(2000) 12 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

AIRPORTS AUTHORITY OF INDIA APPELLANT

Vs

GENERAL OPTICS (ASIA) LTD. RESPONDENT

Date of Decision : 27-12-2000

Acts Referred:

Citation : 2002 1 CPJ 369

Hon'ble Judges : M.S.Janarthanam , Banumathi Baskaran , Kayal Dinakaran J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is directed against the order dated 28.10.1996 in O.P. No. 168/1995 on the file of the District Consumer Disputes Redressal Forum, Chengalpattu.

2. THE appellant is the opposite party while the respondents are the complainants. Only such of those facts as are absolutely essential for deciding the crux of the issue arising for consideration may-in brevity, be related. The 1st complainant M/s. General Optics (Asia) Ltd., it appears exported endoscopic instrument assembly to a consignee at foreign shores. The consignment was insured with the 2nd complainant M/s. United India Insurance Company Ltd. The consignment was air-lifted to the foreign shore. The consignee, it appears, did not effect delivery of the goods and subsequently it was again air-lifted back to the consignor/1st complainant. While taking delivery of the consignment, it was found that the endoscopic instrument assembly was found damaged. The 1st complainant under the insurance cover they had with the 2nd complainant got the value of the instruments as per the insurance cover. The 2nd complainant Insurance Company became a subrogee of the 1st complainant.

M/s. General Optics (Asia) Ltd., the 1st complainant and the subrogee United India Insurance Company Ltd., instituted a complaint against the opposite party International Airports Authority of India, alleging deficiency in service on their part and claiming certain reliefs as prayed for in the complaint.

3. WHILE instituting the complaint before the Forum below, the 1st complainant

figured there as a formal party besides the 2nd opposite party Insurance Company a subrogee. The opposite party in pith and substance contended that there was no deficiency in service on their part.

4. THE Forum below after taking into consideration the materials placed on record, recorded a finding that there was deficiency in service on the part of the 1st opposite party and ultimately allowed the complaint directing the opposite party International Airport Authority of India, represented by its Director, Meenambakkam, Chennai - 600 027 to pay to the 1st complainant Rs. 1,54,783/- as compensation for deficiency in service within one month from the date of its order failing which it shall carry interest @ 12% p.a. from the date of filing of the original petition till date of payment. THE further direction that was issued was that the opposite party should also pay to the complainant, a sum of Rs. 5,000/- towards cost. Aggrieved by the order as above the opposite party/ appellant resorted to the present action by engaging a Counsel of their choice namely, learned Counsel Mr. A.J. Jawad. On service of process, the respondents/ complainants entered appearance through a Counsel of their choice namely, learned Counsels M/s. Nageswaran & Narichania.

5. WHEN this matter came up for hearing before us today, learned Counsel representing the respondents/complainants were absent and no representation is made on their behalf. The fact that the said learned Counsels were absent does not mean that we cannot dispose of the appeal on merits, of course, after hearing the arguments of learned Counsel Mr. A.J. Jawad, appearing for the appellant/opposite party and on perusal of the materials placed on record and that is exactly what we have done in this case.

6. FROM the pith and substance of learned Counsel appearing for the appellant, the one and only point that crops up for consideration is as to whether the order of the Forum below is sustainable in law, on the facts and in the circumstances of the case. There is no pale of controversy that the 1st complainant exported endoscopic instrument assembly to a foreign shore and the export so made was not taken delivery of by the consignee and consequently the exported consignment returned back to the consignor. It is also not in dispute that the consignment got damaged. Yet another fact about which there is no dispute is that the consignment had been insured with the 2nd complainant M/s. United India Insurance Company Ltd. The 1st complainant under the policy of insurance claimed the value of the consignment damaged from the 2nd complainant and subsequently executed a letter of subrogation and special power of attorney in favour of the 2nd complainant.

We are at a loss to understand as to how the Forum below passed an order directing the opposite party to pay to the 1st complainant a sum of Rs. 1,54,783/- representing the value of the damaged consignment by way of compensation when especially the said amount had already been claimed by the 1st complainant from the 2nd complainant Insurance Company under the policy of insurance they had with them.

7. THE complaint in effect had been launched as against the opposite party by the Subrogee Insurance Company the 2nd complainant impleading the 1st complainant M/s. General Optics (Asia) Ltd., as a formal party. Pertinent it is to refer to at this juncture the decision emerging from the Apex Court of this country reported in Oberai Forwarding Agency v. New India Assurance Co. Ltd. & Anr., I (2000) CPJ 7 (SC)=II (2000) SLT 86=2000 (I) CTC 556. One vexed question that came up for consideration in the case before the Supreme Court was as to whether the Insurance Company which has been assigned the rights of a consignor in respect of lost consignment is entitled to maintain a complaint under the Consumer Protection Act, 1986 [for short, "the Act"]. The Supreme Court, on an elaborate consideration of the issue involved, ultimately came to the conclusion that the assignment did not make the Insurance Company a "beneficiary" of service rendered by the carrier and consequently the Insurance Company is not a consumer. The Supreme Court further stated that the consignor not having retained any right, is also not entitled to maintain the complaint as a co-complainant.

8. ON the face of such decision, neither the Insurance Company, 2nd complainant can be construed as a beneficiary-consumer and consequently maintain an action before the Consumer Fora constituted under the Act, nor the insured figuring as a co-complainant can maintain a consumer action inasmuch as the 1st complainant having assigned all its rights in favour of the Insurance Company. The decision of the Supreme Court as stated above is applicable in all fours to the case on hand. In fine, the appeal is allowed; the order of the District Forum is set aside and the complaint itself is dismissed. It is however open to the aggrieved complainants to knock at the doors of the competent Civil Forum for appropriate reliefs if they are so advised. We, however, make no order as to costs on the facts and in the circumstances of the case. Appeal allowed.

