
(2006) 05 NCDRC CK 0075

In the National Consumer Disputes Redressal Commission

Native Drugs And Pharmaceuticals

APPELLANT

Vs

BHARAT MOTOR TRANSPORT CO. pVT. ITD.

RESPONDENT

Date of Decision : 08-05-2006

Acts Referred:

Citation : 2006 2 CPC 699 : 2006 4 CPJ 14

Hon'ble Judges : K.S.Gupta , P.D.Shenoy J.

Final Decision : Revision Petition allowed

Judgement

1. THIS revision is directed against the order dated 13.2.1997 of Consumer Disputes Redressal Commission Punjab, Chandigarh allowing appeal against the order dated 6.6.1996 of a District Forum and dismissing the complaint.

2. FACTS giving rise to this revision lie in a narrow compass. Petitioner/complainant booked 33 corrugated boxes containing Ayurvedic medicines of the value of Rs. 25,000 vide GR No. 19071 dated 11.7.1992 with the respondent/opposite party transport company for being transported from Amritsar to Bhatinda. On boxes not reaching the destination the petitioner served a notice under Secion 10 of the Carriers Act on the respondent on 8.9.1992. Delivery of boxes not being made despite service of notice the petitioner filed complaint claiming the said amount with interest @ 18% p.a. and compensation of Rs. 10,000. Respondent contested the complaint by filing written version. Though the booking of medicines contained in 33 boxes was not disputed but it was alleged that boxes were damaged on, account of rain on 11.7.1992 and were, therefore, returned to the petitioner for re-packing. Thereafter, the petitioner sent the same medicines to M/s. Vinod Medical Agency, Bhatinda through M/s. Chadha Motor Transport Company on 15.7.1992 vide GR No. 55121 and those were received by the consignee. District Forum allowed the complaint with direction to the respondent to pay amount of Rs. 25,000 with interest @ 15% from the date of despatch and cost of Rs. 5,000 which order in appeal by the respondent was set aside by the State Commission. Having heard Mr. Ashok Kumar Biswas for petitioner and Mr. R.C. Mishra for respondent the point which

arises for determination in this revision is whether 33 boxes containing medicines booked vide GR No. 19071 dated 11.7.1992 were returned for repacking by the respondent to the petitioner. Onus to prove return of boxes for repacking was on the respondent. It is not in dispute that before sending reply to the petitioner's notice dated 8.9.1997 on 21.9.1997 the respondent did not send any notice/letter to the petitioner demanding return either of GR No.19071 or hand over the booked boxes after repacking or produced receipt executed by the petitioner acknowledging receipt of boxes for repacking. Petitioner alleged that after 33 boxes did not reach destination, they sent another lot of medicines of the same description to M/s. Vinod Medical Agency through M/s. Chadha Motor Transport Company on 15.7.1992. The State Commission did not consider the important aspect of non-issuance of notice/letter for the said purpose and/or non-production of acknowledgement receipt by the respondent and by drawing adverse inference against the petitioner for not having produced the stock register of medicines in respect of two dates of 11.7.1992 and 15.7.1992, returned the finding that the boxes were returned for repacking by the respondent to the petitioner. In our view, this approach of the State Commission is totally erroneous. The District Forum had rightly returned the finding that booked boxes were not delivered to the consignee by the respondent-transport company.

Mr. Mishra urges that the rate of interest of 15% as awarded by District Forum is on higher side. In our view, the same deserves to be reduced to 12% p.a.

3. FOR the foregoing discussion, while allowing revision the order of State Commission dated 13.2.1997 is set aside and that of District FORum dated 6.6.1996 restored subject to modification in rate of interest as indicated in the preceding para. Petitioner is entitled to cost from the respondent which is quantified at Rs. 7,500. Revision Petition allowed.