

The Eye Foundation Vs. K. Gopalakrishnan

The Eye Foundation Vs. K. Gopalakrishnan

SooperKanoon Citation : sooperkanoon.com/1108889

Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC
Chennai

Decided On : Oct-21-2011

Judge : Thiru a.K. Annamalai, M.a., M.L., M.Phil., Presiding Judicial Member
& Thiru S. Sambandam, B.SC., Member

Appeal No. : F.A.No.553 of 2010 [Against order in C.C.No.332/2008 on the file of
the DCDRF, Coimbatore]

Appellant : The Eye Foundation

Respondent : K. Gopalakrishnan

Judgement :

(The appeal coming before us for hearing finally on 22.09.2011, upon hearing the arguments of both sides and perused the documents, written submissions as well as the order of the District Forum, this Commission made the following order J

A.K. ANNAMALAI, PRESIDING JUDICIAL MEMBER

1. The opposite party is the appellant.
2. Complainant filed a complaint against the opposite party claiming for the direction to replace the defective spectacle purchased from the opposite party and to pay Rs.25,000/- as compensation for deficiency of service and Rs.10,000/- as costs.

3. The complainant purchased a spectacle for his defective eye as per the prescription on 10.6.07 by paying Rs.2,325/- towards the lens and frame. The opposite party prescribed lognes S model frame to the complainant and also informed there would be warranty for the same and the model frame is a superior quality believing the same the complainant placed orders for the same placed order and purchased as per bill dated 10.6.07 and was promised to delivery of the same on 16.6.07. On 16.6.07 when the spectacle was received no warranty card or guarantee card is attached to it and when enquired no such things are given for the said model frames and promised to replace if any defect is found. But when the model of the frame used lost its colour and it was worn out during usage similarly the lens was not such quality and the same needs replacement. When he approached the opposite party, the opposite party refused for replacement and denied to do anything in this regard. Hence legal notice issued on 26.7.07 and filed this complaint claiming reliefs as stated above.

4. The opposite party denied the allegations in the written version except to admit that the complainant paid Rs.2,325/- towards the lens and the frame and no assurance was given for warranty card or guarantee. Hence complaint cannot be sustained. Some times after purchase the complainant wanted to replace the frame as he did not like the same and such a request cannot be entertained by the opposite party to accept and as a goodwill gesture permitted to chose the frame of same size of the old one. The complainant refused the offer and opted for different shape and model in which the old lens cannot be fit without paying extra cost and the complainant not accepted for the same. Further already 20 months has elapsed from the date of delivery and even in the normal use any product would be subjected to normal wear and tear and therefore no bonafide could be attached to the complainant. Hence complaint to be dismissed.

5. On the basis of both sides materials and after an enquiry the District Forum allowed the complaint by directing the opposite party to replace with fresh spectacles in the place of old one and to pay Rs.10,000/- as compensation for mental agony and Rs.1,000/- as costs.

6. Aggrieved by the order of the District Forum, the opposite party come forward with this appeal claiming that the District Forum erroneously allowed the complaint.

7. While considering both sides contentions, averments and arguments it is not in dispute that the complainant purchased spectacles by paying Rs.2,325/- from the opposite party and no warranty card or guarantee card were issued by the opposite party for the same and the complainant complained that the frame lost its colour and the lens have become defective and in those circumstances he wanted to replace with the new one. But the opposite party contended that it will not be possible and even though alternative frame was offered with the same size, the complainant refused to accept the same.

8. When going through both sides contentions, the complainant as soon as after the purchase on 16.6.07 he had issued a legal notice Exhibit A3 on 26.7.07 within 45 days from the date of purchase and in which it is stated that the entire model used in the frame was lost its colour and it was torn apart during usage. Similarly the lens was not a such quality and the same needs replacement. When pointing out the defect in the legal notice as per Exhibit A3 which was received by the opposite party as per Exhibit A4 failed to give any reply or respond for the prayer and in those circumstances now the opposite party cannot say that the spectacle purchased as used for more than 20 months at the time of filing complaint having wear and tear. In the normal course of use it would become torn and lost colour. In those circumstances when the complainant intimated the defect in the goods purchased even though there is no warranty or guarantee is given as soon as the purchase made within the short period the defect was pointed out it is the duty of the service provider or the seller to rectify the defect and it is the deficiency of service under the Consumer Protection Act 1986 and accordingly the opposite party is duty bound to rectify the defects or to replace the defective goods. In those circumstances when we further considering the both sides materials the District Forum directed to replace the goods that is the spectacle which cannot be considered as erroneous one. But instead of directing to replace the one even by obtaining new one if the complainant not satisfied with the same there may be prolonged litigation in this regard could occur and thereby it could be proper to

direct to refund the cost of the spectacle instead of replacement with the new one would be the proper direction. Regarding the compensation is concerned the District Forum awarded a sum of Rs.10,000/- as compensation for mental agony for the defective purchase of the value of goods for Rs.2,325/- which is some what disproportionate to the facts and circumstances of the claim made by the complainant which also need to be reduced.

9. In view of the foregoing discussions and reasons adduced we are of the view that the order of the District Forum to be modified by allowing the appeal in par.

10. In the result, the appeal is allowed in part by modifying the order of the District Forum as follows :- (a) The order of the District Forum by directing the opposite party to replace the spectacle with a new one of the same type and to pay Rs.10,000/- as compensation are hereby set aside. (b) The opposite party is directed to repay Rs.2,325/- cost of the spectacle purchased by the complainant on surrendering the old one by the complainant to the opposite party. (c) The opposite party shall pay a sum of Rs.2,000/- as compensation for complainants mental agony and for deficiency of service. (d) The order of the District Forum to pay Rs.1,000/- as cost is hereby confirmed and (e) No order as to costs in this appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com