(1994) 09 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE COMPANY LTD. And ANOTHER-s — APPELLANT

Vs

KISAN ROADWAYS — RESPONDENT

Date of Decision : 30-09-1994

Acts Referred:

Citation : 1995 2 CPC 478 : 1995 3 CPR 22

Hon'ble Judges : R.C.Mankad , Leelaben Trivedi , R.K.Shah J.

Judgement

1. COMPLAINANT No. 2 Madhusudhan Industries Limited booked consignment of 9900 kgs. of Rice Bran Oil Raw Grade II (oil for short) under note No. 215 with opponent Kisan Roadways. The consignment was despatched in Tanker No. GRP 6296. The consignment was to be delivered to M/s. Ram Vijay Soap Factory at Rajkot. The tanker in which oil was despatched from Rakhial by complainant No. 2 turned turtle at Ghodasar cross roads and as a result thereof, 9880 kgs. of oil leaked out. The opponent issued certificate dated 30.1.1991 certifying to the effect that consignment of oil loaded by complainant No. 2 at Rakhial and which was to be delivered to M/s. Ram Vijay Soap Factory at Rajkot in Tanker No. GRP 6296 under note No. 215 dated 2.1.91 met with an accident on 2.1.91 near Ghodasar in Ahmedabad and as a result thereof 9880 kgs. of oil leaked out the said consignment of oil was insured with complainant No. 1 National Insurance Company Limited and, therefore complainant No. 2 made claim in respect of loss suffered by it on account of leakage of oil as aforesaid. The surveyor surveyed the loss and according to its report oil worth Rs. 1,49,682/- had leaked out as a result of the accident. Rs. 750/- were paid by way of fees to the surveyor and cost of photographs taken by surveyor came to Rs. 260/-. COMPLAINANT No. 1 settled the claim made by complainant No. 2 and paid Rs. 1,09,566/- to complainant No. 2. In view of this payment of Rs. 1,09,566/-, complainant No. 2 executed letter of subrogation and special power of attorney in favour of complainant No. 1.

2. COMPLAINANT No. 2 also gave notice to the opponent under the Carriers'' Act on January 8, complainant No. 2 claimed Rs. 1,54,682/- from opponent. It

appears that no reply was given to this notice by opponent. In the aforesaid circumstances the complainants have filed this complaint for recovery of Rs. l,09,566/- together with interest @18% p.a. and cost from the opponent. The opponent resisted the complaint on several grounds mentioned in their written reply. However, no one appeared on their behalf at the time of hearing of this complaint. The main grounds of defence raised by the opponent are as follows: (1) This Commission has no jurisdiction to entertain the complaint (2) That complainant No. 2 is not consumer. (3) Complainant No. 2 has no right or authority to transfer, assign or subrogate its rights to claim damages and, therefore, subrogation in favour of complainant No. 1 is not valid. (4) The opponent is merely a broker and not a carrier and, therefore, is not liable as a carrier. (5) There is no negligence on the part of the opponent and, therefore, no liability arises for the alleged leakage of oil; and (6) The opponent is not liable to pay any amount to the complainant by way of damages or otherwise.

The opponent has not disclosed who their principal is. Mere description as broker in the consignment note is to enough to establish that the opponent had entered into contract for carriage of oil as broker or agent of some other person. There is no doubt that the opponent had booked the consignment of complainant No. 2 which was to be delivered at Rajkot as stated above. They had issued consignment note in which registration number of the oil tanker is also mentioned. There is absolutely no evidence on record to show that the tanker did not belong to the opponent. But a part from that, the fact remains that the opponent had booked the aforesaid consignment of oil and transported it in the oil tanker for delivery at Rajkot. In our opinion, considering all the facts and circumstances of the case, the opponent is accountable as carrier It is true that in consignment note it is stated to the effect that the consignor/consignee will not transfer, assign or subrogate its right to claim any damages from the common carrier. However, below the terms and additions of the consignment note which includes the aforesaid term does not bear the signature of the consignor or consignee or their representative. There is a space below the terms and conditions for such signature. But there is no signature of consignor or consignee or their representative. It would thus appear that the consignor or consignee had not agreed to the terms and conditions mentioned in the consignment note. But apart from that complainant No. 1 is an Insurance Company and it is entitled to be subrogated in place of complainant No. 2 under Section 79 of the Marine Insurance Act, 1963. Complainant No. 2 is a consumer in as much as it has taken services of the opponent for despatch of oil as aforesaid. The tanker in which the oil was despatched turned turtle, apparently due to the negligence on the part of the driver of the tanker. Obviously, therefore, there was deficiency of service on the .part of the opponent. Complainant No. 2 as a consumer is entitled to file this complaint against the opponent. Complaint No. 1 is entitled to file this complaint because it has taken over the interest of complainant No. 2 and is thereby subrograted to all rights and remedies available to complainant No. 2.

3. THE controversy raised in this complaint is directly covered by our decision in Madhu Refoils and Chemicals Ltd. & Another v. Taran Tanker Service-Complaint No. 503 of 1992 decided of on August 12, 1994. In view of this decision, it must be held that this complaint is maintainable and the complainants are entitled to recover compensation from the opponent for deficiency in service, if any. The tanker in which oil was despatched turned turtle on January 2, 1991 and a result thereof, 9880 kgs. of oil leaked out. These facts are not disputed. The fact that the tanker turned turtle would clearly establish the negligence on the part of the driver of the tanker. In other words, it was due to negligence on the part of the driver of the tanker that it turned turtle and oil leaked out. The opponent is, therefore, liable to make good the loss suffered by the complainant. Since the complainant No. 1 has stepped into the shoes of Complainant No. 2, it is entitled to claim the same rights as complainant No. 2. Therefore, complainant No. 1 is entitled to recover damages/compensation from the opponent for the aforesaid loss. Complainant No. 1 has admittedly paid Rs. 1,09,566/- to complainant No. 2 on account of loss due to leakage of oil. Complainant No. 1 is, therefore, entitled to recover this amount of Rs. 1,09,566/- together with interest from the opponent

4. IN the result, we allow this complaint and direct the opponent to pay to complainant No. 1 INsurance Company sum of Rs. 1,09,566/- together with interest @ 18% p.a. from May 1, 1991 till payment is made together with cost which is quantified at Rs. 2,000/- each within four weeks from the date of receipt of this order. We would have passed order for payment of the aforesaid amount jointly in favour of both the complainants but since complainant No. 2 has already received the payment of said amount from complainant No. 1 INsurance Company, we have passed order only in favour of complainant ''No. 1 INsurance Company. However, as stated above, each of the complainants, shall be paid cost of Rs. 2,000/- by the opponent. Complaint allowed with costs.