

(1992) 05 NCDRC CK 0017

In the National Consumer Disputes Redressal Commission

GREEN TRANSPORT COMPANY

APPELLANT

Vs

New India Assurance Company Ltd.

RESPONDENT

Date of Decision : 20-05-1992

Acts Referred:

Citation : 1992 2 CPJ 349

Hon'ble Judges : V.Balakrishna Eradi , A.S.Vijayakar , Y.Krishan , B.S.Yadav J.

Final Decision : Appeal dismissed

Judgement

1. MR. Justice V. Balakrishna Eradi, President-This appeal has been preferred by M/s. Green Transport Company which was the Opposite Party in Case No. 31 of 1990 on the file of the State Commission. Delhi challenging the order dated March 27,1991 passed by the State Commission directing the appellant-herein to pay a sum of Rs. 1,74,255/- to the complainant with interest at 12 percent per annum from August 26,1988 till the date of payment together with Rs. 1,500/- byway of costs.

2. THE sole complaint before the State Commission was the New India Assurance Company Ltd., which is the respondent - herein. One M/s. Seth Brothers (Perfumers) Pvt. Ltd., Tilak Bazar, Delhi had imported from Singapore a consignment of "patchouli oil" which was packed in three drums of 200 kgs. each. THE consignment arrived by ship in Bombay, it was booked by M/s. Seth Brothers with the appellant company for transportation by road from Bombay to Delhi as per goods receipt No. 44352 dated March 26,1988. THE said consignment was insured by M/s. Seth Brothers with the New India Assurance Company Ltd., - the respondent herein. It is alleged that due to careless and negligent handling of the consignment by the transporting company and its employees, one drum developed cracks at the bottom resulting in leakage and loss of oil. M/s. Seth Brothers lodged a claim with the New India Assurance Company and the latter settled the said claim by paying them an amount of Rs. 1,74,255/-. While making such payment, the New India Assurance Company obtained from M/s. Seth Brothers a letter of subrogation in its favour where

under M/s. Seth Brothers "assigned, transferred and subrogated" all their rights against the defendant to the Insurance Company and authorised them to recover the amount in dispute from the defendant. A special power of attorney was also executed in favour of the Insurance Company by M/s. Seth Brothers. It is on the strength of the latter of subrogation and the special power of attorney that the complaint was filed by the New India Assurance Company before the State Commission claiming compensation from the transporting company. The Opposite Party raised the preliminary objection that the New India Assurance Company Ltd., which was the sole complainant is not a "consumer" and was not, therefore, entitled to maintain the complaint petition under the Act. It also contended that the complainant had no cause of action against the transporter for making any claim under the Consumer Protection Act. Both the aforesaid contentions were rejected rather summarily by the State Commission by observing as follows: "The letter of subrogation and the special power of attorney have been placed on the record by the complainant. From the aforesaid statement and documents it is evident that the insured transferred all their rights to recover damages from the defendants in favour of the complainant. Thus the complainant was subrogated to the rights of M/s. Seth Brothers. The word "subrogate" as defined in the Shorter Oxford English Dictionary. Third Edition, means "to put (a person) in the place of or substitute (him) for another in respect of a right or claim". In view of the letter of subrogation the complainant was substituted in place of M/s. Seth Brothers in respect of their rights and claim against the defendant. It cannot be disputed that M/s. Seth Brothers was a consumer as defined in the Act. Consequently, in our view the complainant also becomes a consumer. We hold accordingly. The second question that arises for determination is, whether the complainant has cause of action against the defendant. As already mentioned the complainant has been subro-gated to the rights of the owner of the goods. Thus they have cause of action to claim the damages for the loss of goods from the defendant".

Thereafter the State Commission went into the merits of the claim and held that the complainant (New India Assurance Company) was entitled to recover from the Opposite Party an amount of Rs. 1,74,255/- being the amount which was paid by it to M/s. Seth Brothers as representing the price of the oil which was lost during transit.

The correctness of the aforesaid conclusions recorded by the State Commission are forcefully challenged before us by the appellant.

3. AFTER hearing both sides we have come to the conclusion that the view taken by the State Commission on the preliminary question of maintainability of the complaint is not correct or tenable in law and that the appeal is liable to be allowed on this preliminary ground. Under Section 2(1)(b) of the Consumer Protection Act. 1986 (hereinafter called the "Act"), a "complainant has to be - (i) a consumer; or (ii) any registered voluntary consumer association; or (iii) the Central Government or any State Government.

4. AS per the definition contained in Section 2(1)(d)(ii) of the Act, "consumer" means, any person who hires any services for consideration and includes any beneficiary of such services other than the person who hires the services for consideration when such services are availed of by the beneficiary with the approval of the first mentioned person. In other words, only the actual person who has hired the service for consideration or any other person availing of the benefit of such service with his approval can be regarded as a "consumer" under the Act. In the present case the transaction of hiring of service was the contract of carriage of goods entered into by M/s. Seth Brothers with M/s. Green Transport Company (appellant) for the transportation of the three drums containing oil from Bombay to Delhi. The complainant before the State Commission, namely, the New India Assurance Company was not the person who had hired the service nor had it availed of the service as beneficiary with the approval of M/s. Seth Brothers. It had merely insured the consignment which formed the subject-matter of contract of carriage. Such being the position, the New India Assurance Company Ltd., cannot be regarded as coming within the definition of "Consumer" so as to entitle it to maintain the complaint petition before the Consumer Forum. The fact that the Insurance Company had acquired rights of subrogation or a transfer of the right of action which M/s. Seth Brothers had as against the transporter or that it had been granted a special power of attorney would not in any way improve the position of the Insurance Company so far as proceedings under the Consumer Protection Act are concerned. It may be that they have a right to institute a suit against the transporter by virtue of subrogation, deed of transfer or special power of attorney. Those documents will not however, clothe the Insurance Company with the legal status and character of "consumer" so as to entitle it to invoke the special jurisdiction and maintain a complaint before the Redressal Forum constituted under the Act. According to the scheme of the Act, the right to seek redressal under its provisions is restricted strictly to consumers, registered consumer associations and the Central and State Governments who alone can figure as a complainant. A third party/stranger cannot acquire by purchase or transfer *intervivos* the right of action which a "consumer" may have and maintain a complaint before a Redressal Forum in his own name.

5. IN the light of the view taken by us as above, it is unnecessary for us to refer to certain decisions which were cited before us on the question as to whether even under the general law a person claiming to have obtained rights of subrogation is entitled to maintain a civil suit except jointly along with the party from whom he claims to have derived the rights of subrogation.

6. FOR the foregoing discussion, we hold that the complaint filed before the State commission by the New India Assurance Company Ltd., Respondent herein - was not maintainable and the State Commission should have dismissed the case on that ground. We accordingly, set aside and vacate the order passed by the State Commission and order that Case No. 31 of 1990 on the file of the State Commission of Delhi shall stand dismissed. The respondent shall pay Rs. 1,500/-

to the appellant by way of costs in this appeal. Appeal dismissed.