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(2012) 03 NCDRC CK 0051

In the National Consumer Disputes Redressal Commission

UNION OF INDIA — APPELLANT

Vs

Shakuntala Nageshwar Patil — RESPONDENT

Date of Decision : 19-03-2012

Acts Referred:

Citation : 2012 0 NCDRC 772 : 2012 2 CPJ 503

Hon'ble Judges : R.C.JAIN , S.K.NAIK J.

Final Decision : Petition allowed

Judgement

1. CHALLENGE in these proceedings is to the concurrent findings and orders passed by the District Consumer Disputes Redressal Forum and the Gujarat State Consumer Disputes Redressal Commission in Appeal No. 316 / 2007. The consumer dispute raised by the complainant before the District Forum was in regard to deficiency in service on the part of the railway administration as a result of which the complainant ''s son died having met with an accident with the Railways. Though a plea was raised on behalf of the Railway Administration that the complaint was not maintainable before the Consumer Fora in view of the provisions of the Railway Accidents Claim Tribunal Act, 1987 and the Railway Accident Claims Tribunal alone had the jurisdiction but this was rejected by the District Forum and the District Forum partly allowed the complaint and directed the -petitioner to pay a sum of Rs. 2,60,000 along with interest @ 9% p.a. from the date of accident, i.e., 28.6.2003 till realisation. Besides, a sum of Rs. 10,000 for mental agony and inconvenience and a sum of Rs. 1,500 towards cost of the litigation was also awarded. Aggrieved by the said order, the Railway Administration filed appeal before the State Commission but without success, hence this petition.

2. WE have heard Ms. Rekha Aggarwal, Counsel for the petitioner and have considered her submissions but we had not the advantage of hearing the say of the respondent as she remained un-represented on record despite service of notice at her new address and having also received a sum of Rs. 7,000 which was sent to her to meet her travel and litigation expenses. Ms. Rekha Agarwal

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would assail the impugned order primarily on the ground that a Consumer Fora would not have the jurisdiction to entertain a claim filed by a party in respect of the death of a person on account of Railway accident and that such a claim could be filed only before a Railway Accidents Claims Tribunal established under the provisions of the Railways Accidents Claims Tribunal Act, 1987, Section 15 of that specifically bars the jurisdiction of any other Court or any other Forum to entertain. The present case, therefore, clearly falls within jurisdiction of the said Tribunal and the jurisdiction was expressly barred by the said provision of the Act. It would be clear from the perusal of the record that initially the complainant herself filed original petition before the Railways Accident Claims Tribunal, which was dismissed by the said Tribunalvide order dated 15.12.2004 holding that the original petition was barred by limitation. Having suffered from such an order, the complainant was ill-advised to approach the Consumer Fora, the proper course for the complainant was to pursue her remedy before the appropriate appellate authority rather than to have approached a Consumer Fora against the order of the Railways Accidents Claims Tribunal dismissing her petition on the ground of limitation. Having considered the matter it appears to us that both the Fora below have committed grave error in entertaining the complaint on the basis of the above factual and legal position. The impugned orders are legally unsustainable and are liable to be set aside. We accordingly allow the revision petition and dismiss the complaint as without jurisdiction though in the facts and circumstances of the case with a heavy heart. Revision Petition allowed.

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