

CONSUMER UNITY AND TRUST SOCIETY, JAIPUR

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v.

THE CHAIRMAN AND MANAGING DIRECTOR,
BANK OF BARODA, CALCUTTA AND ANR.

JANUARY 31, 1995

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[KULDIP SINGH, R.M. SAHAI AND S. MOHAN, JJ.]

Consumer Protection Act, 1986—Section 2(1)(g), 14(1)(d)—Banking—Illegal strike by employees—Loss of service—Claim of damages—Whether banking company is liable to compensate its customers—Held, No.

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The respondent bank was prevented from rendering any skeleton service to its customers due its employees resorting to illegal strike against the enforcement of scheme of transfer by the bank. Since the customers of the bank were deprived of the services due to strike for 54 days, payment of interest at lending rate, wharfage, demurrage etc. were claimed by its customers. The claim was dismissed by the National Consumer Commission as not maintainable. Hence this appeal.

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The question raised for determination was whether a banking company which renders service within the meaning of clause (g) of section 2 of the Consumer Protection Act, 1986, is liable to compensate its customers for loss of service due to illegal strike by its employees.

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Dismissing the appeal, this Court

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HELD : The provisions of Section 14(1)(d) of the Consumer Protection Act are attracted if the person from whom damages are claimed is found to have acted negligently and such negligence must have resulted in some loss to the person claiming damages. In other words, loss or injury, if any, must flow from negligence. Mere loss or injury without negligence is not contemplated by this Section. The bank had not been found to be negligent in discharge of its duties. Therefore, even if any loss or damage was caused to any depositor but it was not caused due to negligence of bank then no claim of damages under the Act was maintainable. [710-H, 711-A]

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CIVIL APPEAL JURISDICTION : Civil Appeal No. 7166 of 1993.

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A From the Judgment and Order dated 18.5.89 of the National Consumer Disputes Redressal Commission, New Delhi in O.P. No. 2 of 1988.

L.K. Pandey, Naresh Sahai Mathur and Raghupathy V.N. for the Appellant.

B Lalit Bhasin, Ms. Nina Gupta, for Vineet Kumar Adv. for the Respondent No. 1.

Harish N. Salve, J. Savla, for Vineet Kumar for the Respondent No.2.

The Judgment of the Court was delivered by

C **R.M. SAHAI, J.** The short question that arises for consideration in this appeal directed against judgment of National Consumer Disputes Redressal Commission, New Delhi, is whether a banking company which renders service within meaning of clause (g) of Section 2 of the Consumer Protection Act, 1986 (referred in brief as 'the Act') is liable to compensate its customers for loss of service due to illegal strike by its employees.

E Reasons for the strike due to enforcement of scheme of transfer by the Bank and its being illegal due to employees resorting to it during pendency of conciliation proceedings before the Commission have not been assailed in this appeal. Even the finding that the bank was prevented from rendering any skeleton service to its customers due to unruly behaviour of the employees who not only created barricades by forming human wall before the bank but even mutilated and defaced the signature on cheques issued by the bank to cater to urgent demands of its customers by colluding with employees of Reserve Bank of India is well founded and unassailable. But what was argued was that since the customers of the bank were deprived of the services due to strike for 54 days, the bank was liable to pay such amounts as,

G (a) Interest on Over drafts accounts to be reimbursed at lending rate during the period the account was not operative.

(b) Re-imbursement of interest at the lending rate less actual rate of interest creditable to the saving deposit account holders.

(c) Interest at the lending rate on the negotiable instruments held in suspense during this period to be reimbursed to the cus-

tomers.

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(d) Re-imbursement of interest at which the customers may have borrowed money from elsewhere to meet with their exigencies for the period during which they could not lay hands on their own money lying stuck in or due to the Bank.

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(e) Reimbursement of wharfage, demurrage and such other costs on consignments, documents of which were lying in the Bank or could not be delivered to the Bank during this period and the related period before and after this strike.

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(f) Such consequential damages and losses incurred by the customers resultant of the strike, including compensation for mental and physical anguish and agony caused due to non-availability of the money or against a limit/loan or over-draft facility with the Bank.

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(g) Such other losses and claims, which may arise out of the actual claims to be lodged by the customers and/or assessed for the strike period after making "thorough assessment through an independent agency".

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To determine merits of this submission, it is necessary to advert to certain provisions of the Act. A consumer or any registered voluntary consumer association, like the appellant, is entitled to file a complaint, as provided in sub-clause (iii) of Clause (c) of sub-section (1) of the Act for deficiency in service. 'Service' has been defined in clause (o) of Section 2 of the Act and reads as under :

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""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 or other energy, board or loading or 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".

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The expression, 'any description' widens the ambit of the Section and extends it to any service. Therefore, payment of interest on overdrafts,

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A interest at lending rate, wharfage, demurrage etc. claimed by the appellant may be covered in the expression 'service'. But 'deficiency' in service has been defined in clause (g) of Section 2 of the Act as under :

""deficiency" 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".

B Even though the depositors were deprived of the service of the bank but the deficiency did not arise due to one of the reasons mentioned in clause (g). The shortcoming in the service by bank did not arise due to failure on the part of bank in performing its duty or discharging its obligations as required by law. Since the depositors were prevented to avail of the services of the bank not because of any deficiency on the part of the bank but due to strike resorted to by the employees who almost physically prevented the bank from functioning, the failure of the bank to render service could not be held to give rise to claim for recovery of any amount under the Act. Further, the power and jurisdiction of the Commission is to award compensation under Section 14(1)(d) of the Act as it has been made applicable to the Commission by sub-rule (b) of Rule 19 of the Rules framed under the Act. Clause (d) of sub-section (1) of Section 14 is extracted below :

"to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party".

C F Each of these expressions used in the sub-section are of wide connotation and are fully comprehended both in common and legal sense. Negligence is absence of reasonable or prudent care which a reasonable person is expected to observe in a given set of circumstances. But the negligence for which a consumer can claim to be compensated under this sub-section must cause some loss or injury to him. Loss is a generic term. It signifies some detriment or deprivation or damage. Injury too means any damages or wrong. It means, 'invasion of any legally protected interest of another'. Thus the provisions of Section 14(1)(d) are attracted if the person from whom damages are claimed is found to have acted negligently and such negligence must result in some loss to the person claiming damages. In

other words, loss or injury, if any, must flow from negligence. Mere loss or injury without negligence is not contemplated by this Section. The bank has not been found to be negligent in discharge of its duties. Therefore, even if any loss or damage was caused to any depositor but it was not caused due to negligence of bank then no claim of damages under the Act was maintainable. A

For these reasons, the appeal fails and is dismissed. But there shall be no order as to costs. B

A.G.

Appeals dismissed.