrandhe was injured are all admitted facts. As to the question of permanent disability the State Commission held that the complainants are entitled to receive compensation for the permanent disability which was quantified at Rs. 1.00 lakhs to be paid by opposite party No. 2. The opposite party No. 2 was also directed to pay Rs. 38,000/- for the reimbursement of the medical bills besides costs of Rs. 1,000/-.

3. WE have the learned Counsel for the parties and have gone through the records. The first submission of the learned Counsel is that the husband has no locus standi to litigate on behalf of the wife. In our opinion the relationship of husband and wife, in marriage, is such that of commonality of interest and inter-dependence on each other, entitles either party to step in the shoes of another when the complaint relates to defective goods used both by the husband and wife. The goods were purchased by the husband for use by the family. The wife was using the cooker for cooking and it exploded causing severe injuries to the wife. The husband incurred Rs. 38,000/- in the treatment of the injured wife and claimed the relief of reimbursement of those expenses besides compensation for the permanent disability suffered by the wife. The husband is certainly a consumer as purchase of defective goods for consideration and is entitled to claim the loss suffered by him in incurring expenditure for the treatment of his wife. The permanent disability suffered by the wife also give a cause of action to the husband. Admittedly the complaint is also filed by Akhil Bhartiya Grahak Panchayat, registered Consumer Organisation and as per the provisions of Section 2(b)(ii) of the Consumer Protection Act, 1986, they have locus standi to file the complaint, although it is loosely mentioned that the complaint is on behalf of complainant No. 2.

4. THE second submission is that the State Commission wrongly recorded that the opposite parties did not file any written version denying the allegations made by the complainants and this erroneous approach has resulted in the gross violation of the principles of natural justice. A copy of the reply and the proof of sending it by speed post is filed along with the appeal. This is not sufficient. The Appellant should have inspected the records of the State Commission and should have then filed an affidavit that the reply version was duly received by the State Commission or was on the case file. In the absence of it, we have to accept the findings of the State Commission that there is no written version on the record denying the allegations made by the complainants in the complaint. The State Commission duly records that opposite party No. 1 was represented by Shri Anil Padigar and opposite party No. 2 was represented by Shri Venkat Krishnan. Shri Venkat Krishnan appeared on two days i.e., 5.8.92 and 2.11.92 and was given an opportunity to give its version and this is so recorded in the order of the State Commission : "Shri Venkat Krishnan, Asstt. Manager of the opposite party No. 2

tried to explain before us that all the safety devices were available in the Cooker system and suggested that necessary care was not taken by Mrs. Meenal Telrandhe while cleaning the cooker. It is submitted that sufficient alternative safety devices are provided in the Gasket Release system and therefore no accident can occur in such cooker while in use. It was explained before us by Shri Venakat Krishnan that if the pressure is not released through the whistle, then rubber gasket melts away, making way for the release of the pressure. If the rubber gasket does not melt, then either the whistle goes or the safety valve melts and releases the pressure". The State Commission considered this material and it so recorded in the impugned order and came to the conclusion that something in the cooker system went wrong and caused the accident within the guarantee period. The State Commission therefore duly considered the stand of the appellant herein while determining the question in issue in the case. The next submission is that there was no manufacturing defect in the product of the Appellant and the accident, if any occurred as the complainants wife did not follow the instructions as to use of the cooker. Shri Krishnan had also suggested that necessary care was not taken by Mrs. Meenal Telrandhe while cleaning the cooker. It is now stated that if a plate is placed on the top of the utensil inside upto the circular rubber gasket, then pressure would mount within and the safety mechanism attached to the lid may not work, then safety mechanism may fail. The fact that the cooker burst is established on record. By the doctrine of Res Ipso Loquitor, it would only be because of manufacturing defect in the absence of proof of misuse. The misuse had to be established by the Appellant who led no evidence and did not serve any interrogatory on the complainant No. 2 and did not summon Mrs. Meenal Telrandhe for cross -examination on this aspect. The inference is irresistible that the accident was caused due to defective goods.

5. THE next submission is that the medical bills produced were all inflated and no evidence was produced as to their correctness or genuineness. There is no merit in this submission. The complainant No. 2 had submitted all these bills to the Appellant on.23.3.91 and 29.7.91 in pursuance of the Appellants letter dated 16.1.91 requesting for sending of the bills or handing them over to their representative so that the Appellant could consider reimbursement of the same. Although at that time the offer may be as a gesture of goodwill or as a matter of policy of the Appellant, yet on the receipt of the bills the Appellant did not question their authenticity or genuineness or rejected the claim made on the strength of those bills. The appellant kept quiet and had to reimbursed the amount when the complaint was filed. The bills represented the actual expenses incurred for the injuries suffered due to the negligence of the Appellant in supplying defective goods and the accident occurred within the guarantee period of 10 years resulting in the explosion. The amount of Rs. 38,000/- towards the reimbursement of the bills allowed by the State Commission is upheld.

6. THE last submission is that neither any evidence was led in to establish the injury nor Mrs. Meenal Telrandhe was produced to ascertain the nature of injury sustained or her disability. The appellant has filed along with the appeal

Annexure -III. Doctors certificate dated 20.11.91 and Annexure IV medical certificate for orthopaedically handicapped candidate dated 21.8.92 relied upon by the State Commission to return the finding that she suffered 42% permanent disability on the basis of the extent of disability noted in the report. The first certificate dated 20.11.91 was given when the treatment was still going on and the certificate says so and it is for this reason that at that time it was considered temporary disability. The permanent disability is noted as 42. The quantum of compensation of Rs. 1.00 lakh assessed by the State Commission is conservative considering that the lady is Diploma Holder in Civil Engineering and Interior Decorator with age at the time of accident of 30 years having two children of 9 years and 4 years. In view of permanent disability to her right hand, she had lost prospects of earning besides incurring extra help to look after the children. For the above reasons, the appeal fails and it is dismissed with costs assessed at Rs. 1,000/- . Appeal dismissed with costs.