

(1999) 02 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

V.DAMODARAN

APPELLANT

Vs

HOTEL CHANMA INTER NATIONAL

RESPONDENT

Date of Decision : 10-02-1999

Acts Referred:

Citation : 1999 1 CPJ 694 : 1999 1 CPR 595 : 1999 2 CPC 58

Hon'ble Judges : E.J.Bellie , Angel Arulraj J.

Final Decision : Complaint dismissed

Judgement

1. THE two complainants are respectively husband and wife. THEy had a son by name Suresh Kumar. According to the complainants he was a science graduate having passed computer technology examinations. He was a bright student and he had high expectations in life. He being the only son of the complainants besides a daughter, they had the entire dependence on him for their future life. While so, Suresh Kumar wanted to have swimming training in the swimming pool maintained in the 1st opposite party hospital by the Proprietor the 2nd opposite party, the 3rd opposite party being the Manager thereof. He joined the swimming training course conducted by the opposite parties on 9.9.1996 and paid a sum of Rs. 500/- as fees therefor. During the course of the training on 19.9.1996 Suresh Kumar drowned in the pool. This happened because the opposite parties did not provide trainers any life savers. THE conduct of the opposite parties amounted to deficiency in service. On account of this incident the complainants had lost their loving only son. On these grounds the complainants have prayed for compensations under different heads totalling to Rs. 15,00,000/- with interest thereon @ 18% p.a. from the date of complaint.

2. IN the written version filed by the opposite parties, they deny that Suresh Kumar joined as swimming trainee in the swimming pool of the opposite parties paying Rs. 500/- as fees. They contend that he only joined as a Member for swimming in the swimming pool and not as a trainee and the amount paid by him was only for using the swimming pool. He was issued a card for swimming for one month of the month of September, 1996. Swimming coaching classes

used to be conducted only during summer i.e., in April and May. On 19.9.1996 after the swimming time was over, Suresh Kumar who was swimming came out of the pool and went to the bath room to cleanse himself. At that time the 3rd opposite party Manager went to the nearby room for mixing for treatment of the water for the next day. At that time he had a noise of jumping into the swimming pool. He immediately rushed to the swimming pool and saw Suresh Kumar trying to drown himself to commit suicide. The 3rd opposite party immediately jumped inside the swimming pool and tried to bring him out but Suresh Kumar refused to co-operate with him but with the help of other employees he was brought out. He was immediately rushed to the hospital hut on the way he died. IN the swimming pool necessary facilities and safeguards like life saving equipments had been provided. There was no negligence on the part of the opposite parties. Therefore no question of payment of any compensation by the opposite party arises. The point that arises for consideration is whether there was deficiency in service on the part of the opposite parties and if so, what relief can be granted to the complainants.

Point : First of all, it has to be seen whether the complaint is maintainable. It is even according to the complainants that Suresh Kumar only had paid consideration for services to be rendered by the opposite parties imparting training lessons for swimming and only he had availed of the services of the opposite parties. This being the case only Suresh Kumar was the consumer as per Section 2(1)(d) of the Consumer Protection Act. The complainants his parents are not at all consumers. They are not even beneficiaries of the transaction. Thus in no way they come under Section 2(1d) of the Consumer Protection Act.

3. A reading of Section 12 of the Consumer Protection Act clearly shows that besides a Consumer Association, Central or State Government, only the consumer to whom goods are sold or delivered or agreed to be sold or delivered or any service is provided or agreed to be provided can file a complaint. Clearly the complainants do not come under Section 12 of the Consumer Protection Act. Thus the complainants are not competent persons to maintain the complaint in this Commission. For this reason the complaint is liable to be dismissed.. We order accordingly. However, there will be no order as to costs. We give liberty to the complainants to agitate their grievance in a Civil Court if they so desire. In case if any suit is filed, we believe that the time taken in this proceeding will be considered for the purpose of limitation. Complaint dismissed.