

(1998) 12 NCDRC CK 0019

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

ADHIKSHAK, DAK GHAR

APPELLANT

Vs

RHADESH MOHAN TRIPATHI

RESPONDENT

Date of Decision: Dec. 7, 1998

Citation: 1999 1 CLT 619 : 1999 1 CPR 614 : 1999 2 CPJ 18

Hon'ble Judges: S.K.Dubey , Saroj Rajwade J.

Final Decision: Appeal allowed

Judgement

1. THIS is an appeal under Section 15 of the Consumer Protection Act, 1986 (for short the "Act") against the order dated 30.11.1996 passed in Case No. 256/1996 by the District Consumer Disputes Redressal Forum, Rewa (for short the "District Forum").

2. UNDISPUTED facts are thus that on 16.11.1994 the complainant sent a registered AD parcel No. 1852 through Rewa Bainkat Bhawan Dakghar to one Laxminarain Pathak, Soni Colony, Guna which was lost in transit. The complainant vide applications dated 15.4.1996/17.7.1996 claimed compensation. The Postal Authorities claimed immunity under Section 6 of the Indian Post Office Act, 1898 (for short the "Act of 1898"). However, on compassionate ground ordered for payment of Rs. 100/- to which the complainant did not agree. The complainant filed a complaint under Section 12 of the Act and claimed Rs. 1,000/- the cost of KG Wool sent by registered parcel and Rs. 10,000/- as compensation for harassment, physical and mental pain. The claim was contested by the opposite party. The District Forum after considering the material on record awarded Rs. 1,000/- as the cost of the contents of the parcel and Rs. 150/- as costs of the litigation.

Mr. K.K. Jain, learned Counsel for the appellant contended that no liability can be fastened under Section 6 of the Act of 1898 unless it is established that the loss was caused by fraudulent or by wilful act or default of any of the officer of the Post Office. Elicited, The Presidency Post Master & Anr. v. Dr. U. Shanker Rao, II (1993) CPJ 141 (NC), followed by this Commission in Revision No. 7/1996 decided on 24.11.1998 (Suptd. Post Office v. Anil Kumar Sharma).

Mr. Rampal Singh, learned Counsel for the complainant-respondent submitted that exemption from liability for loss, misdelivery, delay or damage in view of Section 6 of the Act of 1898 was not available to the opposite party as it was a registered parcel for which special charges were paid. Learned Counsel placed reliance on the observations made by the National Commission in case of M/s. Devi Engineering Co. v. Union of India, 1997 NCJ 269.

3. IN our opinion, the appeal deserves to be allowed in view of Section 6 of the Act of 1898. Section 6 of the Act of 1898 give an immunity which lays down that the Government shall not incur any liability by reason of the loss, misdelivery or delay or damage to, any postal article in course of transmission by post, except in so far as such liability may in expressed terms be undertaken by the Central Government as hereinafter provided and no officer of the Post Office shall incur any liability by reason of any such loss, misdelivery, delay or damage, unless he has caused the same fraudulently or by his wilful act or default.

The present case is not of undertaking the liability of Government in express terms. It is also not the case there is any allegations and proof of causing the loss by any officer of the Post Office causing the loss fraudulently or by his wilful act or default.

4. THE National Commission considered the question of liability in relation to registered parcel in case of M/s. Devi Engineering Company (supra), following the principles laid down in case of the Presidency Post Master & Another v. Dr. U. Shanker Rao (supra), observed in paras 3 and 4 thus :

"3. THE framers of the Act must be taken to have been fully aware of the terms of Sections 28 and 29 of the Act which provide for registration of postal articles on payment of extra charges but nevertheless they have not made any distinction in

Section 6 between articles sent by ordinary post and those sent by Registered Post. On the other hand, the wording of the earlier part of section which confers immunity against liability is quite general and it is comprehensive enough to take in all cases of loss, misdelivery or delay or damage, to any postal article in the course of transmission by post, the only exception mentioned in the section being in respect of cases where any such liability has been undertaken in expressed terms by Central Government in the manner subsequently provided in the Act itself."

"4. It is noteworthy that the last portion of Section 6 where reference is made to loss, misdelivery etc. caused fraudulently or by wilful actor default has relation only to the personal liability of an individual "officer of the. Post Office" who may have been responsible for such fraud, wilful act or default. THERE is no allegation in the present case that the loss or misdelivery occurred on account of fraudulent or wilful act of any particular postal employee."

Though, the minority view in M/s. Devi Engineering Company's case (supra), in the light of Sections 21 and 28 of the Act of 1898 is contrary to majority view, but as a judicial discipline, we have to follow the majority view. In view of this the complaint has to be dismissed. However, as the Postal Authorities offered the payment of" Rs. 100/-. We direct the appellant to pay to the complainant Rs. 100/- within six weeks from the date of this order, failing which the interest on the said amount shall be payable at the rate of 12 percent per annum from the date of this order till payment.

In the result, the appeal is allowed. The order of the District Forum is set aside. In the circumstances, parties to bear their own costs. Appeal allowed.