

(2005) 07 NCDRC CK 0083

In the National Consumer Disputes Redressal Commission

GUPTA ARTS-N-JEWELLERS

APPELLANT

Vs

ASSOCIATED ROAD CARRIERS

RESPONDENT

Date of Decision : 07-07-2005

Acts Referred:

Citation : 2005 4 CPJ 106 : 2006 1 CLT 313 : 2006 1 CPC 56 : 2006 1 CPR 107

Hon'ble Judges : S.N.Kapoor , B.K.Taimni J.

Final Decision : Revision Petition allowed

Judgement

1. HEARD the petitioner in person and learned Counsel for respondent.
2. IN this matter, there are two questions, which need consideration. As regards the first point it is submitted that the petitioner is neither consumer nor there was privity of contract. It is notable that the petitioner being the consignee was supposed to receive 150 boxes of precious material. As per goods receipt, this was a case of door delivery. There is no dispute that out of 150 boxes, 146 boxes were delivered to the complainant. It would mean that right, title and interest in the goods stood transferred. The goods were kept in deliverable stage and the petitioner became owner of the property in a consignment. IN case of named consignee, plea of privity of contract would not come in the way of claiming compensation in view of the intended transfer of all the rights in the property in favour of the named consignee. As such he would at least be beneficiary in terms of Section 2(1)(d). As regards second point regarding issuance of notice under Section 10 of the Carriers Act, the complainant alleged that legal notices dated 30.12.1995 and 28.12.1998 were issued to the respondent. Notice dated 30.12.1995 has been denied. Subsequent notice dated 28.12.1998 is admitted. The plea taken before the State Commission was that the District Forum had held in conclusion that appellant had not issued legal notice dated 30.12.1995. The State Commission mentioned this plea in its order but has not dealt with the same. Seeing the tenor of the reply, it appears that respondent was just interested in denying that four boxes were short in delivery as is evident from Para 10 of the counter affidavit filed on behalf of opposite parties. The

respondent has not produced any evidence at all by indicating that all the 150 boxes were delivered. Seeing the denial virtually on every point we ignore the affidavit of the respondent and prefer the version of the complainant-petitioner in the affidavit. It is evident that the notice dated 30.12.1995 was sent, to Secunderabad office of the respondent as well as to the registered office, Calcutta along with copy to M/s. Lawrence, Madras. Accordingly we held that requisite notice was served in time. There are other additional circumstances to accept the version of the petitioner, as would be evident from what follows. The complainant was forced to file a criminal complaint against opposite party-respondent in the Court of II M.M., Hyderabad on 2.11.1998. It is apparent from the copy of the order passed by the High Court that finally when the goods were reached to respondent No. 2 herein, i.e., Associated Gupta Arts and Jewellers, there was shortage of four boxes worth Rs. 9,489/-. It is unfortunate that even at this belated stage, the respondent had denied that there was shortage of four boxes without proving that all 150 boxes have been delivered. Before the High Court, learned Counsel for the respondent herein and the petitioner in that matter submitted that "the petitioners herein are always ready and willing to compensate the de facto complainant by paying an amount of Rs. 9,489/- with interest @ 12% per annum till the date of realization". On the basis of this statement, criminal proceedings were dropped against the respondent. If the respondent-opposite parties were ready and willing to pay Rs. 9,489/-, and they are allowed to pay the same to the petitioner with interest @ 12% per annum for the purpose of dropping criminal proceedings at least, this much amount is admittedly payable by the respondent to the petitioner.

In view of the discussion, the petitioner being the beneficiary of the contract to carry the goods in question, should maintain the complaint against the respondent-opposite party. This further enhances the maintainability of the present complaint.

3. AS regards the compensation, it has already been observed that complainant is a consumer and is beneficiary under Section 21 of the Consumer Protection Act, 1986. Cost of each box was around 2,300/-. The petitioner claimed that amount of duty was also paid over and above this amount. In all he claimed Rs. 46,000/- for non-delivery of four boxes. In the light of the cost of each box mentioned by the complainant and ignoring the allegedly "expected" loss if the material was used and submission of the learned Counsel for the respondent made before the High Court that they were ready and willing to pay Rs. 9,489/- with interest @ 12% per annum, we think that this amount is reasonable amount, which the complainant is entitled to recover from the respondent-opposite party. Thus, the complainant is entitled to get Rs. 9,489/- with interest from 1st January, 1996 till the date of the payment along with cost assessed at Rs. 1,000/-. Revision petition is allowed, accordingly, and the respondents are directed to pay this amount within a period of four weeks. R.P. allowed.