(1996) 01 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

EAST INDIA TRANSPORT AGENCY — APPELLANT

Vs

Jagdish Bhai M Chandan — RESPONDENT

Date of Decision : 29-01-1996

Acts Referred:

Citation : 1996 1 CPC 400 : 1996 1 CPJ 263 : 1996 1 CPR 126 : 1996 2 CLT 38

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , S.S.CHADHA , R.THAMARAJAKSHI , S.P.BAGLA J.

Judgement

1. THIS First Appeal is directed against the order dated 26.3.93 of the Gujarat State Commission at Ahmedabad allowing the complaint and directing the Appellant -East India Transport Agency to pay Rs. 1,04,664/ -the value of the goods with running interest at the rate of 18% per annum from 15.4.91 till the date of payment, besides Rs. 690/ - the freight charges and Rs. 1,000/ - as costs.

2. THE facts are not in dispute and may be briefly noticed. The complainant had booked at Umergaon, District Bulsar 23 cartons of nylon suit cases for carriage to Delhi with the Appellant which is a unit of E.I.T.A. Ltd. carrying on business as a common carrier. A sum of Rs. 690/ - was paid as freight charges and Rs. 520/ - as risk charges on the value of goods declared at Rs 1,04,644/ -. The goods were entrusted to the Appellant for carriage and delivery to the consignee at Delhi. The risk charges coverage was in force in transit. The details of builty are given in the complainant and need not be reproduced as there is no dispute to the booking details. The consignee at Delhi was the 5th opposite party M/s. Ab -Initio Mercantile Ltd. The Appellant informed the complainant that the truck carrying the consignment caught fire on April 13,1991 and all the goods booked by the consignee were destroyed by fire. The complainant filed a claim with the Appellant who appointed the Surveyor to assess the damages. The survey report dated 12.6.91 obtained by the Appellant quantifies the loss at Rs. 1,04,664/ -. The Appellant, however, rejected the claim on the ground that the said fire was an Act of God and thus the Transport Co. is not liable for the same. The complainant then filed the complaint that there is deficiency in service by the common carrier in not delivering the consignment to the consignee at the

destination and claimed Rs. 1,25,768/ - with costs as compensation for the loss suffered. On being noticed, the Appellant herein took a preliminary objection that the complaint is defective and suffers from deficiency of non -joinder of necessary parties besides taking the stand that the accident occurred on account of Act of God and thus no compensation is due to the complainant. It is also pleaded that the consignor had already borrowed money upon the consigned goods from the State Bank of India, Umergaon which is the purchaser third party to the carrier and hence the complainant has no title in the goods.

3. THE State Commission considered the objections of the Appellant and overruled them and held that the opposite party shall pay Rs. 1,04,664/ - with running interest at the rate of 18% from 15.4.91 till the date of payment besides the refund of the freight charges of Rs. 690/ - and Rs. 1,000/ -as costs.

4. THE main submission of the learned Counsel for the Appellant is that the State Bank of India, Branch Umergaon had advanced money against the bill of consignment thereby creating a lien upon the goods in question and as such the right of action or right to sue if any is only vested in the said Bank and therefore, the complainant had no right to file the complaint against the appellant under the Consumer Protection Act. The submission is that the goods in question were discounted by the State Bank of India, Umergaon and the money was advanced by the State Bank against the value of the bill of consignment as is evident from the letter of the Bank dated 3.6.91 (Annexure C to the cross appeal). There is no merit in this submission. It is pertinent to note that after the receipt of the written statement in which such an objection was taken, the complainant amended the complaint with the permission of the State Commission and joined State Bank of India, Umergaon as a party so that if State Bank of India is claiming any right, it can file its claim before the State Commission. The summons were duly served but the State Bank of India neither appeared nor filed any written version nor made any claim. The transport receipt is a document of title and the original is in the possession of the complainant and the complainant is named consignor in the goods receipt. The Bank had not made any claim against the consignment in a dispute. The Manager of the Bank has not written to the Appellant that the bill was discounted by the State Bank of India. It is obvious from the copy of the letter produced by the Appellant that the Manager only informed the Appellant that the consignment was part of security against the money advanced to the respondent. There was no transfer of the right, title or interest of the goods in dispute to the Bank. The Bank was made a party before the State Commission and it did not come forward to put any claim before the State Commission. We hold that the consignor of the consignment in dispute was the complainant and the consignment was for delivery to the consignee -Ab Initio Mercantile Pvt. Ltd., New Delhi and the name of the Bank was neither mentioned in the consignment note nor the Bank is claiming any claim. The contract of carriage was thus between the complainant and the Appellant who have been negligent and deficient in service in delivering the consignment at the destination. There is no dispute about the quantum as the

Surveyors report obtained by the Appellant on 12.6.91 quantifies the damage to the goods amounting to Rs. 1,04,664/ -. The value of the goods is also established by the delivery challans produced besides the payment of freight and insurance charges. For the above reasons, the appeal fails and is dismissed with costs assessed at Rs. 1,000/ -. Appeal dismissed.