

Arjun Kumar Vs. D.T.D.C.

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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : Sep-15-2008

Judge : J.D. Kapoor, President & the Honourable Ms. Justice Rumnita Mittal, Member

Appeal No. : Appeal No. FA-08 of 310

Appellant : Arjun Kumar

Respondent : D.T.D.C.

Judgement :

J.D. Kapoor, President (Oral):

1. This appeal has been received by way of transfer from the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad by the Order dated 20.8.2007 passed by the National Commission.

2. Feeling aggrieved of the order dated 10.10.2003 passed by the District Forum at Hyderabad in CD No. 69/2000 dismissing the complaint of the appellant seeking refund of the consideration for booking the consignment with the respondent for delivery at Bokajan and compensation for loss of courier as his daughter could not avail the opportunity of appearing in medical entrance KCET-1999, the appellant has preferred this appeal.

3. The case of the appellant before the District Forum, in brief, was that on 15.4.1999 the appellant handed over a consignment to respondent to be delivered to one Sh. R.G. Bhattacharya at Bokajan Cement Factory (Assam) through their Dimapur branch in Nagaland. The consignment note was also received by the appellant for which the respondent charged Rs. 63 for the courier service. The consignment was supposed to be delivered within 48 hours of handing over the consignment to DTDC. But the consignment never reached the consignee. The appellant tried to contact respondent number of times but of no use. The appellant suffered financial loss to the extent of Rs. 1,000 for procurement of prospectus, transport charges, courier service charges and trips to respondents office at Hyderabad, etc. The appellant sent number of letters to respondent but there was no response.

4. During one of the visits of the messengers of appellant, the respondent simply handed over the undelivered consignment to it on 15.9.1999 without any inquiry. As a matter of fact, the appellant sent the prospectus worth Rs. 350 for KCET examination-1999 for which last date of submission was 24.4.1999 at Bangalore. Due to non-delivery, the prospectus could not be utilized or submitted by the daughter of the consignee and she lost a good opportunity of appearing in medical entrance KCET-1999 and thus lost the opportunity of building her career. The appellant also sent some other letters in the same cover addressed to some friends with some personal jobs which also obviously could not reach the concerned. Hence the prayer for relief of Rs. 1,000 towards expenses and Rs. 1 lac for mental agony and cost.

5. In their counter, the respondent averred that the appellant is not a consumer under the Act. Further that there is no service at Bokajan and the service was only available till Dimapur and the consignment was accepted with a condition that the consignee will collect the same from Dimapur. There was no assurance given to the appellant that the consignment will be delivered within 48 hours. The appellant also failed to approach the respondent within 30 days of booking to make a claim which should be done as per the terms and conditions. In fact he did not receive any letters from the appellant and they are all fabricated. The appellant also did not declare the contents of the consignment. Even if there is any deficiency, the

liability is only to the extent of Rs. 100 only. Under the circumstances, the consignment was sent back to respondent from Dimapur and it was handed over to the appellant when the appellant visited the office of respondent in September, 1999 and the same could not be sent to appellant earlier as he is a resident of Gulbargarh, Karnataka State. So much so, there is no deficiency in service on the part of the respondent and hence the complaint is liable to be dismissed.

6. Appellant produced the following documents:

Exhibits marked as under

Ex. A1 copy of consignment note.

Ex. A2 copy of letter of appellant to respondent dated 17.5.1999.

Ex. A3 copy of letter of appellant to respondent dated 3.7.1999.

Ex. A4 copy of letter of appellant to respondent dated 3.9.1999.

Ex. A5 copy of address on cover face.

7. The solitary ground for rejection of the claim of appellant provided by the District Forum is that the respondent had mentioned only Dimapur in the consignment note and not Bokajan and this should have been questioned by the appellant at the time of receiving the consignment note and further the respondent clearly marked Dimapur in bold letters on the address (Ex. A5) face of cover which was in pursuance of consignment note. Hence it cannot be believed that the respondent had given impression that there was service available at Bokajan. Further the appellant also did not disclose the contents of the cover to indicate its importance.

8. It appears that the District Forum has confused the Branch of DTDC i.e. the respondent with the destination for delivering the consignment which was Bokajan. There is no document produced by the respondent to show that it had not given any assurance that there was no service at Bokajan and the nearest service was Dimapur from where the cover was to be collected by the consignee.

9. Even if we accept the contention of the respondent that such assurance was given, the fact remains that this parcel was returned from Gauhati and not from Dimapur. Thus respondent did not deliver the consignment at Dimapur from where the representative of the appellant could have collected the cover. Thus on both the factual aspects the District Forum has faulted and fell in error in returning the finding that the respondent clearly marked Dimapur in bold letters at the address face of cover which was in pursuance of consignment note and therefore cannot be believed that the respondent had given impression to the appellant that there was service at Bokajan.

10. The address mentioned on the consignment was very clear and it did not admit any ambiguity. There is no endorsement on the consignment note that the courier service was only up to Dimapur and the consignee was to collect the said article. Bokajan has postal pin code and there is a postal service also. Thus the place of address was within the operative limits of the respondents Dimapur Branch.

11. The aforesaid facts hold the respondent guilty for deficiency in service which in terms of Section 2(1)(g) means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

12. In such cases we have taken a view that the parties are governed by the terms of contract. If a consumer avails the service of a courier for sending any goods or articles there is no terms in the contract between the parties as to the payment of cost of the goods in case of non-delivery, wrong delivery or damaged delivery. Nor is any receipt issued by the service provider that they have accepted the articles, packets or parcels having contents of a particular value, nature or type. But it does not mean that the courier service is absolved from its liability to perform its part of contract, i.e. to deliver the packets or parcels or letters or any other goods to the consignee within the promised period and any shortcoming, imperfection, inadequacy in the manner of performance of such a contract amounts to deficiency in service and entitles the consumer to a reasonable amount as

compensation.

13. To compensate the consumer as to the actual value of the contents which has neither been declared nor has been accepted by the courier is not in consonance with the terms of the contract and would rather be irrational and harsh upon the service provider, as the courier receives consideration in few hundred which in this case was only Rs. 100 whereas the packets or parcels may contain goods or articles of value running into lacs.

14. In the instant case the compensation being sought by the complainant is not on the terms of contract nor is in consonance with the consideration paid by him. However, taking overall view of the matter, we allow the appeal and deem that lumpsum compensation and cost of Rs. 25,000 shall meet the ends of justice.

15. The payment shall be made within one month from the date of receipt of this order.

16. FDR if any, deposited by the appellant, be returned to the appellant forthwith under proper receipt.

17. A copy of this order as per the statutory requirements be forwarded to the parties free of charge and also to the concerned District Forum and thereafter the file be consigned to Record Room.

18. Copy be sent to Presidents of all the District Fora.

Appeal allowed.

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