
(2004) 01 NCDRC CK 0110

In the National Consumer Disputes Redressal Commission

ALOK KHANNA

APPELLANT

Vs

DIAMOND TRANSPORT OF INDIA

RESPONDENT

Date of Decision : 08-01-2004

Acts Referred:

Citation : 2004 2 CLT 562 : 2004 2 CPJ 242

Hon'ble Judges : N.K.Jain , B.L.Khare , Pramila S.Kumar J.

Advocate : U.C.Issrani , Kamal Verma , S.W.Balchandani , Arun Nagle

Judgement

1. THESE two complaints made under Section 17 of the Consumer Protection Act, 1986 (for short the "Act") are between the same parties involving similar questions of fact and law. THESE have been heard as connected matters and are being disposed of by this common order.

2. COMPLAINT No. 67/99 pertains to a consignment of 12 packages of tin components, weighing 15.040 metric tons, valued at Rs. 5,39,184/-, which was booked with the opposite party-M/s. Diamond Transport of India, on 28.12.1998 vide booking receipt (bilti) No. 3299 for being consigned and delivered to M/s. Ankur Oil Industries, Ruknapur, District Mehsana, Gujarat. COMPLAINT No. 68/99 relates to another similar consignment consisting of 12 packages of tin components, weighing 15.639 metric tons valued at Rs. 5,43,455.25 booked with the opposite party on 28.12.1998 vide booking receipt (bilti) No. 3298 for being consigned and delivered to M/s. Pankaj Traders of the same place Ruknapur. These two consignments were loaded in two different trucks bearing registration Nos. GJ 06 U 7640 and GJ 7 T-5862 respectively. It is no more in dispute that these consignments did not reach their destination and it appears that the same were stolen or otherwise done away on way. The complainant who is consignor of both the consignments thus claims payment of the price of the two consignments with interest and damages from the opposite party attributing deficiency in service to the latter. In the former complaint the total sum claimed is Rs. 7,03,886.08 while the latter claim is for Rs. 7,08,669.87. Both the complaints are resisted by the opposite party mainly on the ground that they are not the

carriers or transporters but only acted as commission agents who on the request of the complainant arranged the said two trucks for transporting the goods. The goods were entrusted by the complainant to the drivers of the said trucks at Mandideep and the two receipts, it is further averred, though prepared and signed by their employee, were finalised by the complainant or his servant. No freight charges were paid by the complainant to the opposite party who only charged their commission. The goods were transported by complainant on his own risk and without getting the same insured. Objection as to non-joinder of necessary party is also taken and it is further contended that this Commission has no jurisdiction to decide the dispute and the complainant should be relegated to seek his remedies by way of regular civil suit.

Earlier this Commission vide its common order dated 5.8.2002 declined to entertain the complaints relegating the complainant to seek his remedies by way of regular civil suit as in the opinion of the Commission these complaints involved complex issues requiring elaborate inquiry which cannot be held in summary jurisdiction under the Act. However, the National Commission in appeals set aside the order of this Commission and remanded the complaints back to this Commission for disposal in accordance with law.

3. BOTH parties have filed affidavits and documents. We have heard their learned Counsel Mr. U.C. Israni and Mr. Balchandani and also evaluated the evidentiary material made available by the parties. Both these cases are of non-delivery of goods which were booked for being taken to Ruknapur (Gujarat) in two different trucks. The only question requiring determination is whether the goods were entrusted to the opposite party for transport as aforesaid or whether the opposite party had merely acted as Commission agent for the owners/drivers of the said two trucks, in booking and arranging transportation of the goods. The important piece of evidence in both the complaints, are two booking receipts/billies (marked Annexure C-1 in each case) which were admittedly issued by the opposite party and carry signatures of their booking incharge. In both these receipts, the opposite party-M/s. Diamond Transport of India is described as a public carrier who have undertaken to carry the goods to the destination and deliver the same to the consignees as indicated in these receipts. These two documents are not mere receipts but constituted contract of carriage and were governed by the provisions of the Carriers Act, 1865. There is absolutely nothing not even whisper in any of these two receipts to show that the opposite party were only Commission agents acting on behalf of the owners/drivers of the trucks in which the goods were loaded. The oral evidence led by the opposite party to prove contrary, inspired little or no confidence and is also hit by Sections 91 and 92 of the Indian Evidence Act.

4. IT is true that a few portions of these two receipts appeared to be in different hand writing. But this is of no consequence. May be because the receipts were not prepared in one stroke and the number of trucks and some other details were supplied latter depending on their availability. Charging of some

commission also did not establish that the opposite party were mere commission agents not the carriers. It is also true that on the back of these receipts it mentioned that the goods are booked at "Owner's Risk". It was further contended by the learned Counsel for the opposite party that the complainant consignor did not take proper care of the goods by getting the same insured. We are, however, not persuaded by the argument. In the first place the terms printed on the back of these receipts are not signed by any party. Secondly, provisions of the Carriers Act and more particularly Section 9 make it abundantly clear that the liability of a carrier is absolute in the matter of delivery of goods safely at the destination as indicated by the consignor. The legal position on the point is made luculent by the Supreme Court in *Nath Brothers, I* (2000) CPJ 25 (SC), in following terms: "The liability of a carrier to whom the goods are entrusted for carriage is that of an insurer and is absolute in terms, in the sense that the carrier has to deliver the goods safely, undamaged and without loss at the destination, as indicated by the consignor. So long as the goods are in the custody of the carrier, it is the duty of the carrier to take due care as he would have taken of his own goods and he would be liable if any loss or damage was caused to the goods on account of his own negligence or criminal act or that of his agent and servants."

Dealing with the expression "at owner's risk", the Apex Court held: "Thus the expression "at owner's risk" does not exempt a carrier from his own negligence or the negligence of his servants or agents."

5. THE opposite party has also raised objection that the dispute is not a consumer dispute and the complainant ought to have taken recourse to his remedy available in ordinary law. Mr. Balchandani, learned Counsel for the opposite party has further contended that Section 9 of the Carriers Act in terms applies only when a civil suit is brought against a common carrier. We are again not impressed by the arguments. Transport service is a "Service" as defined in Section 2(1)(o) and a person availing or hiring any such service is a consumer under Clause (d) of Section 2(1) of the Act. So, any dispute relating to any such service would be a consumer dispute fully covered by the provisions of the Act. THE Supreme Court in *Patel Roadways Ltd., I* (2000) CPJ 42 (SC), has answered in affirmative the question as to whether the proceedings taken by way of complaint under the provisions of the Act would be a suit under Section 9 of the Carriers Act and it was held: "A proceeding before the National Commission, in our considered view, comes within the term "suit"."

6. IT will be thus seen that the two consignments were entrusted to the opposite party a common carrier for being taken to its destination and that the opposite party failed to carry and deliver the goods to the consignees as required by the complainant-consignor. The opposite party were, therefore, clearly guilty of deficiency in service. There was no privity of contract between the complainant and the owner or driver of the said trucks and as such there was no need to implead them as party-respondents. As regards the compensation, the

complainant has led both documentary and oral evidence (affidavits) to show that the consignment booked under receipt No. 3299 valued at Rs. 5,39,184/- being the purchase price of the said goods. Similarly, the consignment under receipt No. 3298 costed Rs. 5,43,455.25. Bills of purchase of both the consignments are filed on record and are proved duly by the affidavit sworn in by the complainant. There is no rebuttal on the point by the opposite party. Needless to say that the opposite party is bound to pay this money to the complainant towards price of the goods which remained undelivered to the consignee. The complainant has, however, further claimed Rs. 1,00,000/- as damages besides, interest @ 18% p.a. There is, however, no evidence of the actual loss sustained in business by the complainant on account of the said non-delivery, over and above the loss of the goods. In our considered judgment awardment of interest @ 9% p.a. from the date on which goods were expected to reach their destination say 1.1.1999 until payment shall adequately compensate the complainant for the loss sustained by him on account of loss of goods in transit.

We accordingly allow both these complaints and direct the opposite party to pay to the complainant Rs. 5,39,184/- in Complaint Case No. 67/99 and Rs. 5,43,455/- in Complaint Case No. 68/99 with interest @ 9% p.a. from 1.1.1999 until payment. The opposite party shall also pay to the complainant Rs. 2,000/- towards cost of each case.

7. THIS order be retained in Complaint Case No. 67/99 and a copy be placed in Case No. 68/99. A copy of this order be conveyed to the parties. Complaint allowed.