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**(2005) 08 NCDRC CK 0067**

**In the National Consumer Disputes Redressal Commission**

**Case No : 1185 of 2005**

Economic Transport Organisation, & Ors.

APPELLANT

Vs

Kamalpur Dying Works

RESPONDENT

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**Date of Decision : 16-08-2005**

**Acts Referred:**

<a href=3999>Consumer Protection Act, 1986</a>, <a href=3999-21>Section 21(b)</a> - Jurisdiction of the National Commission

**Citation : 2005 4 CPJ 172 : 2006 1 ALT 30 : 2006 1 CPC 74 : 2006 1 WbLR 1045**

**Hon'ble Judges : K.S. Gupta, Rajyalakshmi Rao**

**Advocate : Sanjay K. Das**

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**Judgement**

1. In this revision, challenge is to the order dated 15.3.2005 of Consumer Disputes Redressal Commission Orissa, Cuttack dismissing appeal against the order dated 10.6.1997 of a District Forum whereby petitioners/opposite parties were directed to pay Rs. 87,069/- to the respondent/complainant.

2. M/s. Kashi Vishwanath Products Madurai booked four bales of cotton yarn on 11.3.1996 and 23.4.1996 with the petitioner-Transport Company for being delivered to the respondent consignee at Sambhalpur. Out of four bales only one was delivered to the respondent and non-short delivery certificate of three bales was issued by petitioner Transport Company. Complaint alleging deficiency in service filed by respondent was contested by the petitioners. Grounds on which complaint was resisted mainly was that respondent is not a consumer, service rendered by petitioner-Transport Company was in the nature of contract of personal service. However, District Forum answered both these issues against the petitioners and allowed complaint in the manner noticed above which order was affirmed by the State Commission while dismissing the appeal of petitioners.

3. Sanjay K. Das whom we have heard on admission, in addition to pressing the said two issues pointed out that order under challenge was passed at the back of petitioners, who had no knowledge of the date of hearing in appeal. According to him, rate of interest as awarded by District Forum is on higher side and none of

the Fora below has allowed adjustment of Rs. 254/-, freight to be paid by the respondent.

4. Name of M/s. A. Rath and Associates for petitioners is noted in the order of State Commission. Along with memorandum of revision, affidavit from M/s. A. Rath and Associates denying presence at the time of hearing of appeal has not been filed. Thus, contention in regard to the impugned order being passed at the back of the petitioners cannot be accepted.

5. In the decision in Nath Brothers v. Best Roadways Ltd., 2000 (2) SCALE 537, the Supreme Court held that the liability of a carrier to whom goods are entrusted for carriage is that of an insurer and is absolute in terms, so long as the goods are in the custody of carrier, it is duty of the carrier to take due care he would have taken of his goods and he will be liable if any loss/damage is caused to the goods. To be noticed that definition of consumer includes a person who promises to pay consideration for a service. In this backdrop, the respondent is a "consumer" qua the petitioners and petitioners were deficient in service having not delivered the three bales. It was not a contract of personal service as alleged. There was no question of paying the total freight as out of four bales only one bale was delivered by the petitioner-Transport company.

6. As regards rate of interest being on higher side, it may be mentioned that certain amount towards mental agony was also claimed by the respondent. Order of District Forum notices that award of interest at aforesaid rate would also take care of compensation claimed in that behalf and this reasoning was also approved by the State Commission. We are not inclined to take a view different from that of Fora below in the matter.

7. There is no illegality or jurisdictional error in the impugned order warranting interference in revisional jurisdiction under Section 21(b) of Consumer Protection Act, 1986. Dismissed. Revision Petition dismissed.