

ITEM NO.27

COURT NO.11

SECTION XVII

S U P R E M E

C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).14526/2010

(From the judgement and order dated 21/07/2009 in RP No. 945/2005
of The NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI)

M/S SHIVAM GAS SERVICE
VERSUS
CHANDERKALI & ORS.

Petitioner(s)

Respondent(s)

Date: 14/05/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Brij Bhusan, Adv.(N/P)

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

Even though the case was called twice, learned counsel for the
petitioner has chosen not to appear.

Ordinarily, we would have dismissed the special leave petition
in default but keeping in view the nature of the case and the orders
passed by three consumer foras, we have refrained from doing so.

The petitioner had supplied a gas cylinder to Shri Ram Prasad
with a defective pin, which resulted in leakage of gas. When Ram
Prasad used match stick to lit the candle, his room caught fire and
he along with his son sustained serious burn injuries. Both of them
died in the District hospital. The household goods of the
respondents were also burnt and the house was damaged.

The respondents, who are dependents of the deceased filed
complaint under Section 12 for award of compensation by alleging
that the gas cylinder supplied by the petitioner was defective. In

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the counter filed by it, the petitioner raised several objections to
contest the claim of the respondents. The District Forum, after

threadbare examination of the pleadings of the parties and evidence
produced by them including panchnama dated 08.04.1994 prepared by

the police, which revealed that pin of the gas cylinder was

defective awarded a meager compensation of Rs.3,05,000/- with interest at the rate of 12%. The relevant portion of the order passed by the District Forum is extracted below:

"Complainant has stated that all the material of the house also burnt due to the fire and the house has also collapsed. It is also clear from the report of the Police, which has not been objected in any manner. It is therefore, considered that it is admitted. Complainant has stated that at the time of the death of her husband, his age was 38 years and was in good health. He was feeding the complainant and her six children. He was earning about Rs.2,000/- per month. He would have earned Rs.4,08,000/- up to the age of 55 years. Complainant has mentioned Rs.51,000/- for her maintenance. She has not stated about her children in it, the relief in this regard has not been sought, if the Forum thinks it proper, the same can also be granted. Complainant has suffered irreparable loss from the death of her husband and son Dhanpal. Therefore, the defendant has claimed an amount of Rs. ...91,000/- in different forms. Forum took the relief demanded by her into consideration. Complainant has claimed an amount of Rs.1,25,000/- for the damage of her house and Rs.50,000/- for the burnt domestic material. In the opinion of the Forum, relief of Rs.50,000/- as compensation on account of damage to the house and Rs.35,000/- as compensation against the burnt domestic material would be appropriate. Both, the husband and son of the complainant have died, therefore, the complainant has been deprived of the love and affection of both, for which, the Forum thinks it appropriate to allow an amount of Rs.50,000/-, Rs.50,000/- for loss of consortium and Rs.1,20,000/- for loss of expectation of life (for the complainant and her children). Therefore, in different types (1) Rs.50,000/- as compensation against the damaged house (2) Rs.35,000/- as compensation against the domestic material (3) Rs.50,000/- as compensation for loss of love and affection of both the husband and the son, (4) Rs.50,000/- for loss of consortium, (5) Rs.1,20,000/- for loss of expectation of life (for the complainant and her

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children) i.e. the Forum thinks it proper to allow the compensation of Rs.3,05,000/- along with interest at the rate of 12% from the date of filing of the complaint and up to the date of payment."

While rejecting the argument of the petitioner that the finding recorded by the District Forum on the issue of supply of defective cylinder is not based on evidence, the State Commission observed as under:

"This argument in view of the own report of the appellant dated 8.4.1994 stands nullified. Report dated 8.4.1994 is addressed as 'Panchnama' by the appellant which clearly shows that the gas cylinder, after the accident, was found empty at the spot and its upper portion was blackish cylinder a pin was pressed and suppressed, knob and nostle was a out burnt and the pin was not working properly and there was no rubber tube. These observations speak a volume about the defect in the

cylinder. Merely on certain variation in the dates of supply of the cylinder, the complaint cannot be discarded. We concur with the findings of the learned District Forum that the cylinder in question, which subsequently caused damage to the house, resulting into death of husband and son of the complainant, was defectively supplied and it is clear case of deficiency in service. The occurrence is gruesome and the carelessness is apparent."

The State Commission then proceeded to reduce the amount of compensation and the rate of interest by making the following observations:-

"There are also no evidence with regard to the quality and quantity of the same and cost of the house hold items. We are left only to have a global assessment on these two counts. On these two scores we can award only up to Rs.50,000/-. A sum of Rs.50,000/- has been granted towards loss of life and affection of husband and son and simultaneously Rs.50,000/- has been claimed for the loss of consortium. The complainant has stated that her husband was aged about 35 years although no age proof has been given. Accepting even it is true, on this score of loss of consortium, in our view only Rs.25,000/- would have been appropriate to be awarded. Compensation for the loss of love and affection for son can be assessed to

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be Rs.25,000/-. We assess in the absence of other supporting material that a sum of Rs.1 lac paid be sufficient to compensate for loss of husband and child. Thus the total compensation which should be awarded could be Rs.2 lacs. In the circumstances we are not inclined to grant 12% interest, which can be substituted, that in case the payment is not made within three months henceforth, the complainant would be entitled to charge interest at the rate of 9% per annum from the date of the complaint."

Still dissatisfied, the petitioner moved the National Consumer Disputes Redressal Commission by filing revision which was dismissed by the impugned order.

We have carefully perused the record and are convinced that the District Forum did not commit any error by awarding compensation to the respondents. The assessment of loss made by the District Forum was based on comprehensive analysis of the evidence produced by the respondents. The State Commission interfered with the same without assigning cogent reasons.

In our view, even though the respondents did not question the order of the State Commission apparently due to ignorance and

financial constraints because the only bread winner of the family died in the fire accident, we feel that the order passed by the District Forum should be restored because the order passed by the State Commission for reducing the amount of compensation from Rs.3,05,000/- to Rs.2,00,000/- and the rate of interest from 12% to 9% is based on pure conjectures and is legally unsustainable.

The special leave petition is accordingly dismissed with the direction that the order passed by the District Consumer Forum whereby compensation of Rs.3,05,000/- was awarded to the respondents
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with 12% interest shall stand restored. We have passed this order by exercising jurisdiction under Article 142 of the Constitution for doing full justice in the matter.

The Registry is directed to send a copy of this order to the respondents by fax so that they may realize the balance amount from the petitioner.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master