
(2011) 09 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

Gulab Road Lines

APPELLANT

Vs

ORIENTAL INSURANCE CO LTD

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Citation : 2011 0 NCDRC 605 : 2011 4 CPJ 307 : 2011 4 CPR 316

Hon'ble Judges : V.R.KINGAONKAR , VINAY KUMAR J.

Advocate : A.K.RAINA

Judgement

1. THIS appeal arises out of the judgement and order rendered by the State Consumer Disputes Redressal Commission, UT Chandigarh (in short "the State Commission"), in complaint bearing No. 55/1998. By the impugned order, the complaint was allowed. The appellant was directed to pay a sum of Rs.9,79,800/- by way of compensation along with interest @ 18% p.a. from 17.10.1998 till realisation of the entire amount to the original complainants. The facts giving rise to the complaint may be briefly stated in the following way:

2. M /s. Deepak Spinner Ltd., original complainant no. 2, had entrusted a consignment consisting of packages of PW yarns etc. to the appellant for transportation thereof. The appellant agreed to deliver the consignment to M/s. Neeta Textiles, Kurala Road, Andheri, Mumbai " 59. The consignment was loaded in truck no. MCY-5266. The appellant allegedly failed to deliver the consignment at the place of destination. The consignment was allegedly misappropriated by the appellant or the transport agency to whom it was entrusted. Therefore, M/s. Deepak Spinners Ltd., the consignee, lodged a claim with the Insurance Company for the amount of loss. The consignor, M/s. Deepak Spinners Ltd. executed a letter of subrogation after the claim was settled at Rs.9,79,800/-. The complaint was filed thereafter by the insurer as complainant no.1 and the consignor " M/s. Deepak Spinners Ltd. as complainant no. 2 against the appellant for recovery of the amount of loss caused due to non-delivery of the consignment. The appellant was duly served with the notice of the State Commission. However, the appellant did not appear before the State

Commission. The appellant had sent a reply through post. In the said reply, in response to the notice of the State Commission, the appellant did not dispute loss of the goods. The only contention raised by the appellant was that the Commission at Chandigarh had no territorial jurisdiction inasmuch as the alleged loss of consignment had taken place somewhere during transit in the State of Madhya Pradesh. The State Commission rejected such contention on the ground that the insurance policy was issued by the insurer at Chandigarh and moreover, the loss was sustained by the consignor who resides in Chandigarh.

3. BY filing the present appeal, the appellant impugned judgement of the Commission at Chandigarh (UT) on the ground that no cause of action had arisen at Chandigarh and moreover, the insurer had no legal status to file the consumer complaint.

4. IT may be stated that when the appeal was heard by this Commission, the question regarding status of the insurer as complainant was considered by the Commission in the light of judgement of the Supreme Court in *Oberoi Forwarding Agency Vs. New India assurance Co. Ltd. and Ors.* " 2000 (2) SCC 407. This Commission held that the complaint was not maintainable. Consequently, the appeal was allowed with liberty to the complainants to seek remedy before any other appropriate Forum. The judgment of this Commission was challenged by the appellant insurer and the original complainant before the Supreme Court. The Supreme Court allowed the Civil Appeal No.1826 of 2010 in view of *Economic Transport Organisation Vs. M/s. Charan Spinning Mills (P) Ltd. and Anr.* " 2010 (2) SCALE 427. The Supreme Court held that the earlier view in *Oberoi Forwarding Agency (Supra)* was no more good law. In this view of the matter, the order rendered by this Commission on 5.1.2007 was set aside and the matter was remanded to this Commission for fresh consideration and disposal of the appeal.

5. WE have heard the learned Counsel for the parties. We have also considered the ratio of *Economic Transport Organisation Vs. M/s. Charan Spinning Mills (P) Ltd. and Anr.* " 2010 (2) SCALE 427. Needless to say, the complaint could not have been dismissed by the Commission and the technical objection raised by the appellant is no more valid.

6. PERUSAL of the letter of subrogation and special power of attorney reveals that the insurer was, in fact, assigned the rights available to the consignor. There is no dispute about the fact that the consignor (assured) was paid an amount of Rs.9,79,800/- by the insurer towards loss of the goods. The relevant part of the letter of subrogation and special power of attorney may be reproduced for ready reference: "In consideration of your paying to us a sum of Rs.9,79,800/- in respect of loss/damage to the under mentioned goods and/or duly payable thereon insured under Policy No.23112/21/00003/97 issued by you, we hereby assign, transfer and abandon to you all our actionable rights, title and interest in and to the said goods and proceeds thereof (to the extent provided by law) and all rights and remedies against Railway Administration and (or Sea Carriers and/

or agents of Sea Carriers and/or Port Authorities and/or Custom Authorities and/or any Carriers and/or persons whoever is liable in respect thereof. We hereby authorises you to file a suit or suits in courts of law against the Union of India owning and representing Indian Railways, the Sea Carriers Charters Agents of Sea Carriers and/or Port Authorities or any other carriers and/or bailees and/or person or persons, firm or firms, corporation or corporations, to recover, the claim moneys of the aforesaid claim or claims and for the said purpose to join us as a co-plaintiff. If you so intend, we further hereby give you authority to sign, declare, verify and affirm and execute jointly and severally in our name and on our behalf, plaint, affidavits, vakalatnamas, petitions and such other applications and/or notices and documents as may be found necessary for the commencement or continuation of proceedings to recover the claim moneys".

A bare perusal of the terms of the agreement between the respondents (complainants) leave no manner of doubt that the actionable claim was transferred by the consignor in favour of the insurer without any reservations. Under these circumstances, the objection raised by the appellant is of no avail and will have to be rejected. There is no dispute about the fact that the consignment was lost during the transit. It appears that the appellant lodged FIR with the police in respect of the misappropriation of the goods by the driver of the truck vehicle. The appellant also informed the consignor about the loss of the consignment by letter dated 25.4.1997. The appellant informed to the consignor " M/s. Deepak Spinners Ltd. that on 31.10.1996, the truck vehicle was despatched with the consignment and subsequently, it was learnt that the driver of the truck had misappropriated the consigned goods. It is pertinent to note that the appellant never adduced any evidence to show that the consignment was misappropriated at a particular place situated in the State of Madhya Pradesh. It cannot be assumed, therefore, that the loss of consignment was only within the limits of the State of Madhya Pradesh. The appellant could not have, therefore, raised any objection in respect of the absence of territorial jurisdiction with the State Commission at Chandigarh (UT). One does not know whether the consignment was lost when the same was within the territory of Chandigarh or elsewhere. Under these circumstances and particularly in absence of any evidence, the State Commission was justified in holding that the appellant was liable to pay the compensation as per the impugned order.

7. IN the result, we do not find any merit in the present appeal. Hence, the appeal is dismissed with cost of Rs.10,000/- payable to the respondents.