

First Appeal No.
108 of 2022

Domino's Pizza (Jubilant Foodworks Limited)
Versus
Sh. Shivang Mittal

19.11.2024

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND
DEHRADUN

Date of Admission: 04.07.2022
Date of Final Hearing: 08.11.2024
Date of Pronouncement: 19.11.2024

FIRST APPEAL NO. 108 / 2022

Domino's Pizza (Jubilant Foodworks Limited)
having its Office at
Tower-D, Plot No. 5, Logix Techno Park
Sector-127, Noida – 201304, U.P.

(Through: Sh. Parveen Kumar, Advocate)
..... Appellant

Versus

Sh. Shivang Mittal S/o Sh. Ajay Kumar Mittal
R/o 651/13A, Ganga Enclave, Sainik Colony
Roorkee, District Haridwar

(Through: Sh. Shree Gopal Narsan, Advocate)
..... Respondent

Coram:

Ms. Kumkum Rani,
Mr. B.S. Manral,

President
Member

ORDER

(Per: Ms. Kumkum Rani, President):

This appeal under Section 41 of the Consumer Protection Act, 2019 has been directed against the impugned judgment and order dated 05.05.2022 passed by learned District Consumer Disputes Redressal Commission, Haridwar (hereinafter to be referred as "The District Commission") in consumer complaint No. 41 of 2021, styled as Sh. Shivang Mittal Vs. Domino's Pizza and another, wherein and whereby the consumer complaint was allowed.

2. The facts giving rise to the present appeal, in brief, are, as such that the respondent / complainant, his parents, brother and sister, all are completely vegetarian and no one in his family had ever consumed any food except the vegetarian food. The complainant had online ordered veg Pizza; veg Taco and Choco lava cake from the appellant / opposite parties and the order was delivered at his residence at 175/10, Saket, Roorkee, District Haridwar. The complainant had taken the delivery of the Taco with the faith that he was delivered a veg Taco, hence he made the payment of Rs. 918/-. When the complainant ate the Taco, he realized that the same was non-vegetarian instead of vegetarian and the complainant got badly ill. Therefore, the complainant had suffered mental, physical and economic anguish by consuming non-vegetarian Taco in impression of a vegetarian Taco. A complaint to this effect was also submitted with the Police Station, Kotwali Gangnahar, Roorkee, but no action was taken by the police. By not delivering the vegetarian Taco, the appellant / opposite parties have committed deficiency in service. Therefore the consumer complaint was instituted by the complainant before the District Commission, with a prayer to refund the cost of the food item delivered and also to award compensation of Rs. 4,50,000/- towards mental, physical and economic agony as well as litigation expenses of Rs. 15,000/-.

3. The consumer complaint was resisted by the appellant on various grounds inter alia that the order placed by respondent / complainant was correctly supplied and there was no mistake in delivery of the order. It was further submitted that every non-veg product has a red sticker conspicuously affixed on the packing to show that the contents are non-veg. However, being a veg product, the Taco was delivered in a box affixed with a green sticker. The same fact has been expressly

admitted by the complainant in the consumer complaint. The complainant had not filed any document to corroborate his allegation of falling ill by consuming non-veg Taco. The consumer complaint was further defended on the ground that the complainant's allegation of inaction of police on his written complaint also establishes that the complainant's allegation of delivering non-veg Taco instead of veg Taco, was completely false and fabricated. There was no deficiency in service on the part of the appellant, hence the consumer complaint is liable to be dismissed.

4. Learned District Commission, after hearing both the parties and taking into consideration the material available on record, passed the impugned judgment and order on dated 05.05.2022, thereby allowing the consumer complaint and directed the appellant / opposite parties to refund the amount of food items amounting to Rs. 918/- to the respondent / complainant together with interest @6% p.a. from the date of filing of the consumer complaint, i.e., 03.02.2021 till payment and also to pay Rs. 4,50,000/- towards mental, physical and economic agony & Rs. 15,000/- towards counsel fee and litigation charges. The appellant was also directed to pay special damages of Rs. 5,00,000/- to the respondent / complainant.

5. On having been aggrieved by the impugned judgment and order, the present appeal has been submitted on behalf of the appellant, alleging that the impugned judgment and order is grossly erroneous and untenable in law and is against the facts, documents, evidence and circumstances of the case and was passed without application of mind. It was further stated in the memo of appeal that the District Commission below has failed to appreciate the fact that since the complainant had

approached the District Commission, the burden to prove that a non-veg product was indeed delivered to him was on the complainant. The observation of the District Commission in para 13 of the judgment that “appellant failed to prove that the respondent / complainant had ordered a non-veg Taco” is against the well-established principle, which requires the complainant to meet his burden of proof. It was further contended that learned District Commission had failed to apply Section 38(2)(c) of the Consumer Protection Act, 2019, according to which, the complainant was under an obligation to produce an independent report to ascertain the veracity of the complaint made by him. The complainant's allegation of Non-Vegetarian Taco instead of Vegetarian Taco was accepted without any independent evidence. Even learned District Commission did not record any finding in the judgment that how it has reached to the conclusion that the Taco in question was a non-vegetarian Taco. It was also stated that a red sticker is affixed on all non-vegetarian Taco and green sticker on vegetarian Taco, therefore, being a veg product, the Taco in question was delivered in a box affixed with a green sticker, but learned District Commission has failed to appreciate that there is nothing on record to indicate that the Taco in question was non-veg Taco. Learned District Commission has failed to notice that an application for seeking CD filed by the complainant was pending and without deciding the said application, learned District Commission has decided the consumer complaint on assumptions & presumptions. Learned District Commission has not given any reason for imposing fine of Rs. 5,00,000/- upon the appellant. Learned District Commission has not considered that there were glaring inconsistencies in the facts as set out in the consumer complaint. Therefore, the Commission be pleased to set aside the impugned judgment & order and dismiss the consumer complaint.

6. We have heard learned counsel for the parties and perused the record.

7. Learned counsel for the appellant submitted that an application dated 19.04.2022 was moved before the District Commission on behalf of the appellant / opposite parties, with a prayer to provide the CD attached with the consumer complaint. The certified copy of the said application is Paper No. 32 of the memo of the appeal. The original record of the District Commission has been summoned by this Commission and the aforesaid application finds place at Paper Nos. 14/1 to 14/2 of the original record. The order-sheet dated 19.04.2022 of the consumer complaint shows that the said application was kept on record by the District Commission, but the same was not decided as per law and without deciding the said application, the District Commission went on to decide the consumer complaint per impugned judgment and order, which was not at all justified. The ideal approach would have been that the District Commission ought to have invited objections against the application and thereafter decide the same as per law and only then, the District Commission ought to have proceeded to decide the consumer complaint on merit. It would not be out of place to mention here that the said CD is an electronic evidence and the same has to be proved by the complainant in accordance with law and the appellant has every right to go through the same and rebut the same by producing cogent and reliable evidence in that regard, as the same goes to the root of the matter. It is further pertinent to mention here that the record does not show that the said application was opposed by respondent / complainant, who along with his counsel was present before the District Commission on 19.04.2022, as would be evident

from the order-sheet of the said date. However, since the above approach was not adopted by the District Commission and non-disposal of the aforesaid application is a valid ground available to the appellant, the impugned judgment and order can not be maintained and the appeal deserves to be allowed on the said ground alone and the case needs to be remanded to the District Commission, with a direction to the District Commission to firstly decide the application dated 19.04.2022 moved by the appellant / opposite parties in accordance with law after providing opportunity of hearing to the parties and thereafter to decide the consumer complaint on merit, as per law.

8. For the reasons aforesaid, we are of the view that the impugned judgment and order has been passed by the District Commission without application of mind. Thus, we are inclined to interfere with the finding recorded by the District Commission. Therefore, the appeal is liable to be allowed.

9. Appeal is allowed. Impugned judgment and order dated 05.05.2022 passed by the District Commission is set aside and the case is remanded to the District Commission, with a direction to firstly decide the application dated 19.04.2022 moved on behalf of the appellant / opposite parties for providing CD filed by respondent / complainant, as per law after providing opportunity of hearing to the parties and then to proceed further to decide the consumer complaint on merit, in accordance with law. The parties are directed to appear before the District Commission on 16.12.2024. No order as to costs of the appeal. The amount deposited by the appellant with this Commission, be released in its favour.

10. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties. A copy of this Order be sent to the concerned District Commission for record and necessary information. The original record of the District Commission be also remitted back forthwith.

11. File be consigned to record room along with a copy of this Order.

(Ms. Kumkum Rani)
President

(Mr. B.S. Manral)
Member

Pronounced on: 19.11.2024