

PETITIONER:
THE CHAIRMAN, THIRUVALLUVAR TRANSPORT CORPORATION

Vs.

RESPONDENT:
THE CONSUMER PROTECTION COUNCIL

DATE OF JUDGMENT 09/02/1995

BENCH:
AHMADI A.M. (CJ)
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AHMADI A.M. (CJ)
MOHAN, S. (J)

CITATION:
1995 AIR 1384 1995 SCC (2) 479
JT 1995 (2) 441 1995 SCALE (1) 525

ACT:

HEADNOTE:

JUDGMENT:

1. The short question which arises for consideration in the present appeal is whether the National Consumer Disputes Redressal Commission (hereinafter called 'the National Commission') constituted under Section 20 of the Consumer Protection Act, 1986 (for short 'the 1986 Act') had jurisdiction to adjudicate upon a claim for compensation arising out of a motor vehicle accident, notwithstanding the jurisdiction conferred on a Claims Tribunal constituted under the Motor Vehicles Act 1988 (for short 'the 1988 Act'). The factual matrix in which this question arises for consideration, briefly stated, is as under.

2. Shri. K. Kumar was travelling from Kombakonam to Thanjavur on the night between 2nd and 3rd June, 1990 in an omnibus which met with an accident near village Vayalur while trying to avert a bullock-cart. It appears that when the bus driver was in the process of over-taking the bullock-cart, the bullocks got panicky whereupon the driver swerved the bus to the left and ran into the branches of a tree on the road side resulting in damage to the vehicle; the window panes having been smashed. As the vehicle suddenly swerved and the driver applied the brakes Shri. K. Kumar who was sitting in the centre of the rear seat was thrown in the front and hit against the iron side-bar, sustaining a serious head injury. Subsequently he succumbed to the injury. The Consumer Protection Council, Tamil Nadu, on behalf of the legal representatives of the deceased lodged a complaint before the National Commission under the 1986 Act claiming compensation. The appellant herein contested the claim contending that the claimant, i.e., the Council, had no locus standi to maintain the action and in any the National Commission had no jurisdiction to entertain a petition since exclusive jurisdiction was conferred by the 1988 Act on the Claims Tribunal constituted thereunder. The National Commission, contends the appellant, side-stepped the question regarding jurisdiction and without answering

the same awarded Rs.5,10. lacs by way of compensation with -interest at 18% per annum from 1st May, 1992 till the date of payment. In addition thereto a sum of Rs. 10,000/- was awarded by way of costs. The entire payment together with costs was ordered to be made within three months from the date of judgment. It is against the said decision of the National Commission that the present appeal is preferred.

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3. In order to appreciate the principal contention relating to the jurisdiction of the National Commission, it is necessary to look to the relevant provisions of the 1986 Act. This law was enacted to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes etc. Section 2 contains the dictionary of the said Act. Section 2(c) defines a complaint to mean any allegation made in writing by a consumer complaining that as a result of any unfair trade practice or a restrictive trade practice adopted by any trader he had suffered loss or damage or the goods bought by him or agreed to be bought by him were defective or the services hired or availed of or agreed to be hired or availed of by him were deficient in any respect or that a trader was guilty of charging a price in excess of the fixed price or that displayed on the goods or packet containing such goods Section 2(d) defines a consumer as under:-

"S. 2(d) - 'consumer' means any person who, -

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person."

Section 2(e) defines a "consumer dispute" to mean, a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint. Section 2(f) defines a "defect" to mean any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard expected to be maintained by or under any law by a trader in any manner whatsoever in relation to any goods. Deficiency says Section 2(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. Section 2(o) defines "service" as under:

service" means service of any description which is made available to potential users and

includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical of other energy, board or lodging of both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service."

Section 3 provides that the provisions of the Act shall be in addition to and not in

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derogation of the provisions of any other law for the time being in force. Section 12 inter alia provides that a complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided or by any recognised consumer association whether the consumer concerned is a member of such association or not. The explanation to the section states that a "recognised consumer association" means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force. Section 21 deals with the jurisdiction of the National Commission with which we are concerned. It reads as under:

"21. Jurisdiction of the National Commission - Subject to the other provisions of this Act, the National Commission shall have jurisdiction.

(a) to entertain-

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs; and

(ii) appeals against the orders of any State Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its

jurisdiction illegally or with material irregularity.

4. From the Preamble and the various Provisions of the 1986 Act it becomes clear that whenever a complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided arises, the complainant, i.e. the consumer or any voluntary consumer association or the Central or any State Government can move the appropriate Forum under the statute for redressal. If the amount claimed by way of compensation exceeds the minimum stated in section 21, the National Commission can take jurisdiction, hear and dispose of the complaint. The limit of Rs. 20 lakhs was substituted for Rs. 10 lakhs by Amendment Act 50 of 1993. In the present case, it is an admitted fact that no petition was filed on behalf of the legal representatives of the deceased victim of the accident before the Motor Vehicle Claims Tribunal constituted under the 1988 Act. After the lapse of the period of six months which is the period of limitation for

preferring -such a claim expired, the respondent preferred an application claiming Rs.20 lakhs before the National Commission, It is, therefore, obvious that the claim was preferred before the National Commission since the legal representatives of the deceased had failed to prefer the claim before the Tribunal under the 1988 Act. It would, therefore, be proper at this stage to refer to a few provisions of the 1988 Act.

5. The said Act was enacted to consolidate and amend the law relating to motor vehicles. Section 2(28) defines a "motor vehicle" or "vehicle" to mean any mechanically propelled vehicle adapted for use upon roads whether the power of

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propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer. The vehicle which was -involved in the accident was indisputably a vehicle within the meaning of the said provision. Chapter XII refers to Claims Tribunals. Section 165 provides that a State Government may, by notification in the Official Gazette, constitute one or more Motor Accident Claims Tribunal for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. Section 166 next provides that an application for compensation may be made by the person who has sustained the injury or by the owner of the property or where death has resulted from the accident, by -all or any of the legal representatives of the deceased or by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Section 168 then says that on receipt of an application for compensation, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties an opportunity of being- heard, hold an inquiry and make an award determining the amount of compensation which appears to be a just. Section 175 next provides that where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which -may be adjudicated upon by the Claims Tribunal for that area. In the present case the death had occurred due to the injury suffered in the accident arising out of the use of a motor vehicle. The legal representatives of the deceased did not prefer any claim before the Claim Tribunal for the area in which the accident occurred but instead the respondent-council preferred the claim before the National Commission without examining the question whether or not it had jurisdiction awarded a sum of Rs. 5,10 lakhs by way of compensation.

6. The question which then arises for consideration is whether the National Commission had jurisdiction to entertain the claim application and award compensation in respect of an accident involving the death of Shri K. Kumar caused by the use of a motor vehicle. Clearly the Claims Tribunal constituted for the area in question, had jurisdiction to entertain any claim for compensation arising out of the fatal accident since such a claim application would clearly fall within the ambit of section 165 of the 1988 Act. The 1988 Act can be said to be a special Act in relation to the claims of compensation arising out of the use of a motor vehicle. The 1986 Act being a law dealing

with the question of extending protection to consumers in general, could, therefore, be said to be a general law in relation to the specific provisions concerning accidents arising out of the use of motor vehicles found in Chapter XII of the 1988 Act. Ordinarily the general law must yield to the special law. Besides, the complaint in question cannot be said to be in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided to the deceased. The expression "service" as defined by the 1986 Act means service of any description which is made available to potential users and includes the provision of facilities inter alia

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in connection with transport. The accident that occurred had nothing to do with service provided to the deceased. This becomes obvious when one reads the provision along with the definition of complaint in section 2(c) and service in section 2(o) of the 1986 Act. Complaint according to section 2(c) means any application in writing in relation to an unfair trade practice or as a restrictive trade practice adopted by any trader or in relation to goods bought by him or agreed to be bought by him. Both these clauses have no application whatsoever. The third clause relates to the services hired or availed of or agreed to be hired or availed of by a consumer. Therefore, at best it can be said the complaint in question related to the service hired or availed of by the deceased. The complaint in the instant case cannot be said to be in relation to any service hired or availed of by the consumer because the injury sustained by the consumer had nothing to do with the service provided or availed of by him but the fatal injury was the direct result of the accident on account of which he was thrown out of his seat and dashed against the iron handle of the seat in front of him. We, have, therefore, no manner of doubt that this case squarely fell within the ambit of section 165 of the 1988 Act and the Claims Tribunal constituted thereunder for the area in question had jurisdiction to entertain the same. As pointed out earlier, the 1988 Act and, in particular, the provisions in Chapter XII thereof creates a Forum before which the claim can be laid if it arises out of an accident caused by the use of a motor vehicle. That being a special law would prevail over the relevant general law such as the 1986 Act but in the instant case even that question does not arise for the simple reason that the dispute in question did not attract the jurisdiction of the National Commission, whatsoever, and the National Commission has not shown how it had jurisdiction. The issue was pointedly raised and for reasons best known to the National Commission it failed to come to grip with it. Surprisingly, there is no discussion whatsoever in the order of the National Commission in this behalf we are, therefore, of the opinion that the National Commission did not have jurisdiction and as counsel for the appellant put it this was a case of unwarranted exercise of jurisdiction.

7. In fact only a few months ago i.e., on 15th April, 1993, while disposing of a revision application in the case of Union of India & Anr v. M. Adai Kalam II (1993) CPJ145(N.C.) the National Commission held that it had no jurisdiction to entertain complaints of loss, destruction, damage or non-delivery of goods by railway on account of deficiency in service since such claims fell within the exclusive jurisdiction of the Railway Claims Tribunal constituted under the Railway Claims Tribunal Act, 1987. Yet it is difficult to comprehend how it exercised jurisdiction

in the present case.

8. This Court while admitting the appeal on 3rd January, 1994 specifically stated that no notice need be sent to the widow and the child who were awarded compensation. Not only that the appellant was directed to pay the compensation to the widow and the child within three months therefrom. It is obvious from this order that this Court felt that it was not necessary to make the widow and the child run to this Court to settle the question of law. The respondent-counsel did not appear in response to the notice but having

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regard to the importance of the question this Court by its order dated 31st August, 1994 requested Shri R.P. Bhatt to assist this Court amicus curiae in answering the question whether or not in such cases the National Commission has jurisdiction to entertain the complaint. In the circumstances it is not necessary for us to go into compensation since there is no question of reversing the award in the sense of calling upon the widow and the child to refund the amount of compensation already received. The main emphasis was to decide the question of law as it was apprehended that similar cases which have become time barred under the 1988 Act may be taken to the National Commission under the 1986 Act even though that body had no jurisdiction whatsoever. We should, therefore, rest content by deciding the question of jurisdiction and holding that the National Commission had no jurisdiction whatsoever and was entirely wrong in exercising jurisdiction and awarding compensation. However, in the facts and circumstances of this case while we reverse the order of the National Commission by allowing this appeal we direct that the appellant will not be entitled to recover the compensation money already paid to the widow and the child under this Court's order. The appeal will stand disposed of accordingly. No order as to costs.

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