

(1999) 07 GAU CK 0012

**Gauhati High Court****Case No:** Consumer Protection Case No. 6 of 1997

Legal Heirs of Dr.Amalendu Das

APPELLANT

Vs

Indchem A.T.Ltd.and Ors.

RESPONDENT

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**Date of Decision:** July 1, 1999**Acts Referred:**

- Consumer Protection Act, 1986 - Section 2(1)(d), 2(1)(d), 2(1)(g), 2(1)(g), 2(1)(o)

**Citation:** (1999) 3 GLJ 314**Hon'ble Judges:** J.N.Sarma, J and D.Dutta, J**Bench:** Full Bench**Advocate:** R.L.Yadav, Advocates appearing for Parties

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**Judgement**

J. N. Sarma, Member

1. This complaint was filed by Dr. Amalendu Das, proprietor of M/s Ananda Poly Clinic, Karimganj. During the pendency of the complaint the complainant died and on the prayer of his legal heirs their names, namely, Shri Debarshi Das, Sri Rajarshi Das both sons and Smti Anita Das, the daughters of the deceased complainant have been substituted vide order dated 10.4.99.

2. The facts of the complainant's case may be stated as follows. Complainant late Dr. Amalendu Das invited quotations for one Ultra Sound Sonography machine to install at his Poly Clinic in order to improve the facilities of the clinic. The opposite party Nos. 1 and 2 (for short OP 1 and OP 2) submitted quotations in respect of Compuson 5000 Ultra Sound Sonography machine. OP 1, the Indchem AT Ltd, Madras, is the manufacturing company of the said machine and OP No. 2 is the Regional Sales.Manager of the company in Calcutta. The price quoted for the machine was Rs.7,13,641.25 only including the freight of Rs.5,645. The complainant accepted the quotation and placed order with the OP 1 and 2 for supply of the machine by making a payment of Rs. 1,60,000 only to them as advance.

3. The proforma opposite party No. 3, the Assam Financial Corporation came forward to assist the complainant in buying the machine and paid a loan of Rs.7,07,996.25, being the price of the machine. This loan was sanctioned at an interest of 13.5% per annum for a period of 9 years with penal interest @ 4% per annum in case of default.

4. On receipt of the entire amount of price Rs. 7,07,996,25 and freight charge of Rs. 5,645/ only, the OPs 1 and 2 sent the Compuson 5000 Ultrasound System Make II Sonography machine which reached Karimganj on 1.10.92. The complainant took delivery of the machine that day itself. The warranty period of the said machine was initially one year only, but later on the period was extended to three years vide letter dated 3.9.93. The said Sonography machine was installed in the complainant's Poly Clinic in presence of an Engineer of the OP 1 and 2. The concerned Engineer checked the electric line and equipment before installation of the machine. When the troubles started after installation of the machine from the very beginning the OP 1 and 2 were duly informed and requested for removing the defects immediately. The complainant could not use the machine for several defects when it is detected during the warranty period. As the problems in the machine arose one after another the OPs 1 and 2 were informed from time to time and repeated requests were made to them by the complainant to send their Service Engineer. Although the Service Engineer attended to the complaints he could not rectify the defects completely. The service personnel of OPs 1 and 2 came for the purpose on as many as ten occasions on 9.7.93, 22.8.93, 2.9.93, 18.1.94, 6.5.94, 15.5.94, 16.5.94, 31.5.94, 21.6.94 and 7.7.94. Thereafter also the Service Engineer visited Poly Clinic of the complainant several times. Although some parts and accessories were replaced by him the defects could not be removed. Besides so many other problems were found during the operation of the machine and the some were duly intimated to the OPs.

5. When the OPs 1 and 2 failed to rectify the defects it became apparent that a defective machine was supplied by them deliberately only with the intention of making unlawful gain. The complainant then, wrote to OPs 1 and 2 for replacement of the defective machine by new one. As there was no response from them the complainant filed a petition before this Commission and the same was registered as Complaint No. 13 of J994. The OPs 1 and 2 appeared in the case and contested it by filing written objection. During the pendency of the aforesaid case both the parties came to a settlement outside the State Commission and the said amicable settlement was reduced into writing on 12.1.95. In view thereof the aforesaid case was dropped by the Commission. In terms of the said agreement the OPs 1 and 2 agreed to replace the defective machine by new one and the complainant agreed to withdraw his entire claim. Thereafter the OPs took back the aforesaid defective machine and supplied another machine of the same model, which was installed in the complainant's clinic on 9.4.95 in presence of the Engineer of the OPs. The OPs informed the complainant of the despatched of the machine vide their letter dated 22.3.95 and it was received by the complainant at Karimganj on 27.3.95.

6. The performance of the replaced machine was also not found satisfactory as in the second month itself after its installation defects were found for which the machine could not be operated. As the complainant faced acute problems with the machine he sent a letter by Speed Post to the OPs to send their Service Engineer immediately. After about four months trouble started in the machine and in the monitor no picture was found and the light indicator in the key board was out of order and there was no light at all. Another complaint was lodged at the office of the OPs in Calcutta on 3.9.95. On receipt of this complaint their Service Engineer came on 13.9.95, but could not rectify the defects in spite of his best efforts. He, then took some parts from the said Sonography Machine and returned to Calcutta by giving a report that SMPS power supply defective which require replacement. The Service Engineer again came from Calcutta with parts on 25.9.95. When he corrected the defective parts the machine somehow started functioning but after about fifteen days the machine started giving trouble on 14.10.95 and it could not be operated due to several defects. Complainant again lodged a complaint by sending a registered letter and requested the OPs to rectify the defects before 21.10.95 by sending their Service Engineer. On 22.12.95 the OPs sent their Service Engineer to attend to the complaint. He noted the defects and mentioned in his Field Activity Report. Although the Service Engineer could rectify some of the defects he could not tackle the problems of the linear image coming very slowly, Monitor frequently showing the false annotation "The probe is not connected". As a result the machine remained completely idle from 12.96. Thereafter, the Service Engineer of the OP company came several times and failed to rectify the defects to bring the machine into order in spite of their best efforts.

7. When the matter was reported to the head office of OP 1, at Madras their DGM assured to send a Service Engineer. In spite of complainant's agreeing to bear the travel expenses of Engineer nobody turned up from Madras. Instead a Service Engineer from Calcutta came again on 13.3.96 to repair the defects. The position did not improve and the defects continued making the machine inoperative. It is alleged that the OPs supplied the machine with inherent manufacturing defects intentionally and knowing fully well its condition. There is a deliberate attempt to cause wrongful loss to the complainant by supplying a defective machine with the ulterior motive of making wrongful gain by OPs 1 and 2.

8. In his complaint before this Commission the complainant has preferred the claim of following amounts :

- (i) Cost of the machine including freight and other expenses Rs.7,15,000
- (ii) Interest on the said amount @ 18% PA for the last three years Rs.3,86,100
- (iii) Compensation for harassment, mental agony and loss in profession. Rs.5,00,000
- (iv) Misc cost paid against service charges, lodging, food and conveyance charges paid to the Service Engineer of the OPs for number of occasions Rs. 1,50,000

(v) Other expenses and cost of defective parts supplied by the OPs Rs. 1,50,000

Total Rs.19,01,100

9. The notices issued by registered post to OPs 1 and 2 from this Commission on two occasions returned unserved. Only proforma OP 3 entered appearance, but did not contest the case. It is presumed that OP No.3, the Assam Financial Corporation, does not have any objection to the complaint in this case. As the notice sent by registered post could not be served on OPs 1 and 2 on two occasions we have got no alternative to passing the order ex parte in this case on the merit of the complaint in the interest of justice.

10. We have heard Sri RL Yadav, learned counsel for the complainant and perused the complaint and the Annexures enclosed thereto. The copies of the memorandum of settlement between the parties in the earlier case, legal notice to the OPs and complainant's letter to the OPs enclosed with the complaint as Annexures lend support to the complainant's version in his petition. We come to the finding recorded below on the basis of the complaint and the relevant papers on record only in absence of rebuttal from the OPs.

11. There is no denying the fact that the Sonography Machine in question

was supplied by the OPs to the complainant on receipt of the price and freight charge. The factum of OPs sending their Service Engineer on numerous occasions to repair the machine, rectify the serious defects and replace some of the parts leads us to believe that the machine was totally defective and gave trouble from the very beginning since its installation in complainant's clinic. The Service Engineer of the OP company could not bring the machine into order in spite of replacement of several parts. As they failed to rectify the defects and the machine developed trouble again and again there is reasonable ground to believe that there was manufacturing defects in the machine itself. Even replacement of it by another machine of the same model did not improve the position. The replaced machine also started giving trouble and several defects were found, which could not be rectified by the engineers/technicians of the OP company. We are told that OP 1 is the manufacturing company of the Compuson 5000 Ultra Sound Sonography machine, which was supplied to the complainant. If the OP 1 itself is manufacturer, it is solely responsible for manufacturing and supplying such a machine with manufacturing defects. Even if it is not the manufacturer and only a supplier then also it would be liable for deficiency in service for supplying such a defective machine. Besides, the after sales service rendered by OPs 1 and 2 is definitely deficient as it appears from the evidence on record.

12. We find that in the instant case the complainant is a "consumer" as defined in section 2 (1) (d) (i) and (ii) of the Consumer Protection Act inasmuch as he purchased the machine, which is goods, for consideration from and hired and availed services of the OPs 1 and 2 for repairing and rectifying the defects in the machine, also for

consideration. The machine in question was purchased by the complainant for using it in his clinic for his livelihood. It can not be considered e a commercial transaction. Apparently this complaint is within the purview of the Act and hence it is maintainable.

13. On the facts and circumstances based on whatever evidence on record we come to the conclusion that the OPs 1 and 2 are liable for deficiency in service within the meaning of section 2 (1) (g) and (o) and unfair trade practice within the meaning of section 2 (1) (r) of the Act. We are, therefore, inclined to hold that the OPs 1 and 2 are liable to refund the price of the machine along with the freight, and pay the complainant interest, compensation and cost as indicated below.

14. The complainant has claimed interest @ 18% per annum. It appears from the complaint itself that he has taken a loan of Rs.7,07,996.25 only, being the price of the machine, from proforma OP 3," the Assam Financial Corporation at an interest of 13.5 % per annum for a period of 9 years. This period has not yet expired. He is, however, liable to pay penal rate of interest @ 4% per annum in case of defects. It is not known whether the complainant has already defaulted in payment of any installment and paid any penal interest for that. The learned counsel for the complainant could not produce any record on this point. The amount of freight Rs.5,645 was paid by complainant and this amount also bears some interest. Considering all these aspects we are inclined to hold that the OPs 1 and 2 are liable to pay an interest of 15 % only per annum on Rs.7,13,641.25 including the freight, which is considered as reasonable. In our opinion payment of a compensation of Rs. 15,000 only and cost of Rs.25,000 only including the cost of travel expenses of Service Engineer etc. to the complainant by OPs .1 and 2 will meet the ends of justice.

15. We, therefore, direct the opposite parties Nos 1 and 2 to pay the following amounts to the complainant:

(i) Price of the machine including freight Rs. 7,13,641.25

(ii) Compensation Rs. 15,000.00

(iii) Costs Rs. 25,000.00

Total Rs.7, 53, 641.25

The interest @ 15% PA on Rs. 7,13,641.25 only should be paid with effect from two months after the date of completion of installation of the first machine till the date of payment of this amount.

In case the opposite parties 1 and 2 fail to pay the aforesaid entire amount

including the interest within two months from the date of this order they shall be liable to pay interest @ 18% PA from the expiry of the two months. On payment of the entire amount as indicated above the OPs 1 and 2 shall be entitled to take back

the defective machine along with spare parts supplied by them.

16. The complaint is allowed with cost and direction for payment as indicated above.