

(2011) 07 NCDRC CK 0041

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Uttam Kumar Atarthy

APPELLANT

Vs

Indian Oil Corporation Ltd

RESPONDENT

Date of Decision: July 14, 2011

Citation: 2011 0 NCDRC 420 : 2011 3 CPR 224 : 2011 4 CPJ 58

Hon'ble Judges: Vinay Kumar J.

Final Decision: Appeal dismissed

Judgement

1. FIRST Appeal No.106 of 2011 is filed by the Complainants, seeking enhancement of compensation of Rs.2 lakhs, awarded by the West Bengal State Consumer Disputes Redressal Commission, in SC Case No.35 of 2002. FIRST Appeal No.133 of 2011, arising out of the same matter, is filed by the OPs/Indian Oil Corporation and others with the prayer to set aside the order of the State Commission. Both the appeals are therefore, taken up together for disposal.

2. APPEAL No.133 of 2011 has been filed by the appellant/Indian Oil Corporation with a delay of 26 days. Considering the grounds mentioned in the application for condonation, this delay is condoned and matter considered on merits.

The appeal filed by the Complainants, Uttam Kumar Atarthy and seven others for enhancement of compensation arises from the fact that the Complainants had together sought a total compensation of Rs.16.8 lakhs. As against this, the impugned order has awarded Rs.2 lakhs towards compensation and Rs.10,000/- towards costs to be paid by all OPs jointly, excluding OP-

5. The complaint has been dismissed against OP-5, proprietor of the Kitchen Mate, distributor of LPG Gas.

The case of the Complainant before the State Commission was that in 1984 the Complainant No.1 had got LPG gas connection from the OPs, with Consumer No.9264. It was converted into double cylinder connection in 1991. The distributorship of S.K. Trading, Benachity, Durgapur, to whom this connection was attached, was cancelled. Their consumers were diverted to another distributor, OP-5 for sometime. OP-5 directly distributed gas cylinders to the consumers twice a week in the area of the Complainant. Subsequently, it was advertised through local cable network that there would be several extension counters for distribution. OP-5 ?Kitchen Mate? had his extension counter at Gurudwara Road, which was nearest to the Complainant. From this counter gas cylinders were made available on cash payment basis on returning the empty cylinders. There was thus, no need for prior booking of the cylinder.

3. ON 23.3.2001, Complainant No.1 obtained the delivery of a cylinder, with a given number. When an attempt was made to connect it to the gas oven, a large quantity of gas started leaking out from the cylinder. This was followed by an explosion and fire in the kitchen in which, several members of the family received burn injuries.

The injured were brought to the local hospital and later six of them were shifted to two Calcutta hospitals on 26.6.2001. In the next two weeks, two victims of this incident succumbed to their burn injuries. The survivors were still undergoing treatment when this complaint was filed with the State Commission. While the accident took place on 23.3.2001, the consumer complaint was filed on 16.5.2002.

4. THIS accident was reported to the local police and a representation was also made to the General Manager, Indian Oil Corporation, Eastern Region. The concerned cylinder was seized by the police and got examined by a forensic expert viz., the Forensic Science Laboratory, Calcutta. The report stated that the nozzle valve of the LPG cylinder was defective and LPG came out from the cylinder mouth, like a jet under heavy pressure, which caused fire. It was alleged that the OP was negligent in marketing a defective cylinder without proper examination and this amounted to a deficiency in service.

The claim of the Complainants was contested by the OPs, denying the allegations of negligence and supply of defective cylinder. It was also argued on behalf of OP-5 that no specific allegation is made against it. The State Commission took note of the claim of Complainant No.1 that he had become consumer of OP-5, kitchen-Mate due to cancellation of the distributorship of the earlier distributor, S.K.Trading. The Commission observed that the Complainants have not produced any document to show that the cylinder was purchased from OP-5. Nor was any evidence produced in support of the claim that gas cylinders were sold by OP-5 on spot payment without any prior booking. Therefore, the State Commission held that the case of the Complainants against OP-5 could not sustain. It also held that the Indian Oil Corporation could not avoid its liability only as Complainant No.1 had purchased the cylinder from open market on spot payment, without going through the distributor. The report of the Forensic Science Laboratory establishes that the particular gas cylinder was a defective one and heavy leakage from it had caused the fire.

During the course of the arguments, learned counsel for the appellant/complainant Uttam Atarthy pointed out that the State Commission has given a verdict that Complainant No.1 was a consumer of the OP/Indian Oil Corporation and has awarded compensation as the accident has been caused by a defective cylinder. Learned counsel for OP/Indian Oil Corporation conceded it as an admitted fact that the deceased was a registered consumer of the respondent Corporation.

5. CONSIDERING the above, I am in agreement with the decision of the State Commission that the case of the complainant is established against the OPs, excluding OP-5.

6. THE State Commission has awarded a compensation of Rs.2 lakhs. THE appeal for enhancement of this compensation is primarily based on the following grounds:-

a) While arriving at the figure of compensation, the State Commission has not taken into account the fact that one of the two deceased persons was the sole bread-winner of the family. THE loss suffered by the Complainants due to his death at the age of 45, has not been considered by the Commission. b) THE State Commission has also not considered the details of expenditure submitted by the Complainants on which their claim of Rs.16.8 lakhs was based. Expenditure of

Rs.2.75 lakhs approximately, was already incurred on the treatment of the six injured persons. c) THE incident took place in the year 2001 while the order of the State Commission was passed in 2011, almost ten years later. Yet, no interest has been allowed on the compensation awarded.

In the impugned order the State Commission has referred to the schedule in which expenses on the treatment of the injured are detailed. However, the order neither accepts nor rejects the amounts claimed therein. From the details in the Annexure, I find that they pertained to treatment expenses of the following:-

1. Gautam Atarthy. 2. Sohan Atarthy. 3. Smt. Parna Atarthy. 4. Rakhi Dshi Bhadani.

Of the above, Gautam Atarthy was the head of the household in whose name the relevant consumer LPG connection stood and who had died of his burn injury in this incident. The other three namely, Shri Sohan Atarthy, Smt. Parna Atarthy and Smt. Rakhi Dshi Bhadani, were not part of the immediate family of the deceased. More significantly, the details in the schedule are only partly relating to medical/treatment expenses of these persons. A major part of the expenses claimed are towards conveyance and food expenses. Excluding the same, the claimed amount towards medical expenses will be about of Rs.1.4 lakhs.

7. COMING to the question of quantum of compensation, it may be gathered that the State Commission has not assigned any reason as to why lumpsum compensation of Rs.2 lakh only was being awarded to the appellants. It is true that most of the claim put forth by the appellants is on account of expenditure required for obtaining medical treatment. The appellants had claimed amount of Rs.16,80,000/-. The claim for loss of future income due to death of Mr. Gautam Kumar Atarthy alongwith compensation due to loss of consortium also has been spelt out in schedule ?X?. The appellants had further sought compensation on account of loss consortium due to death of minor Pooja. These items have not been considered by the State Commission. It is but natural that parents of Pooja suffered grief due to loss of her life. It is also logical to assume that due to loss of the bread winner of the family, the appellants have lost future dependency. Ordinarily, the loss on account of life is to be compensated on principles underlying Section 163 A of the Motor Vehicles Act, 1988, which is known as ?Structured Formula?. Considering the fact that earning capacity of deceased Gautam Kumar Atarthy is not duly proved, it would be appropriate to hold that the appellants have lost dependency of at least Rs.3 lakh more. Therefore, it follows that the lump sum compensation is required to be enhanced from Rs.2 lakh to Rs.5 lakh. It is accordingly enhanced to Rs.5 lakhs. This enhanced amount of Rs. 5 lakhs shall carry an interest at 7% per year, from the

date of complaint to the State Commission. The OP/ Indian Oil Corporation, is directed to pay this amount to Smt. Archana Atarthy, widow of the deceased Gautam Kumar Atarthy, on behalf of the Complainants. It shall be paid within a period of three months. Failing this, interest at the rate of 10% shall be payable for the period of delay.

First Appeal No. 106 Of 2011, filed on behalf of the complainants, is disposed of in the above terms. As a consequence thereof, First Appeal No. 133 of 2011, filed on behalf of the OPs, stands dismissed. The parties shall bear their own costs.