
(2000) 03 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

UNIT TRUST OF INDIA THROUGH THE BRANCH MANAGER
Vs
USHA RANI CHOUDHURY

APPELLANT

RESPONDENT

Date of Decision : 18-03-2000

Acts Referred:

Citation : 2000 1 CPC 652 : 2000 2 CLT 474 : 2000 2 CPJ 522 : 2000 2 CPR 338

Hon'ble Judges : N.S.Singh , R.K.Bawri , P.Syiems J.

Final Decision : Appeal dismissed

Judgement

1. THE judgment and order dated 25th March, 1998 passed by the learned District Forum, Shillong in C.P. Case No. 18(S)/97 is the subject-matter under challenging in this appeal before this Commission. Heard Mr. D.K. Jain, learned Counsel appearing for the appellant-Unit Trust of India, Guwahati and also heard Ms. T. Yangi, learned Counsel appearing for the respondent. THE facts of the case in a short compass are as follows :

2. THE respondent, namely Smt. Usha Rani Choudhary lodged a complaint on 13th June, 1997 with the District Consumer Disputes Redressal Forum at Shillong under C.P. Case No. 18(S), 1997 by contending inter alia, that she invested a sum of Rs. 50,000/- (Rupees fifty thousand) only with the appellant, namely, Unit Trust of India by purchasing 500 (five hundred) units, each of the value of Rs. 100/-, initially under the Monthly Income Unit Scheme with Extra Bonus Plus Growth (9) '87 (MISG(9) '87) and is a holder of Unit Certificate and the same scheme was terminated on 1.1.1993 and after the maturity of the said scheme the complainant was advised to convert the said units into Units of Growing Monthly Income Scheme with Bonus 1992 (11) (GMISB-92 (II) in short) and, accordingly, she opted the same. It is also the case of the respondent that she was also assured that the actual appreciation amount would be declared shortly and paid separately and, thereafter, the capital appreciation was declared at 9% of the face value of the Unit thus, entitling the complainant to receive a sum of Rs. 4,500/- (Rupees four thousand and five hundred) only from the appellant but inspite of her repeated requests by sending letters from time to time, the

complainant neither received the payment nor any reply from the end of the appellant and, having no alternative, the matter was taken up by the Consumer Unity and Trust Society who by their letter dated 1.2.1994 addressed to General Manager, Unit Trust of India requested them to look into the matter and redress their grievance and that on the basis of the aforementioned letter dated 1.2.1994, the General Manager of the appellant informed the complainant that the matter is being pursued with the Calcutta Office as reflected in the document marked as Annexure-XI to the complaint. THEREafter, on 18.1.1995 the authority of the appellant informed the complainant that a cheque being No. 76215 dated 18.2.1993 for Rs. 4,500/- (Rupees four thousand and five hundred) has been sent to her and a duplicate cheque would be issued to her on receipt of a stamped declaration executed before Magistrate/Notary/Commissioner of Oaths and, accordingly, the complainant executed the same before the Additional Deputy Commissioner, East Khasi Hills District, Shillong and it was sent to the appellant vide respondent's letter dated 14th February, 1995, which however, the appellant did not pay heed to. A Lawyer notice was also sent to the appellant and on the basis of the said Lawyer notice, the complainant/respondent was asked to forward the duly filled in Indemnity Bond typed on a Non-judicial Stamp Paper of Rs. 20.00 which the complainant duly complied with and sent the same on 7.6.1996 and, thereafter, the authority of the appellant returned the said Indemnity Bond asking the complainant/respondent to have it executed before a Magistrate or Notary Public to enable the authority of the appellant to issue a duplicate cheque and, in compliance with the said instruction, the complainant/respondent again sent a duly filled in Indemnity Bond as required by the appellant. According to the complainant/respondent she is entitled for the following amounts : (i) Payment of the sum due Rs. 4,500.00 . to the Complainant as Capital appreciation (ii) Interest at the rate of 21% per annum on 4,500.00 from January, 1995 to May, 1997. Rs. 4,173.75 Rs. (iii) Cost of serving Legal Notice. Rs. 300.00 (iv) Cost of correspondence all Rs. 10,000.00 these years from 1993-1997. (v) Mental agony and harassment. Rs. 10,000.00 (vi) Cost of filing the complaint Rs. 3,000.00 petition including Advocate's fees. and being aggrieved by the action of the appellant, the complainant/respondent filed the complaint before the District Forum. According to Ms. T. Yangi, learned Counsel for the respondent/complainant, the appellant had released a sum of Rs. 6,533.64 (Rupees six thousand five hundred thirty-three and paisa sixty four) only after filing of the complaint before the District Forum. THE case of the complainant was contested by the appellant represented by its Zonal Manager and the (P) Branch Manager by stating inter alia, that the appellant-Trust duly issued the related certificates under GMIS '92 (II) and the amount of capital appreciation was also been despatched to the complainant-respondent's address vide Cheque No. R76215 dated 18.2.1993 for Rs. 4,500/- however, from the letter of the complainant, the appellant understood that she has not received the above cheque but the same was not returned undelivered to the Trust and presumably the same was lost in transit and, immediately on receipt of the said complaint, it was decided by the Competent Authority of the Trust-appellant to

release the amount further alongwith an interest @ 12% (being the prevailing long term bank rate of interest) from 18.2.1993 (i.e. date of release of original cheque) to 17.9.1993 (i.e. date of issue of duplicate cheque) and, accordingly, the Cheque No. M05011 dated 3.9.1997 for Rs. 6,433.54 (i.e. Rs. 4,500/- + Rs. 1,933.64 as interest amount was issued in favour of the complainant. It is also the case of the appellant-Trust that there is no intentional negligence and deliberate deficiency of service as far as the Trust is concerned. Upon hearing the learned Counsel for the parties, the District Consumer Disputes Redressal Forum hereinafter referred to as District Forum finally decided the case on 25.3.1998 with the following operative order : "It is hereby ordered that the opposite parties paid to the complainant a sum of Rs. 4,500/- with interest at the rate of 18% per annum from September, 1996 onwards together with cost of the suit of Rs. 2,000/- and a compensation of Rs. 3,000/- within a period of two (2) months from the date of this order, failing which, interest at the rate of 20% shall accrue till final payment of the same."

Being aggrieved by the impugned judgment and order passed by the District Forum on 24.3.1998, the present appellant preferred this appeal. Mr. D.K. Jain, learned Counsel at the very outset contended that the District Forum has erred in law while awarding the compensation of Rs. 3,000/- together with cost of the suit of Rs. 2,000/- with interest at the rate of 18% per annum on the sum of Rs. 4,500/- inasmuch as generally and ordinarily the interest would be at the rate of 9% per annum on the sum of Rs. 4,500/- and, apart from it, the compensation of Rs. 3,000/- so far awarded by the District Forum is not tenable in the eye of law inasmuch as, the complainant/respondent could not make out a case for damage and loss caused to her. The learned Counsel for the appellant also submitted that the Trust-appellant had despatched the cheque of Rs. 4,500/- timely to the address of the complainant/respondent in the month of February, 1993 and even, on receipt of the letter of the complainant to the effect that the complainant did not receive the money and the said original cheque in time, the Trust-appellant also despatched a duplicate cheque and, as such, there is no intentional negligence and deliberate deficiency of the service on the part of the appellant-Trust. Supporting the case of the appellant-Trust, Mr. Jain, learned Counsel relied upon a decision of the National Consumer Disputes Redressal Commission rendered in *Commercial Officer, Office of the Telecom Distt. Manager, Patna v. Bihar State Warehousing Corporation* - reported in I (1991) CPJ 42 (NC), and contended that the award of compensation by the Forum established under the Consumer Protection Act has to be made only on well-recognised legal principles governing the quantification of damages or compensation and the same to be awarded has to be quantified on a rational basis on a consideration of materials 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.

3. NOW this Commission is to see and examine as to whether the compensation so far awarded by the District Forum, Shillong was quantified on rational basis

after due consideration of the available materials on record or not and whether there is infirmity or illegality or impropriety in the impugned judgment and order or not. Upon hearing the learned Counsel for the parties and also on perusal of the available materials on record, we are of the view that the submission so far advanced by Mr. Jain, learned Counsel appearing for the Trust-appellant holds little water and that the impugned judgment and order passed by the District Forum does not suffer from any infirmity or illegality for the following reasons :

(1) It is not disputed fact that the complainant/respondent is entitled to receive a sum of Rs. 4,500/- in the first part of the year 1993 on the basis of the maturity of the related scheme and that the complainant being a certificate holder of it could not receive the said money in time due to the reasons and circumstances as highlighted by the complainant which was controverted and denied by the appellant-Trust. From the available materials on record, it is established that the complainant/respondent made repeated requests by sending letters from time to time, i.e. the related letters dated 3.5.1993, 9.6.1993, 4.7.1993, 23.8.1993 and 1.11.1995 as reflected in the documents marked as Annexures IV, V, VI, VII and VIII to the complaint for payment of the capital appreciation plus interest accrued thereon and the first response to the letter was made by the appellant-Trust only in the year 1994 under a related Trust letter dated 22nd December, 1994 thus, informing the complainant that the appellant is pursuing the matter with their Calcutta Office and, thereafter, only in the year 1995, they informed the complainant that the appellant-Trust will be issuing a duplicate cheque to the complainant/respondent on receipt of a stamp declaration executed before Magistrate/Notary/Commissioner of Oaths as seen in the document marked as Annexure XII to the complaint. Now we are also required to see as to whether there is a lapse or deficiency of service on the part of the appellant-Trust or not. A bare perusal of the impugned judgment and order highlighted the fact that the Assistant Manager, Unit Trust of India, Guwahati, namely Mr. T. Bharadwaj admitted the factum of deficiency on the part of the Trust-appellant. The appellant-Trust did not adduce any evidence for establishing and proving the fact that they had sent a cheque for Rs. 4,500/- in the year 1993 to the complainant and the same was lost in transit. The appellant-Trust also did not produce even the alleged duplicate copy of the subsequent cheque dated 17th September, 1996 which was allegedly returned undelivered, before the District Forum. Bare perusal of the records further reveals that on receipt of the instant complaint, the appellant-Trust released the said amount of Rs. 4,500/- with the interest @ 12% for the period from 18.3.1993 to 17.9.1996. The said amount was released in connection with the said complaint case, by the Trust-appellant, and the same was done after proper application of their mind in the matter. This is our view but, the appellant-Trust now urged and contended that the rate of interest should be ordinarily and generally 9% per annum on the said sum of Rs. 4,500/-. We are unable to agree with such plea so far taken by the appellant-Trust. The District Forum awarded interest @ 18% per annum on the sum of Rs. 4,500/- for the period from September, 1996 onwards, not from the date of the alleged issuance of the first cheque in the month of February, 1993. On further perusal

of the statement made by the appellant-Trust in paragraph 12 of their show cause statement it has been revealed that the Competent Authority had decided to release the amount further alongwith an interest @ 12% (being the prevailing long term bank rate of interest) from 18.2.1993 (i.e. date of release of original cheque) to 17.9.1996 (i.e. date of issue of duplicate cheque). It is further revealed that in the year 1995, the complainant had duly submitted the related declaration in compliance with the related office letter of the Trust-appellant vide the compliance letter dated 14th February, 1995 but, after lapse of about more than a year the appellant urged the complainant to submit a duly executed Indemnity Bond typed on Non-judicial Stamp Paper vide appellant's letter dated 10.7.1996.

4. IN view of the above position, there is a delay and laches on the part of the appellant-Trust in releasing the said money/despaching the related cheque and rather deficiency of service on the part of the appellant-Trust. IN our considered view, the compensation so far awarded to the complainant/respondent has been duly quantified on rational basis by the District Forum inasmuch as, there is a delay of about 4 years in releasing the money so far entitled to the complainant/respondent under the said scheme or policy and, apart from it, it took a long time and rather, the complainant/respondent had a long journey in urging and making her claim to the appellant repeatedly from time to time as highlighted in the complaint petition. Considering all these aspects, the learned District Forum had awarded compensation to the tune of only Rs. 3,000/-. When there is sufficient materials on record establishing the factum of deficiency on the part of the appellant-authority rendering the service to the respondent, the State Commission always apply its mind as to whether the District Forum was justified in awarding the compensation in question and whether the compensation so far awarded to the complainant by the District Forum was quantified on a rational basis on the basis of the available materials and circumstances while deciding this related issue. In our considered view in the instant case, it is a compensation quantified on rational basis. We are also of the view that the case law so far cited by Mr. D.K. Jain rendered in Commercial Officer's case (supra), supports the case of the complainant/respondent. We are further of the view that the learned District Forum, Shillong had dealt with the matter exhaustively and given a reasoned judgment and order. For the reasons, observations and discussions made above, we are of the view that the appellant-Trust could not make out a case to justify the interference of the impugned judgment and order passed by the learned District Forum. In the result, this appeal is devoid of merit and, accordingly, it is dismissed but no order as to costs; thus affirming the impugned judgment and order of the District Forum. Appeal dismissed.