

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**CONSUMER CASE NO. 373 OF 2014**

1. GANGADHAR SHAMANDAS MANGLANI & 4 ORS.

D-10-3, Parth Indraprastha Towers, Behind Government Colony, Drive-In-Road,  
Ahmedabad - 380 052.

Gujarat.

2. Hema G. Manglani

(Mother of late Mukesh G. Mangalni) D-10-3, Parth Indraprastha Towers, Behind Government Colony, Drive-In-Road,

Ahmedabad-380052

3. Rashi Mukesh manglani

(widow of late Mr. mukesh G. Manglani)D-10-3, Parth Indraprastha Towers, Behind Government Colony, Drive-In-Road,

Ahmedabad-380052

4. Aditya Mukesh manglani

Minor son of late Mr. Mukesh Manglani through his legal and natural guardian/mother Mrs. Rashi Mukesh Manglani)D-10-3, Parth Indraprastha Towers, Behind Government Colony, Drive-In-Road,

Ahmedabad-380052

5. Dhairya Mukesh Manglani

(Minor son of late mr. Mukesh Manglani Through his legal and natural guardian/mother Mrs. Rashi Mukesh manglani)D-10-3, Parth Indraprastha Towers, Behind Government Colony, Drive-In-Road,

Ahmedabad-380052

.....Complainant(s)

Versus

1. HOTEL LUCKY INDIA & ANR.

Kalinga Road, Near New Bus Stand, Barbil,  
Keonjhar,  
Orissa.

2. Mr. S.K. Behera

Kalinga Road, Near New Bus Stand, Barbil,  
Keonjhar,  
Orissa.

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. C. VISWANATH, PRESIDING MEMBER**

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, MEMBER**

**For the Complainant :** Mr. Satyajit Sen, Advocate

**For the Opp.Party :** Mr. Suresh Chandra Tripathy, Advocate,  
: Ms. Sailaja Kulshreshtha, Advocate,

**Dated : 01 Jul 2022**

**ORDER**

1. Heard Mr. Satyajit Sen, Advocate, for the complainants and Mr. Suresh Chandra Tripathy, Advocate, for the opposite parties.
2. Gangadhar Shamandas Manglani and others (heirs and dependants of the deceased Mukesh G. Manglani) have filed above complaint for directing the opposite parties (i) to pay Rs.29381046.78 as compensation, for death of Mukesh G. Manglani, (ii) to pay Rs.700000/- as the cost of litigation and (iii) any other relief, which is deemed fit and proper in the case.
3. The facts as stated in complaint and emerged from the documents are that late Mukesh Gangadhar Manglani was serving as Sales Director in Riddhi Technology, Pvt Ltd. Vatva, Ahmedabad and drawing salary of Rs.27000/- per month. In connection with his business tour, he booked one A/C room in Hotel Lucky India. (A Unit of S.K. Mineral Handling Pvt. Ltd.) (the opposite parties) for 03.08.2012 to 05.08.2012. He checked in on 03.08.2012 in Hotel Lucky India and stayed in Room No.301. On 04.08.2012 at 4:00 hours, while sleeping, the fire broke out in the hotel, in which, three guests including Mukesh Gangadhar Manglani died due to burn injury and asphyxia due to inhalation of carbon-die-oxide and carbon-mono-oxide. Injured/deceased were taken to Community Health Centre, Barbil at 6:15 hours, where they were declared dead. On the complaint of Dr. Sachindra Kumar Das, FIR No.12/2012 was registered at Police Station Barbil on 04.08.2012 at 7:45 hours under Section 285/337/304-A IPC. In which, after investigation the police submitted Charge Sheet No.95 dated 19.05.2014, against S.K. Behra (opposite party-2). The police made Inquest of the dead body of Mukesh Gangadhar Manglani on 04.08.2012 at 10:30 hours at CHC Government Hospital, Barbil and sent the dead body for post mortem and post mortem was done on 04.08.2010 at 16:10 hours at CHC Barbil, in which, cause of death was noted as "Asphyxia due to inhalation of carbon-die-oxide and carbon-mono- oxide, which might be due to accidental burn". Kailash Kotwani, the proprietor of Riddhi Technology, Pvt Ltd. Vatva, Ahmedabad was informed about the incident, who informed the complainants. Then complainants-1 to 3, Girish Gangadhar Manglani, Kailash Kotwani, Prakash and Deepak came to Kolkata taking flight from Ahmedabad, from where they went to Barbil through road, reaching there at 11:00 hours on 05.08.2012. Complanants-1 to 3 cremated the dead body at Barbil and came back to Ahmedabad, taking flight from Bhubaneswar. This complaint was filed on 05.08.2014, claiming compensation as mentioned above. The office has reported 2 days delay in filing the complaint. It should one day as incident occurred on 04.08.2012. In the interest of justice we condone the delay in filing the complaint.
4. The opposite parties filed their written reply on 25.05.2016, in which, the material facts, as stated in the complaint, have not been denied. It has been stated that Hotel Lucky India was put into operation in the year 2007, after obtaining licence from Municipal Authorities on 25.07.2007. It was a three floor building, consisting 6 rooms and two exit points at each floor. Electricity supply was from Orissa North Eastern Electricity Supply Company Ltd., vide agreement dated 13.08.2007. Electricity load was enhanced from 256 KVA to 35 KW on 06.03.2009. Ever since, periodical inspection was conducted by Electrical Inspector, besides the staff of Orissa North Eastern Electricity Supply Company Ltd. There was no adverse report, in respect of installation of electricity connections. On each floor of the building one fire extinguisher and smoke detectors/fire sensors were installed, which was checked regularly. On the date of incident, fire extinguishers and smoke detectors were in good working condition. The report of Fire Officer that the Hotel did not have smoke detector or the staff of Hotel was not acquainted to operate fire extinguishers is incorrect. At the time of incident on 04.08.2012, 19 members of the staff were on duty. Abhiram Panda, an employee of Hotel, who was on duty, knew operating fire extinguishers. On 04.08.2012 at 4:00 hours, suddenly fire broke out due to electrical short circuit in the Hotel. The guests were alerted quickly for immediate exit. All the guests quickly left their rooms, except four persons, who were in deep sleep, closing the door from inner side, did not respond. Despite effort to extinguish the fire, it could not be controlled and spread in whole building. Fire Service Station was informed immediately. By the time, the fire could be controlled; three guests lost their life due to suffocation. Electrical short circuit could not be anticipated. The Hotel was known for providing best service to the guests. There was no negligence on the part of management of the Hotel nor was there any deficiency in service. The complaint involved complicated question of fact, which required oral evidence and cross-examination, which is not possible in summary proceeding.

5. The complainants filed Rejoinder Reply on 28.07.2016, in which, the facts stated in the complaint were reiterated. It has been stated that incident of fire on 04.08.2012 at 4:00 hours in the Hotel and death of Mukesh G. Manglani due to fire were admitted. Negligence on the part of Hotel management was proved on the principle of *res ipsa loquitur*. The complainants filed Affidavit of Evidence of Gangadhar Shamandas Manglani, Affidavit of Evidence of Smt. Hema G. Manglani and Affidavit of Evidence of Girish Gangadhar Manglani and various documentary evidence.

6. The opposite parties filed Affidavit of Evidence of Surendra Kumar Behera, Affidavit of Evidence of Kaushik Das, Affidavit of Evidence of Satya Ranjan Dhal, Affidavit of Evidence of Abhiram Panda, Affidavit of Evidence of Dasarath Mallick and various documents. Both the parties have filed their written synopsis.

7. We have considered the arguments of the counsel for the parties and examined the record. The opposite parties raised an objection that the complainants are neither a 'consumer' as defined under Consumer Protection Act, 1986 as nor was there any deficiency in service on the part of the opposite parties as such the complaint is not maintainable. Section 2 (1) (o) of Consumer Protection Act, 1986 defined "service" in which 'boarding or lodging' is included. The deceased availed lodging services, paying the rents as prescribed by the opposite party. As such, the complainants, who are heirs and dependants of the deceased are consumers within the meaning of Section 2 (1) (d) of Consumer Protection Act, 1986. The complainants alleged deficiency in service, as such, the complaint is maintainable.

8. The counsel for the opposite parties submitted that the complaint involved complicated question of fact, which required oral evidence and cross-examination, which is not possible in summary proceeding. He relied upon the judgment of Supreme Court in **Synco Industries Vs. State Bank of Bikaner, (2002) 2 SCC 1**. Supreme Court in **Dr. J. J. Merchant Vs. Shrinath Chaturvedi, (2002) 6 SCC 635**, **Amar Jwala Paper Mills Vs. State Bank of India, (1998) 8 SCC 387** and **CCI Chambers Coop. Hsg. Society Ltd. Development Credit Bank Ltd. (2003) 7 SCC 233** held that consumer foras have jurisdiction to adjudicate all the issues as a civil court. This view has been reaffirmed by three Judges Bench of Supreme Court, in **IFFCO TOKIYO General Insurance Company Ltd. Vs. Pearl Beverages Ltd., 2021 SCC OnLine SC 309**.

9. Supreme Court in **Shyam Sunder Vs. State of Rajasthan, (1974) 1 SCC 960**, held that the maxim "*res ipsa loquitur*" is resorted to when an accident is shown to have occurred and cause of accident is primarily within the knowledge of the defendant. The fact of the incident may, sometimes, constitute evidence of negligence committed by the defendant. In **Syed Akbar Vs. State of Karnataka, (1980) 1 SCC 30**, has held that as a rule mere proof of an event has happened or an accident has occurred, the cause, which is unknown, is not evidence of negligence. But the peculiar circumstances, constituting the event or accident in particular case, may themselves proclaim in concordant, clear and unambiguous voice the negligence of some body as the cause of the event or accident. It is in such cases the maxim "*res ipsa loquitur*" may apply, if cause of the accident is unknown and no reasonable explanation as to the cause is coming from the defendant. In **Ravi Kapoor Vs. State of Rajasthan, (2012) 9 SCC 284**, has held that this doctrine of "*res ipsa loquitur*" serves two purposes-One that an accident may be in its nature to be more consistence with it being caused by negligence for which the opposite party is responsible than by any other causes and that in such case, mere fact of the accident is prima facie evidence of such negligence. Secondly it is to avoid hardship in cases where the claimant is able to prove the accident but cannot prove, how the accident had occurred. In **IFFCO TOKIO General Insurance Company Ltd. Vs. Pearl Beverages Ltd., 2021 SCC OnLine SC 309**, has held that principle of "*res ipsa loquitur*" as such appears to be opposes when what is in question is whether the driver was under the influence of alcohol. It may be another matter that though the principle as such is inapplicable, the manner in which the accident may occurred along with other circumstances point out to the driver being under the influence of alcohol. Supreme Court in **Pushpabai Purshottam Udeshi Vs. M/s. Ranjit Ginning & Pressing Co. Ltd., (1977) 2 SCC 745** and **Mohammed Anyuddin alias Miyam Vs. State Of A.P., (2000) 7 SCC 72**, also applied principle of "*res ipsa loquitur*" has been applied for holding the defendant as guilty of negligence.

10. It is not disputed that Mukesh Gangadhar Manglani checked in Hotel Lucky India and stayed in Room No.301 on 03.08.2012; On 04.08.2012 at 4:00 hours, while sleeping, the fire broke out in the hotel, in which, he died due to burn injury and asphyxia due to inhalation of carbon-die-oxide and carbon-mono-oxide. The complainants have filed copies of FIR, Charge sheet submitted by the Police against Surendra

Kumar Behera, Post Mortem report of Mukesh Gangadhar Manglani, to prove that Hotel management was found guilty to commit negligence.

11. The opposite party took the plea, after noticing fire, the guests were alerted quickly for immediate exit. All the guests quickly left their rooms, except four persons, who were in deep sleep, closing the door from inner side, did not respond. As such, the deceased was guilty of contributory negligence. This plea is not liable to be accepted. The incident took place on 04.08.2012 at 4:00 hours. Sleeping of the guests in hotel at this time is usual. The deceased cannot be held as guilty of contributory negligence.

12. The opposite parties took plea that electricity load was enhanced from 256 KVA to 35 KW on 06.03.2009. Ever since, periodical inspection was conducted by Electrical Inspector, besides the staff of Orissa North Eastern Electricity Supply Company Ltd. There was no adverse report, in respect of installation of electricity connections. The fire took place due to electrical short circuit as such use of electrical wiring and board etc. of standard quality according to the load consumed has not been proved. The report of Officer In-Charge, Joda Fire Station dated 02.08.2013 shows that the Hotel did not have smoke detector and the staffs of Hotel were not acquainted to operate fire extinguishers. Negligence on the part of the opposite party in this respect is proved applying the maxim "res ipsa loquitur". Death of Mukesh Gangadhar Manglani in the Hotel of the opposite parties on 04.08.2012 at 4:00 hours, due to burn injury and asphyxia and Hotel management has committed deficiency in service are proved.

13. The complainants have filed birth certificate of the deceased showing his date of birth as 22.08.1976. As such on the date of incident, his age was 36 years. The complainants have filed salary slip of the deceased, showing that the deceased had drawn salary of Rs.27000/- for July, 2012. Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680**, has ruled for awarding "just compensation". In the age group of 36 years to 40 years, multiplier of 15 has been applied. In the family of the deceased, his father, mother, wife and two minor sons were fully depended upon the income of the deceased as such, personal expenditure of the deceased can be taken as 25% of his income. Loss of income comes to Rs.3645000/-, after deducting personal income of the deceased and applying multiplier of 15. The deceased was in permanent service as such 50% of this income has to be added towards future prospect. Total loss of income comes to Rs.5467500/-. Apart from it, the complainants are entitled to Rs.15000/- as loss of estate, Rs.40000/- as loss of consortium and Rs.15000/- as funeral expenses. Total compensation comes to Rs.5537000/-.

### O R D E R

In result, the complaint is party allowed. The opposite parties are directed to pay Rs.5537000/- with interest @6% per annum, from the date of death of Makesh G. Manglani till the date of payment to the complainants within two months from the date of the judgement. The compensation shall be equally apportioned among the complainants.

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**C. VISWANATH**  
**PRESIDING MEMBER**

.....J  
**RAM SURAT RAM MAURYA**  
**MEMBER**