(2006) 05 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

GUPTA TRANSPORT CORPORATION APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 26-05-2006

Acts Referred:

Citation : 2006 3 CPR 24 : 2006 4 CPJ 302

Hon'ble Judges : N.K.Jain , Pramila S.Kumar J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal under Section 15 of the (for short "CP Act") by the opposite party-a common carrier, is directed against the order dated 17.1.2000 passed by District Consumer Disputes Redressal Forum, Gwalior directing appellant-carrier to pay to respondent No. 1-the New India Assurance Company Ltd. Rs. 1,20,899 with interest and costs.

2. THE order impugned was passed ex parte against the appellant-opposite party. However during hearing of this appeal, the appellant-opposite party with the leave of the Commission and on payment of costs has filed its reply, affidavit and documents. It was a case where consignment booked by respondent No.-2 a partnership firm of Gwalior with the appellant-opposite party for transportation, was damaged during transit. Since the consignment was insured with respondent No. 1-Insurance Company, respondent No. 2 consignor submitted its claim with respondent No. 1 which in turn settled the claim for Rs. 1,20,899 and the amount was accordingly paid to respondent No. 2 who in turn on 8.3.1999 executed a letter of subrogation cum special power of attorney in favour of respondent No. 1. Thereafter both the respondents i.e. the insurer and the insured on 22.9.1999 filed joint complaint under Section 12 of the CP Act against appellant-carrier claiming the said amount of Rs. 1,20,899. The Forum below by order impugned allowed the complaint directing the appellant-opposite party to pay the said sum of Rs. 1,20,899 with interest @ 12% p.a. from the date of payment and costs Rs. 1,400/-.

Appellant-opposite party has resisted the claim mainly on the ground that respondent No. 1-Insurance Company was not its consumer and no privity of contract as such existed between them and no order therefore could be passed against the appellant under the provisions of the CP Act. Several other pleas are also raised.

3. THE question thus arises whether respondent No. 1-Insurance Company was entitled to maintain the complaint under the CP Act on the basis of the said letter dated 8.3.1999 described as letter of subrogation cum special power of attorney. Counsel for appellant Mr. Hemant Sharma has placed reliance on two Supreme Court decisions in the case of Oberai Forwarding Agency, II (2000) SLT 86=I (2000) CPJ 7 (SC)=2000 CTJ 172 (SC) (CP) and Navjyoti Investment & Dealers Ltd., III (2001) CPJ 8 (SC)=IV (2001) SLT 616, and it was contended that the so called letter of subrogation was in fact, a deed of assignment and the respondent No. 1-assignee was not therefore entitled to file any complaint under the CP Act. As against it, Shri Mahavir Bhatnagar, learned Counsel for respondent No. 1 maintained that the deed dated 8.3.1999 was letter of subrogation which entitled the respondent No. 1 to step into the shoes of respondent No. 2-consignor and was thus entitled to file complaint against the appellant-carrier. We have very carefully gone through the document in question. The opening paragraph of this document thus reads : "In consideration your paying to us a sum of Rs. 1,20,958.00 say of one lac twenty thousand nine hundred fifty eight only in respect of loss/damage to the undermentioned goods and/or duty payable thereon insured under Policy No. 2145060100252, Bill No. 103 dated 21.1.1999 issued by M/s. Shyam Sunder Agrawal & Company, Dal Bazar, Gwalior we hereby assign, transfer and abandon to you all our notionable rights, title and interest in respect and to the said goods and proceeds thereof to the extent provided by law and all rights and remedies against Railway administrations and/or sea carriers and/ or customs authorities and/or person or persons whosoever is liable in respect thereof."

4. HON''ble the Supreme Court in the case of Oberai Forwarding Agency (supra), has reproduced the relevant para of the letter of subrogation which was in consideration before the Apex Court in that case and it was held that such a "letter of subrogation" was in fact an assignment. It was held that the assignee was not a beneficiary of any service and was thus not a consumer. It was further held that a complaint by an Insurance Company was not maintainable. A bare comparison of the language of the two documents, the one re-produced by the Apex Court in the case of Oberai Forwarding Agency (supra), and the other before us, leave no manner of doubt that main terms of both the documents are identical. The Apex Court in its sub-sequent decision in Navjyoti Investment, (supra) dealing with a similar letter of subrogation held: "The main terms of the letter of subrogation in this case are identical to a letter of suborgation in Oberai Forwarding Agency''s case. On such terms it has been held that it is an assignment. As it is an assignment the principle laid down in the above mentioned case (Oberai Forwarding Agency''s case) apply and the complaint would not be maintainable."

Similar is the position in the instant case and as such the complaint filed by respondent No. 1 even after making respondent No. 2 as a co-complainant was not maintainable. The Forum below seems to have missed this legal infirmity in the case of the respondent and erred in entertaining the complaint and granting the relief as aforesaid.

5. THIS appeal thus succeeds and is allowed. The impugned order is set-aside and the complaint of respondent is dismissed. We however make no order as to costs which the parties are left to bear their own as incurred throughout. Appeal allowed.